IN THE HIGH COURT OF SOUTH AFRICA /ES

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / ~~NO~~.
(2) OF INTEREST TO OTHER JUDGES: YES / ~~NO~~.
(3) REVISED.

DATE 04/04/14 SIGNATURE

CASE NO: 29689/2012

DATE: 4/4/2014

IN THE MATTER BETWEEN

| | |
|---|---|
| VALUE CEMENT | EXCIPIENT/3RD DEFENDANT |
| AND | |
| ALDES BUSINESS BROKERS FRANCHISE | 1ST DEFENDANT/PLAINTIFF |
| AXAL PROPERTIES 2 CC | 2ND RESPONDENT/1ST DEFENDANT |
| ECKRAAL QUARIES (PTY) LTD | 3RD RESPONDENT/2ND DEFENDANT |

JUDGMENT

MASETI, AJ

[1] This is an exception in terms of rule 23(1) by the third defendant against the plaintiff's particulars of claim on the grounds that it is vague and embarrassing alternatively that it does not set out averments necessary to sustain a cause of

action. The excipient further states that the particulars of claim are vague to the point that it prejudices the excipient as the excipient is unsure what case it has to meet.

[2] During October 2008 the first and second defendants (as sellers) gave a written mandate to the plaintiff (as estate agent) to sell the first and second defendants' cement operation business.

[3] The plaintiff would be entitled to commission from the first and second defendants (as sellers) under circumstances where the plaintiff would indtroduce a purchaser to the first and second defendants resulting in a valid contract of sale being concluded for the purchase of the cement operation business.

[4] The plaintiff alleges compliance with its obligations in terms of the written mandate in that:

4.1 the plaintiff introduced the third defendant (as purchaser) to the first and second defendants (as sellers);

4.2 at the time of the introduction the third defendant (as purchaser) was ready and willing to purchase the cement business operation of the first and second defendants;

4.3 a valid sale agreement was concluded in respect of the cement business operation between the first and second defendants (as sellers) and the third defendant (as purchaser).

[5] Consequently and based on the plaintiff's compliance with the written mandate given to the plaintiff by the first and second defendants (as sellers) the plaintiff is entitled to claim compensation in the form of commission from the first and second defendants.

[6] The plaintiff in its particulars of claim expressly states that it claims commission from the first and second defendants (as sellers) in terms of the written mandate.

[7] The cause of action against the first and second defendants (as sellers) is based on compliance by the plaintiff with the written mandate given to the plaintiff by the first and second defendants.

[8] Quite apart and separate from the plaintiff's cause of action against the sellers, the plaintiff's cause of action against the third defendant is based on an acknowledgement of liability and undertaking to pay which in itself is a separate cause of action.

[9] The plaintiff in this regard alleges that during the negotiations pertaining to the written agreement to be concluded between the first and second defendants (as sellers) and the third defendant (as the purchaser) the third defendant acknowledged its liability towards the plaintiff and undertook to pay the aforesaid commission to the plaintiff.

[10] This verbal acknowledgement of liability and undertaking to pay was subsequently reduced to writing and forms part of a draft agreement between the parties marked "E" which remained unsigned.

[11] The *facta probanda* giving rise to the cause of action against the third defendant is the acknowledgement of liability and undertaking to pay given by the third defendant to the plaintiff during the negotiations between the parties.

[12] Plaintiff in his particulars of claim expressly states that it claims commission from the third defendant based on the acknowledgement of liability and undertaking to pay. In addition the plaintiff expressly states that it prays for judgment against the first and second defendants (as sellers) and the third defendant jointly and severally, the one paying the other to be absolved.

[13] The third defendant's exception is based on the grounds that the plaintiff's particulars of claim is vague and embarrassing in that

13.1 it is unclear whether the third defendant is liable to pay commission to the plaintiff in terms of annexure "E" being an unsigned draft agreement of sale or annexure "F" being a signed written agreement of sale;

13.2 whether the commission allegedly payable to the plaintiff is payable by the first, second and third defendants or whether it is payable by the first and second defendants alternatively the third defendant;

13.3 whether plaintiff's particulars of claim contains averments necessary to disclose a cause of action or not;

13.4 whether the claim for commission allegedly payable by the third defendant to the plaintiff is based on annexure "E" which is an unsigned agreement of sale or annexure "F" a signed agreement of sale which does not confer any liability on the third defendant regarding payment of commission or annexure "D", a mandate agreement between plaintiff and the first and second defendants which does not confer any liability on the third defendant.

