

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 34125/2021

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

7 September 2022

.....

Date

A handwritten signature in black ink, appearing to read "ML TWALA".

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ML TWALA

In the matter between:

E-SPORT ENTERTAINMENT (PTY) LTD

(Registration Number: 2016/487339/07)

EXCEPIENT

And

**SOUTH AFRICAN SECURITISATION
PROGRAMME (RF) LTD**

RESPONDENT

(Registration Number: 1991/002706/06)

In re: the matter of

**SOUTH AFRICAN SECURITISATION
PROGRAMME (RF) LTD**

(Registration Number: 1991/002706/06)

PLAINTIFF

And

ONLINE ARENA ENTERPRISES (PTY) LTD

t/a ORENA.COM

(Registration Number: 2013/121161/07)

FIRST DEFENDANT

E-SPORT ENTERTAINMENT (PTY) LTD

(Registration Number: 2016/487339/07)

SECOND DEFENDANT

TUCCONI, LUCA TANCREDI

(Registration Number: 9106265145082)

THIRD DEFENDANT

JUDGMENT

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the judgment is deemed to be the 7th of September 2022

TWALA J

[1] The second defendant in this case brought this application in terms of rule 23 of the Uniform Rules of Court wherein it excepts to the plaintiff's particulars

of claim to the summons on the grounds that the particulars of claim do not disclose a cause an action.

- [2] At the commencement of the hearing of this case, counsel for the second defendant informed the court that the plaintiff has already obtained judgment against the first and third defendants and that it is only the second defendant that is defending this matter. For the sake of convenience, I propose to refer to the parties as the excipient and the respondent.
- [3] The genesis of this case is that the respondent has issued summons against the excipient, the first and third defendants for the return of certain goods and payment of the sum of R487 167.26 based on the Master Rental Agreement which was concluded between The Rental Company Trust (Trust Number: IT 616/96) (*"The Trust"*) and the first defendant on the 29th of September 2017. Under the Master Rental Agreement, the first defendant rented certain equipment for a period of sixty (60) months and undertook to pay therefore a rental amount in the sum of R19 043.53 per month.
- [4] On the 13th of September 2017 the excipient and the third defendant signed unlimited deeds of guarantee in terms of which they bound themselves as guarantors and co-principal debtors with the first defendant, jointly and severally, in favour of The Trust or its cessionary/ies in the event of a cession of whatsoever nature and however arising for the due and proper fulfilment of all the obligations of the first defendant arising from or out of the terms of the Master Rental Agreement between the first defendant and The Trust or from any cause howsoever arising.
- [5] The Trust performed all its obligations arising in terms of the Master Rental Agreement and at the instance of the first defendant and made the equipment

available for its use. On the 21st of September 2011 The Trust concluded a deed of Main Cession Agreement with Sunlyn (Pty) Ltd (formerly known as Sunlyn Rentals (Pty) Ltd with registration number: 1988/000147/07 (*"Sunlyn"*) in terms whereof The Trust, inter alia, ceded existing and future rental agreements to Sunlyn. The cession was dependant on Sunlyn making an offer which is acceptable to The Trust which offer would be acceptable to TheTrust only when payment of the provisional purchase price is made.

- [6] Both the The Trust and Sunlyn having fulfilled their obligations in terms of the Main Cession agreement. On the 2nd of November 2016 Sunlyn conclude a written Main Cession Agreement with Fintech Underwriting (Pty) Ltd with registration number; 2002/025400/07 (*"FUN"*) in terms whereof Sunlyn, inter alia, ceded existing and future rental agreements to FUN. The cession was dependant on FUN making an offer which is acceptable to Sunlyn which offer would be acceptable to Sunlyn only when payment of the provisional purchase price is made. FUN and Sunlyn fulfilled their obligations in terms of the Main Cession Agreement.

- [7] On the 15th of November 2017 a written Sale and Transfer Agreement was concluded between FUN and the plaintiff in terms whereof the Master Rental Agreement was sold by FUN to the plaintiff together with the other rental agreements reflected in the electronic schedule furnished by FUN to the plaintiff. The plaintiff duly performed its obligations in terms of the sale and transfer agreement and paid the purchase price.

