

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 2023/020898

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

31 August 2026

DATE

[REDACTED]
SIGNATURE

In the matter between:

BMW FINANCIAL SERVICES (SOUTH AFRICA) (PTY) LIMITED

Plaintiff

and

MOREKU HOLDINGS (PTY) LTD

First Defendant

MATETE PEDECIA APHANE

Second Defendant

JUDGMENT

VETTER, AJ

A. INTRODUCTION

- [1] The defendants except to the plaintiff's particulars of claim on two grounds. The exception is dismissed.
- [2] The plaintiff sues the first defendant for the balance said to be owing under a written instalment sale agreement, and the second defendant as surety for that debt. A copy of the agreement is annexed to the particulars as Annexure B. I refer to the plaintiff as BMW.
- [3] The exception is taken on the grounds that the particulars are vague and embarrassing and lack averments necessary to sustain a cause of action. The first ground is that BMW relies on an instalment sale agreement which it has not annexed, so that paragraph 4.1 of the particulars does not comply with rule 18(6) of the Uniform Rules of Court.¹ The second is that the National Credit Act 34 of 2005 does not apply to this agreement. To the extent that BMW has founded its cause of action on that Act, the particulars are said to lack the averments necessary to sustain it.

B. THE APPROACH TO AN EXCEPTION

- [4] An exception is determined on the pleading as it stands. The facts stated in it are assumed to be true, no facts outside it may be brought into issue, and no reference may be made to any other document.²
- [5] A document which rule 18(6) requires to be annexed is annexed to the pleading and forms part of it. The pleading is therefore read as a whole, annexures included. In deciding an exception, a court is not playing games and does not blindfold itself.³
- [6] An excipient must persuade the court that upon every interpretation which the pleading, and in particular the document upon which it is based, can reasonably

¹ Exception, paras 1 to 7, CaseLines 25-1 to 25-2.

² *Gallagher Group Ltd and Another v IO Tech Manufacturing (Pty) Ltd and Others* 2014 (2) SA 157 (GNP) at para 19.

³ *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA* [2005] ZASCA 73; 2006 (1) SA 461 (SCA) at para 10.

bear, no cause of action is disclosed. If it fails in that, the exception ought not to be upheld.⁴

- [7] Where the ground is that a pleading is vague and embarrassing, two questions arise. The first is whether the pleading lacks particularity to the point of vagueness. The second is whether the vagueness causes embarrassment of such a nature that the excipient is prejudiced.⁵ The prejudice must be serious, and the excipient must make out a clear and strong case before the exception can succeed.⁶
- [8] The defendants are confined to the grounds raised in their notice of exception. It is impermissible for an excipient to traverse matters of evidence which do not appear *ex facie* the allegations in the pleading objected to.⁷
- [9] Finally, an exception is not to be approached in an over-technical manner. The procedure exists to weed out cases without legal merit, and an over-technical approach destroys its utility.⁸

C. THE FIRST GROUND

- [10] Paragraph 4.1 alleges that on 8 October 2021, at Midrand, the first defendant and BMW, each represented by a duly authorised representative, signed a written instalment agreement, and that a true copy of it is annexed as Annexure B.⁹
- [11] Rule 18(6) requires a party who in his pleading relies upon a contract to state whether the contract is written or oral and when, where and by whom it was concluded. If the contract is written, a true copy of it, or of the part relied on,

⁴ *Gallagher* above n 2 at para 20; *Theunissen en Andere v Transvaalse Lewendehawe Koöp Bpk* 1988 (2) SA 493 (A) at 500E-F.

⁵ *Trope v South African Reserve Bank* 1992 (3) SA 208 (T) at 211A-B.

⁶ *Merb (Pty) Ltd and Others v Matthews and Others* (2020/15069) [2021] ZAGPJHC 693 (16 November 2021) at para 10.

⁷ *Merb* above n 6 at para 30.

⁸ *Telematrix* above n 3 at para 3.

⁹ Particulars of claim, para 4.1, CaseLines 02-13.

must be annexed.¹⁰ Paragraph 4.1 states each of those things and the copy is annexed. The paragraph complies with the rule.

