



IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG

CASE NO: 1997/23

- (1) Reportable: Yes/No
(2) Of interest to other Judges: Yes/No
(3) Revised: Yes/No

SIGNATURE

DATE

26/08/2026

In the matter between:

SHOPRITE CHECKERS (PTY) LTD

PLAINTIFF

and

TERRANOVA LIQUOR (PTY) LTD

FIRST DEFENDANT

RUAN SERFONTEIN

SECOND DEFENDANT

MATTHYS DU TOIT LOUBSER

THIRD DEFENDANT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 26 August 2026 at 10h00.

JUDGMENT

Schutte AJ

Introduction

[1] The parties are in the liquor trade, but their business relationship went sour when the defendants ordered more liquor than they could afford. In this matter, the plaintiff seeks payment of more than R3 million from the defendants. But the first hurdle in the matter is an exception filed by the defendants against the plaintiff's particulars of claim.

The particulars of claim

[2] The plaintiff alleges that it had concluded a franchise agreement with the first defendant on 14 November 2017. In terms of the agreement, the plaintiff granted the first defendant the right to operate an OK Liquor business and provided the first defendant with a monthly credit facility, payable within 30 days of the date of the statement.

[3] The plaintiff also alleges that it concluded a credit facility agreement on 5 February 2018 with the first defendant, in terms of which the plaintiff granted the first defendant a credit facility, payable within 30 days from statement.

[4] The plaintiff claims that, in August 2022, it and the first defendant concluded a verbal loan agreement in terms of which the plaintiff would advance R508 012 to the first defendant. This loan was repayable within a reasonable time, or upon cancellation of the franchise agreement, or upon perfection of the notarial bonds which the plaintiff held over the first defendant's assets, or upon demand.

[5] The first defendant fell into arrears, and by January 2023, it owed the plaintiff R3 008 630.57 and R508 012.00, respectively, in terms of the credit facility and the verbal loan agreement.

[6] The second and third defendants' liability arises from a written surety they signed in favour of the plaintiff for the debt of the first defendant.

The exception

[7] The defendants say the plaintiff's particulars of claim lack the necessary averments to sustain a cause of action. They say that the credit facility agreement incorporated the plaintiff's standard terms and conditions, which included a clause stating that the credit facility agreement was the sole agreement between the plaintiff and the first defendant regarding the subject matter, and that no variation, amendment or cancellation of the credit facility agreement would be of any force and effect unless in writing.

[8] The defendants objected to the fact that the repayment terms of the verbal loan agreement were at variance with the express repayment terms of the credit facility agreement, and further that the verbal agreement constituted a novation of the credit facility agreement.

[9] The defendants request that their exception be upheld and the plaintiff's claim be struck out or that the plaintiff be instructed to amend its particulars of claim.

The exception test

[10] Rule 23 of the Uniform Rules of Court, which regulates exceptions, stipulates as follows:

"(1) Where any pleading is vague and embarrassing, or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may apply to the registrar to set it down for hearing within 15 days after the delivery of such exception: Provided that —

(a) where a party intends to take an exception that a pleading is vague and embarrassing such party shall, by notice, within 10 days of receipt of the pleading, afford the party delivering the pleading, an opportunity to remove the cause of complaint within 15 days of such notice; and

(b) the party excepting shall, within 10 days from the date on which a reply to the notice referred to in paragraph (a) is received, or within 15 days from which such reply is due, deliver the exception.

(2) Where any pleading contains averments which are scandalous, vexatious, or irrelevant, the opposite party may, within the period allowed for filing any subsequent pleading, apply for the striking out of the aforesaid matter, and may set such application down for hearing within five days of expiry of the time limit for the delivery of an answering affidavit or, if an answering affidavit is delivered, within five days after the delivery of a replying affidavit or expiry of the time limit for delivery of a replying affidavit, referred to in rule 6(5)(f): Provided that —

(a) the party intending to make an application to strike out shall, by notice delivered within 10 days of receipt of the pleading, afford the party delivering the pleading an opportunity to remove the cause of complaint within 15 days of delivery of the notice of intention to strike out; and

(b) the court shall not grant the application unless it is satisfied that the applicant will be prejudiced in the conduct of any claim or defence if the application is not granted.

(3) Wherever an exception is taken to any pleading, the grounds upon which the exception is founded shall be clearly and concisely stated.

(4) Wherever any exception is taken to any pleading or an application to strike out is made, no plea, replication or other pleading over shall be necessary."

[11] In *Living Hands (Pty) Ltd and Another v Ditz and Others*,¹ the court stated that:

"(a) In considering an exception that a pleading does not sustain a cause of action, the court will accept, as true, the allegations pleaded by the plaintiff to assess whether they disclose a cause of action.