[14] The issue to be adjudicated upon by this court is whether plaintiff's particulars of claim is in fact and in law vague and embarrassing and lack averments to sustain a cause of action.

[15] The excipient's counsel argued that an exception to a pleading on the ground that it is vague and embarrassing involves a twofold consideration. The first is whether the pleading lacks particularity to the extent that it is vague. The second is whether the vagueness causes embarrassment of such a nature that the excipient is prejudiced. She referred to *Quinlan v MacGregor* 1960 4 SA 383 (D&CLD) at 393E-H and *Trope v South African Reserve Bank and another and two other cases* 1992 3 SA 208 (TPD) at 211A-B.

[16] She further argued on behalf of the excipient that, as to whether there is prejudice or not, the ability of the excipient to produce an exception-proof plea is not the only, nor indeed the most, important test. If that were the only test, the object of pleadings to enable parties to come to trial prepared to meet each other's case and not to be taken by surprise may well be defeated, and refers to *Levitan v Newhaven Holiday Enterprises CC* 1991 2 SA 297 (CPD) at 298G-H and *Trope's* case *supra* at 211B-C.

[17] She argued that it may be possible to plead particulars of claim which can be read in any one of a number of ways by simply denying the allegations made likewise to a pleading which leaves one guessing as to its actual meaning. Yet there can be no doubt that such a pleading is excipiable as being vague and embarrassing. It follows that averments in the pleading which are contradictory and which are not pleaded in the alternative are patently vague and embarrassing. One can but be left guessing as to the actual meaning (if any) conveyed by the pleading and refers to *Parow Lands (Pty) Ltd v Schneider* 1952 1 SA 150 (SWA) at 152F-G as well as *Trope, supra*, at 211D-E.

[18] Plaintiff's counsel argued that the plaintiff's cause of action against the third defendant is based on an acknowledgment of liability and undertaking to pay, which in itself is a separate cause of action and refers to *Rodel Financial Service (Pty) Ltd v Naidoo and another* 2013 3 SA 151 (KZP) where the following is indicated at paragraph [12]:

"The mere giving of the acknowledgment of debt coupled with an express undertaking to pay the debt means that the creditor may sue either on the acknowledgment or on the original debt."

[19] He argued that in order to succeed an excipient has the duty to persuade the court that upon every interpretation which the pleading in question, and in particular the document on which it is based, can reasonably bear, no cause of action or defence is disclosed; failing this the exception ought not to be upheld and refers to *Theunissen en andere v Transvaalse Lewendehawe Koöp Bpk* 1988 2 SA 493 (AD) at 500E-F; *Lewis v Oneanate (Pty) Ltd and another* 1992 4 SA 811 (AD) at 817(F); *Sun Packaging (Pty) Ltd v Vreulink* 1996 4 SA 176 (AD) at 183E; *Pete's Warehousing and Sales CC v Bowsink Investments CC* 2000 3 SA 833 (EC) at 839G-H; *First National Bank of Southern Africa Ltd v Perry NO and others* 2001 3 SA 960 (SCA) at 965C-D.

[20] He stated further that the object of an exception is to dispose of the case or a portion thereof in an expeditious manner or to protect the party against an embarrassment which is so serious as to merit the costs even of an exception and refers to *Kahn v Stuart en andere* 1942 CPD 386 at 391; *Lobo Properties (Pty) Ltd v Express Lift Co (SA) (Pty) Ltd* 1961 1 SA 704 (CPD) at 711G; *Miller v Muller* 1965 4 SA 458 (CPD) at 468.

[21] He further contended that an exception founded upon the contention that a summons discloses no cause of action, or that a plea lacks averments necessary to sustain a defence, is designed to obtain a decision or a point of law which will dispose of the case in whole or in part and avoid the leading of unnecessary evidence at the trial. He referred to *Dharumpal Transport (Pty) Ltd v Dharumpal* 1956 1 SA 700 (AD) at 706E. If it does not have that effect the exception should not be entertained and referred to *Miller and others v Bellville Municipality* 1971 4 SA 544 (CPD) at 546D; *Rumanal (Pty) Ltd v Hubner* 1976 1 SA 643 (ECD) at 646C.