[12] The complaint is in truth a different one. It is that Annexure B is headed as a quotation and pre-agreement statement, and so is not the instalment sale agreement which BMW pleads, with the result that the agreement itself has not been annexed. That says nothing about paragraph 4.1. It asserts that the annexed document is something other than what BMW says it is, which is a question for the trial; and courts have been reluctant to decide exceptions on fact bound issues.¹¹

[13] Reading the annexure as a whole, as I must, it does not bear the character the defendants give it. Its first page describes the document both as a quotation and pre-agreement statement for an instalment sale agreement and as an instalment sale agreement, and the terms it incorporates define the Agreement so as to include the quotation.¹² The defendants have not shown that on every interpretation the annexure can reasonably bear, no cause of action is disclosed.

[14] Nor do the defendants say what it is that they are unable to plead to. A defendant who contends that an annexed document is not the agreement the plaintiff pleads knows precisely the case it must meet and may deny it. Neither vagueness nor serious prejudice is shown, and the first ground fails.

D. THE SECOND GROUND

[15] The second ground begins from a premise the particulars do not bear out. It is advanced, in terms, only “to the extent that” BMW based its cause of action on the provisions of the Act.¹³ BMW’s cause of action is not founded on the Act. It is founded on the instalment sale agreement, its terms, breach, cancellation and the suretyship. Paragraph 10 pleads that BMW complied with the Act by

¹⁰ Rule 18(6) of the Uniform Rules of Court.

¹¹ *Merb* above n 6 at para 11.

¹² Annexure B, CaseLines 02-24 and 02-27.

¹³ Exception, para 11, CaseLines 25-3.

sending the letters of demand pleaded earlier, and paragraph 11 pleads an assessment under section 81 before the credit was granted.¹⁴ Those allegations supplement the contractual case. They do not constitute it.

- [16] The ground rests, next, on a fact which appears nowhere in the particulars. The defendants allege in their exception that the first defendant is a juristic person whose assets or annual turnover at the time of conclusion exceeded R 1 000 000, and that the Act accordingly does not apply.¹⁵ That is evidence which the defendants tender for themselves, and an exception is not a vehicle for evidence. If the defendants wish to dispute that the Act applies, they must plead that dispute and prove it at the trial.
- [17] There is a further and more fundamental answer. BMW pleads that the Act applies and that it has complied with it. The defendants say that the Act does not apply. Their complaint is therefore not that the particulars say too little but that they say too much. On the defendants' own case the allegations about the Act are unnecessary. Surplusage is the antithesis of prejudice. No defendant is left unable to plead by allegations which it says need never have been made. It denies them and pleads over.
- [18] The alternative reliance on section 93(1) of the Act meets the same answers. It asks me to hold that the pre-agreement statement had to be followed by a further credit agreement, that no such agreement was concluded, and that the quotation expired after five days. There is therefore, on the defendants' argument, no valid written credit agreement binding either of them.¹⁶ Section 93(1) says nothing of the kind. It requires a credit provider to deliver to the consumer, without charge, a copy of the document recording the agreement, and it is section 92(3) which keeps a quotation open for five business days.¹⁷ Nothing turns on the choice of section, because the ground fails whichever is invoked. Every one of those propositions is a question on the merits, and each

¹⁴ Particulars of claim, paras 10.3 and 11, CaseLines 02-18 to 02-19.

¹⁵ Exception, paras 9 and 10, CaseLines 25-2 to 25-3.

¹⁶ Exception, paras 11.1 to 11.5, CaseLines 25-3.

¹⁷ Sections 92(3) and 93(1) of the National Credit Act 34 of 2005.

rests on the same unpleaded foundation. Neither a missing averment nor prejudice is established. The second ground fails.

E. COSTS

[19] Costs follow the result. The scale is a matter for my discretion, and I may have regard to the amount involved. The balance claimed is R 4 601 518.60.¹⁸ An exception in a matter of that value warrants scale B. Nothing was advanced to justify any other scale.

F. ORDER

[20] I make the following order:

1. The exception is dismissed.
2. The first and second defendants are to pay BMW Financial Services (South Africa) (Pty) Limited's costs of the exception on scale B, jointly and severally, the one paying the other to be absolved.

VETTER AJ
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances

For the Excipients: Mr N Mboweni
Instructed by: N Mboweni Attorneys Inc.

For the Respondent: Ms S F Fisher-Klein

¹⁸ Particulars of claim, para 12.1, CaseLines 02-19; rule 67A of the Uniform Rules of Court.

Instructed by: Velile Tinto Inc. Attorneys

Date of hearing: 25 August 2026

Date of judgment: 31 August 2026

This Judgment is handed down electronically by circulation to the parties' legal representatives by email and publication on CaseLines and SAFLII. The date for the handing down is deemed 31 August 2026.