(b) The object of an exception is not to embarrass one's opponent or to take advantage of a technical flaw, but to dispose of the case or a portion thereof in an expeditious manner, or to protect oneself against an embarrassment which is so serious as to merit the costs even of an exception.

¹ *Living Hands (Pty) Ltd and Another v Ditz and Others* 2013 (2) SA 368 (GSJ) at para 15.

(c) The purpose of an exception is to raise a substantive question of law which may have the effect of settling the dispute between the parties. If the exception is not taken for that purpose, an excipient should make out a very clear case before it would be allowed to succeed.

(d) An excipient who alleges that a summons does not disclose a cause of action must establish that, upon any construction of the particulars of claim, no cause of action is disclosed.

(e) An over-technical approach should be avoided because it destroys the usefulness of the exception procedure, which is to weed out cases without legal merit.

(f) Pleadings must be read as a whole and an exception cannot be taken to a paragraph or a part of a pleading that is not self-contained.

(g) Minor blemishes and unradical embarrassments caused by a pleading can and should be cured by further particulars."

[12] In *Jowell v Bramwell-Jones and Others*,² the court stated that:

"... it had to ask first whether the exception went to the heart of the claim, and, if so, whether it was vague and embarrassing to the extent that defendant did not know the claim it had to meet; and, if the exception failed on any ground, to ascertain in the second place whether the particulars identified by defendant were strictly necessary in order to plead and, if so, whether the material facts were unequivocally set out."

[13] In simple terms, the test to be followed is that I accept the facts as set out in the particulars of claim to be true. Then, I consider whether the accepted facts constitute a cause of action. Thirdly, if I am satisfied that the facts do constitute a cause of action, I then consider whether the defendants can plead thereto.

Application of the law to the facts

[14] The plaintiff's case is that the credit facility agreement and the verbal loan agreements are two separate, stand-alone agreements, concluded on different dates

² *Jowell v Bramwell-Jones and Others* 1998 (1) SA 836 (W) at page 845G-I.

with, amongst others, different repayment terms. There is simply no room to read into the plaintiff's allegations, as the defendants would want me to, that these agreements are but one and the same agreement. The defendant's construction of the particulars of claim is not one that the objective reader would establish. The objective reader would not hesitate, I believe, to conclude that the plaintiff has alleged two distinct agreements.

[15] If I accept, as the authorities instruct me to, that every allegation made by the plaintiff is correct, then I must accept that I would be able to grant judgment against the defendants for their breach of two agreements, one termed a credit facility agreement and the other, a verbal loan agreement.

[16] In my view, the defendants have failed to prove that the particulars of claim do not disclose a cause of action. The exception stands to be dismissed.

Costs

[17] I see no reason to deviate from the principle that costs follow the result. The appropriate cost order is party and party costs. Both counsel argue that the appropriate scale would be scale B. I disagree. In my view, scale A – the lowest scale – applies because the issues before me did not raise any novel law nor were they complex.

Judicial case management

[18] Three years after the plaintiff issued summons, this matter still finds itself stuck in the pre-plea phase. The matter calls for judicial intervention.

Conclusion

[19] For the reasons set out, I dismiss the exception with costs, and case-manage the matter.

Order

[20] I therefore make the following order:

1 The defendants' exception is dismissed with costs on a party and party scale (scale A).

2 The costs are to be paid by the defendants jointly and severally, the one to pay the other to be absolved.

3 The defendants are to file their respective pleas and counter-claims, if any, on or before 7 September 2026.

4 The plaintiff must file its replication – if it so wishes – and its plea to the counter-claim(s) (if any) on or before 28 September 2026.

5 The defendants must file – if they so wish – their replication to the plaintiff's plea to the counter-claim, if any, on or before 12 October 2026.

6 The parties must file their respective discovery affidavits by no later than 26 October 2026.

7 If not settled, the parties must exchange their respective pre-trial agendas by no later than 9 November 2026 and hold a pre-trial conference and file the signed pre-trial minutes by no later than 30 November 2026.

8 The parties must, by no later than 7 December 2026, enrol the matter for the first available judicial case management hearing date.

9 If any clauses of this case management order are not complied with, the non-compliant party must file an affidavit before the judicial case management hearing, setting out in detail the extent of and reasons for non-compliance.



SCHUTTE AJ
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG

Appearances

On behalf of the plaintiff: Advocate van Schalkwyk

On behalf of the defendants: Advocate Steyn

Date heard: 13 August 2026

Judgment delivered: 26 August 2026