[22] Plaintiff's counsel argued further that an exception cannot be taken to a declaration or particulars of claim on the ground that it does not support one of several claims arising out of one cause of action and referred to *Stein v Giese* 1939 CPD 336; *Du Plessis v Nel* 1952 1 SA 513 (AD) at 531H-532A; *Dharumpal Transport, supra,* at 706E.

[23] The *onus* rests upon the excipient who alleges that a summons discloses no cause of action; the excipient has the duty to persuade the court that the pleading is excipiable on every interpretation that can reasonably be attached to it. See *Amalgamated Footwear and Leather Industries v Jordan & Co Ltd* 1948 2 SA 891 (C) at 893; *Geldenhuys v Maree* 1962 2 SA 511 (OPA) at 514C.

[24] The pleading must be looked at as a whole. See *Nel and others NNO v McArthur and others* 2003 4 SA 142 (TPD) at 149F.

[25] An exception that a pleading is vague and embarrassing must not be directed at the particular paragraph within a cause of action. It must go to the whole cause of action which must be demonstrated to be vague and embarrassing. See *Jowell v Bramwell-Jones and others* 1998 1 SA 836 (WLD) at 899G; *Venter and others NNO v Barritt, Venter and others NNO v Wolfsberg Arch Investments 2 (Pty) Ltd* 2008 4 SA 639 (CPD) at 644A.

[26] An exception that a pleading is vague and embarrassing will not be allowed unless the excipient will be seriously prejudiced if the offending allegations were not expunged. See *Levitan v Newhaven Holiday Enterprises CC* 1991 2 SA 297 (CPA) at 298A.

[27] The exception can be taken only if the vagueness relates to the cause of action. See *Carelsen v Fairbridge, Arderne & Lawton* 1918 TPD 306 at 309, approved in *Liquidators Wapejo Shipping Co, Ltd v Lurie Bros* 1924 AD 69 at 74.

[28] The court in considering the facts and applying the law into the facts first refers to the general approach to exception in *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA* 2006 1 SA 461 (SCA). In *Telematrix* ASA filed an exception against the particulars of claim of the plaintiff

in which ASA pertinently raised questions whether a negligent decision which prohibited the publication of two advertisements and which gave rise to pure economic loss can be wrongful in the delictual sense. The court *a quo*, Snyders J, upheld the exception and found that the plaintiff's particulars of claim did not disclose a cause of action. In an appeal Harms JA at p465-466E had this to say:

> "[2] ... The case does not, therefore, have to be decided on bare allegations only, but on allegations that were fleshed out by means of annexures that tell a story. This assists in assessing whether or not there may be other relevant evidence that can throw light on the issue of wrongfulness. I mention this because, relying on the majority decision in *Axiam Holdings Ltd v Deloitte & Touche,* [*Axiam* 2006 1 SA 237 (SCA)] the plaintiff argued that it is inappropriate to decide the issue of wrongfulness on exception because the issue is fact-bound. That is not true in all cases. This Court, for one, has on many occasions decided matters of this sort on exception. Three important judgments that spring to mind are *Lillicrap, Indac* and *Kadir* [*Lillicrap* 1985 1 SA 475 (A), *Indac* 1992 1 SA 783 (A) and *Kadir* 1995 1 SA 303 (A)].
>
> Some public policy considerations can be decided without a detailed factual matrix, which by contrast is essential for deciding negligence and causation.
>
> [3] Exceptions should be dealt with sensibly. They provide a useful mechanism to weed out cases without legal merit. An over-

technical approach destroys their utility. To borrow the imagery employed by Miller J, the response to an exception should be like a sword that 'cuts through the tissue of which the exception is compounded and exposes its vulnerability'."

[29] Erasmus *Supreme Court Practice* B1-153 summed up the position as follows:

"An exception that a pleading is vague and embarrassing is not directed at a particular paragraph within a cause of action: it goes to the whole cause of action, which must be demonstrated to be vague and embarrassing. ... An exception that a pleading is vague and embarrassing strikes at the formulation of the cause of action and not its legal validity. [See *Trope v South African Reserve Bank* 1993 3 SA 264 (A) at 269I.] ...