- [8] It is trite that an exception that a pleading does not disclose a cause of action strikes at the formulation of the cause of action and its legal validity. The cause of complaint is not directed at a particular paragraph in the pleading but at the pleading as a whole, which must be demonstrated to be lacking the

necessary averments to sustain a cause of action. Furthermore, it is trite that exceptions should be dealt with sensibly since they provide a useful mechanism to weed out cases without legal merit. However, an overly technical approach should be avoided because it destroys the usefulness of the exception procedure. (*See Telematrix (Pty) Limited v Advertising Standards Authority SA 2006 1 ALL SA 6 (SCA); 2006 1 SA 461 (SCA)*).

- [9] In *M Ramanna and Associates cc v The Ekurhuleni Development Company (Pty) Ltd*, case No: 25832/2013 (4 April 2014) ZAGPJHC this Court stated the following:

“It is a basic principle that particulars of claim should be so phrased that a defendant may reasonably and fairly be required to plead thereto. This must be seen against the background of the abolition of the requests for further particulars of pleading and the further requirement that the object of pleadings is to enable each side to come to trial prepared to meet the case of the other and not be taken by surprise. Pleadings must therefore be lucid and logical and in an intelligible form; and the cause of action or defence must appear clearly from the factual allegations made.

The whole purpose of pleadings is to bring clearly to the notice of the Court and the parties to an action the issues upon which reliance is to be placed and this fundamental principle can only be achieved when each party states his case with precision”.

- [10] Recently, the Supreme Court of Appeal per Ponnann JA in *Luke M Tembani and Others v President of the Republic of South Africa and Another* (Case no

167/2021) [2022] ZASCA 70 (20 May 2022) referring to the authorities quoted above stated the following:

“Paragraph 14: Whilst exceptions provide a useful mechanism to weed out cases without legal merit, it is nonetheless necessary that they be dealt with sensibly. It is where pleadings are so vague that it is impossible to determine the nature of the claim or where pleadings are bad in law in that their contents do not support a discernible and legally recognised cause of action, that exception is competent. The burden rests on an excipient, who must establish that on every interpretation that can reasonably be attached to it, the pleading is excipiable. The test is whether on all possible readings of the facts no cause of action may be made out; it being for the excipient to satisfy the court that the conclusion of law for which the plaintiff contends cannot be supported on every interpretation that can be put upon the facts.”

[11] Before proceeding with the discussion, it is useful to restate the causes of complaint of the excipient which are subject of this exception which are as follows:

- “1. The plaintiff’s *locu standi* is premises on it having obtained all the rights and obligations under the Master Rental Agreement (“the agreement”) (annexure SAS1a; SAS1b; and SAS1c to the particulars of claim) following various cessions. Absent valid cessions it lacks *locus standi* and no cause of action is made out.
2. In particular the plaintiff claims that:
 - (a) The agreement was entered into between the first defendant and The Rental Property Trust (paragraph 3 of the particulars of claim);

- (b) *The Rental Property Trust ceded its rights under the agreement to Sunlyn Rentals (Pty) Ltd (paragraph 13 of the particulars of claim (“the first cession”));*
 - (c) *Sunlyn Rentals (Pty) Ltd thereafter ceded its rights under the agreement to Fintech Underwriting (Pty) Ltd (paragraph 17 of the particulars of claim (“the second cession”));*
 - (d) *Fintech Underwriting (Pty) Ltd thereafter ceded its rights under the agreement to the plaintiff (paragraph 22.9 of the particulars of claim (“the third cession”).*
3. *In respect of the first and second cessions, the plaintiff pleads in detail “Main Cession Agreement”, both of which contain a similar term:*
- (a) *For the first cession (Vide paragraph 11.8):*
 - 1. *The cession of each contract would be a separate and severable transaction upon the terms and conditions of the Main Agreement.*
 - (b) *For the second cession (Vide paragraph 15.8):*
 - 1. *The cession of each contract would be a separate and severable transaction upon the terms and conditions of the Main Sunlyn Agreement.*
4. *As such, neither of the “Main Cession Agreements” in itself resulted in the cession of the agreement from the cedent to the cessionary. In order for that to occur a separate contract of cession would need to be entered into.*
5. *No separate agreement of cession is pleaded. Instead the plaintiff pleads as follows:*
- (a) *In respect of the first cession (Vide paragraph 13):*