An exception that a pleading is vague or embarrassing will not be allowed unless the excipient will be seriously prejudiced if the offending allegations were not expunged. [See *Levitan v Newhaven, supra.*]

The test applicable in deciding exceptions based on vagueness and embarrassment arising out of lack of particularity can be summed up as follows [*Lockhat v Minister of the Interior* 1960 3 765 (D) at 777A-E; *Quinlan v MacGregor* 1960 4 SA 383 (D) at 393F-H; *Trope v South African Reserve Bank* 1992 3 SA 208 (T) at 211B]:

(a) In each case the court is obliged first of all to consider whether the pleading does lack particularity to an extent amounting to vagueness. Where a statement is vague it is either meaningless or capable of more than one meaning. To put it at its simplest: the reader must be unable to distill from the statement a clear, single meaning.

(b) If there is vagueness in this sense the court is then obliged to undertake a quantitative analysis of such embarrassment as the excipient can show is caused to him or her by the vagueness complained of.

(c) In each case an *ad hoc* ruling must be made as to whether the embarrassment is so serious as to cause prejudice to the excipient if he or she is compelled to plead to the pleading in the form to which he or she objects. ...

(d) The ultimate test as to whether or not the exception should be upheld is whether the excipient is prejudiced.

(e) The *onus* is on the excipient to show both vagueness amounting to embarrassment and embarrassment amounting to prejudice.

(f) The excipient must make out his or her case for embarrassment by reference to the pleadings alone.

(g) The court would not decide by way of exception the validity of an agreement relied upon or whether a purported contract may be void for vagueness."

[30] In *Francis v Sharp and others* 2004 3 SA 230 (CPD) at 240F-G plaintiff's action arises from an alleged breach of contract by the first and second defendants and seeks payment of damages and ancillary relief. The contract on which the plaintiff relies was not reduced into writing. The defendants excepted on the grounds of failure by the plaintiff to make averments necessary to sustain a cause of action alternatively the particulars of claim are vague and embarrassing. H J Erasmus, J at p237D-H stated referring to *Colonial Industries Ltd v Provincial Insurance Co Ltd* 1920 CPD 627 at 630 where Benjamin, J said, regarding the general approach to exceptions:

> " 'Save in the instance where an exception is taken for the purpose of raising a substantive question of law which may have the effect of settling the dispute between the parties, an excipient should make out a very clear, strong case before he should be allowed to succeed.'
>
> This approach has been consistently followed in this Division ... [see *Kahn*'s case, *Lobolo Properties* case and *Levitan*'s case as already cited in paragraphs 16 and 20 *supra*].
>
> It has been held that a commercial document executed by the parties with a clear intention that it should have commercial operation should not lightly be held to be ineffective ... In my view, a similar approach should,

in broad terms and *mutatis mutandis*, be adopted in regard to an oral commercial agreement."

At page 240G he stated:

"The approach to be adopted to an exception that a pleading is vague and embarrassing was stated as follows in *Levitan v Newhaven Holiday Enterprises CC (supra* at 298A):

'It has been stated, clearly and often, that an exception that a pleading is vague or embarrassing ought not to be allowed unless the excipient would be seriously prejudiced if the offending allegations were not expunged.'

To this must be added the consideration that the validity of an agreement and the question whether a purported contract may be void for vagueness do not readily fall to be decided by way of an exception ..."

[31] In *Southernport Developments (Pty) Ltd v Transnet Ltd* 2003 5 SA 665 (W) and 2005 2 SA 202 (SCA) the appellants' particulars of claim were met with an exception which was upheld by Blieden, J in the South Gauteng High Court, Johannesburg, but on appeal the order of the court *a quo* was set aside and the exception was dismissed with costs. The parties undertook to enter into good faith negotiations to agree upon and conditions of a lease agreement. In default of consensus between the parties the agreement provided for arbitration. Failure by the parties to agree would constitute a dispute within the meaning of that

expression thus justifying a referral to arbitration. Ponnan, AJA in paragraph [12] at p208 held that the duty to negotiate in good faith is known to our law in the field of labour relations and referred to the English, American and Australian legal positions. The English law refuses to recognise a pre-contractual duty to negotiate in good faith. In the United States the enforceability of agreements to negotiate in good faith varies from state to state.

In Australia in *Coal Cliff Collieries (Pty) Ltd v Sijehama (Pty) Ltd* (1991) WSWLR 1, Kirby, P stated at 26E-27B:

> "From the foregoing, it will, I hope be clear that I do not share the opinion of the English Court of Appeal that no promise to negotiate in good faith would ever be enforced by a Court. I reject the notion that such a contract is unknown to the law whatever its term. I agree with Lord Wright's speech in *Hillas & Co Ltd v Arcos Ltd* 1932 147 LT 503 at 515 that, provided there was consideration for the promise, in some circumstances, a promise to negotiate in good faith will be enforceable ... Nevertheless ... I believe that the proper approach to be taken in each case depends upon the construction of the particular contract."