1. *Subsequent to the conclusion of the Master Rental Agreement, The Rental Company Trust and Sunlyn fulfilled all their respective obligations as per the Main Cession Agreement, and subsequently The Rental Company Trust's rights, title and interest in the Master Rental Agreement were ceded to Sunlyn as per the provisions of the Main Cession Agreement.*
- (b) *In respect of the second cession (Vide paragraph 17):*
 1. *Subsequent to the conclusion of the Master Rental Agreement, The Sunlyn and Fintech fulfilled all their respective obligations as per the Main Sunlyn Cession Agreement, and subsequently Sunlyn's rights, title and interest in the Master Rental Agreement were ceded to Fintech as per the provisions of the Main Cession Agreement.*
6. *Nowhere do the Main Cession Agreement provide an obligation on any party to provide cession of the agreement to the cessionary. Indeed, in each Main Cession Agreement clause 2.1 makes it clear that there is a discretion on whether or not to offer any agreements up for cession.*
7. *As such, merely complying with the obligations in terms of the respective Main Cession Agreement does not ex lege in a cession and a conclusion that "subsequently" the cedent's rights were ceded to the cessionary is bad in law.*
8. *In the absence of pleaded contracts of cession the rights under the agreement could not have passed to the plaintiff and accordingly, on the plaintiff's own pleaded version, it lacks locu standi and no cause of action is made out."*

- [12] The excipient's complaint is that the respondent does not have *locu standi* to institute these proceedings against it. It is contended that the first and second cession agreements between The Trust and Sunlyn and between Sunlyn and FUN do not create an obligation on any of the parties to provide cession of the agreement to the cessionary. In order for that to occur, so the argument went, a separate contract of cession should have been concluded. In the absence of valid cession agreements, the respondent does not have *locu standi* to institute these proceedings.
- [13] I understand the above authorities to be saying that the Court should consider the pleading as a whole when determining whether it lacks the necessary averments to sustain a cause of action. In this case, it is undisputed that the respondent's cause of action is premised on the agreement of sale and transfer between itself and FUN. It is not in dispute that the Master Rental Agreement was concluded between the excipient and The Trust. However, Sunlyn made an offer to The Trust which offer was accepted and the obligations arising from the acceptance of the offer were fulfilled by both The Trust and Sunlyn which then culminated in The Trust ceding all its rights, title and interest in the Master Rental Agreement to Sunlyn. In my judgment the allegation in the pleading that there was a cession concluded between The Trust and Sunlyn and between Sunlyn and FUN is sound in law and the respondent need to prove same by evidence at the ensuing trial.
- [14] There is no merit in the excipient's contention that the Master Cession Agreement provided for a separate contract to be entered into by the cedent and the cessionary for the cession to take effect. In my view, once the offer is accepted and the obligations of both parties are fulfilled, the terms of the Master Rental Agreement take effect and or comes into play. The respondent's

cause of action is plainly stated that it is premised on the sale and transfer agreement it concluded with FUN. I agree with the respondent's counsel that the particulars of claim have served its purpose of informing the excipient with sufficient particularity of the case it has to meet and is able to plead thereto. It follows ineluctably therefore that on all possible reading of the facts the pleading makes out a clear cause of action and therefore the exception falls to be dismissed.

[15] It is not in dispute that the Master Rental Agreement provides that when the parties are involved in any court proceedings arising from this agreement, the costs shall be on the scale as between attorney and client. Although the issue of costs is in the discretion of the Court, I have no reason to interfere with the provisions of the agreement between the parties.

[16] In the circumstances, the following order is made:

1. The exception is dismissed with costs on the scale as between attorney and client.



TWALA ML

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of Hearing:	29th August 2022
Date of Judgment:	7th September 2022

For the Exceptient: Advocate AG Campbell

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