The Honourable Acting Judge of Appeal at p211 stated:

> "It is the very exercise of the right to contract which has bound the parties to the negotiation in good faith which they promised. Thus to enforce that

undertaking is not to interfere in the parties' freedom to contract but to uphold it."

[32] In *Codix Trust and others v Stockowners Co-operative (in liquidation) and others* [2014] 1 All SA 342 (KZP) an appeal against the judgment of Radebe, J, upholding the respondents' exception to the appellants' particulars of claim on the ground that they lacked an averment necessary to sustain a cause of action in that the appellants had not pleaded and proved compliance with the provisions of section 215(1) and (5) of the Co-operatives Act 91 of 1981 which requires everyone who has a claim against the liquidated co-operative to give notice to the liquidator of the co-operative in liquidation of the action or intended action against the co-operative. It was the appellants' contention that since the relief they seek is declaratory in nature such notice was and is not a requirement. Madondo, J at 353c-e stated:

> "[41] An excipient should make out a very strong case before he or she should be allowed to succeed. An excipient has the duty to persuade the court that upon every interpretation that the particulars of claim could reasonably bear, no cause of action was disclosed. See *Francis v Sharp and others* 2004 3 SA 230 (C) at 237D-I ... It is, therefore, appropriate to except if the point of law raised will dispose of the case in whole or in part. A pleading is excipiable only on the basis that no possible evidence led on the pleadings can disclose a cause of action."

The order of the court *a quo* upholding exception was set aside and the appeal upheld based on the fact that compliance with the statutory provisions in question was not an essential ingredient of the appellant's cause of action but a peripheral issue which should not have been allowed to bar the appellant's access to justice and to have their claims properly ventilated.

[33] In *Quinlan v MacGregor* referred to by the excipient's counsel, *supra*, the defendant excepted to paragraphs (6) and (7) of the plaintiff's declaration on the ground that they are bad in law and/or vague and embarrassing by virtue of an acknowledgement of debt which did not reflect the other instalments not paid by the defendant within the due date. Burne, AJ stated that the exception fails on the ground that it is not directed against the declaration as a whole but against paragraphs (6) and (7) alone and counsel for the excipient did not complain of any lack of clarity as to the cause of action relied upon. Individual allegations or paragraphs never aspire to disclose a cause of action in themselves and as such cannot be excepted to at such level. All that seems available to the excipient is the complaint that there is a lack of particularity. Even if some measure of vagueness is caused, such vagueness does not create embarrassment of such proportions as to warrant the taking of an exception. In each case the court is obliged first of all to consider whether the pleading does lack particularity to an extent amounting to vagueness. The eventual test as to whether the exception should be upheld or not is whether the excipient is prejudiced. In the present case

as long as the excipient is informed, albeit by implication, that it failed to pay some of the instalments, he is not greatly prejudiced in pleading merely because he is not informed of the precise amount which the plaintiff says he failed to pay. The exception was dismissed with costs.

[34] The court has to consider further principles relating to an exception taken on the ground that a pleading is vague and embarrassing. In *Jowell v Bramwell-Jones and others, supra,* at 899-903 Heher, J stated:

(a) The object of all pleadings is that a succinct statement of grounds upon which a claim is made or resisted shall be set forth shortly and concisely, and the pleader is thus merely required to plead a summary of the neutral facts.

(b) It is therefore incumbent upon a plaintiff only to plead a complete cause of action which identifies the issues upon which he seeks to rely and on which evidence will be led, in intelligible and lucid form and which allows the defendant to plead to it.

(c) An attack on a pleading as being vague and embarrassing cannot be found on the mere averment of lack of particularity, although a lack of particularity might allow an application in terms of Rule 30, which is an entirely different proceeding.

(d) The test whether a pleading is vague and embarrassing has also been stated to be whether an intelligible cause of action (or defence) can be ascertained.

(e) An exception that a pleading is vague and embarrassing may only be taken when the vagueness and embarrassment strikes at the root of the cause of action or the defence.

(f) Pleadings must be read as a whole; no paragraph can be read in isolation. The exception must be directed at the whole cause of action which must be demonstrated to be vague and embarrassing.

(g) A distinction must be drawn between the *facta probanda*, or primary factual allegations which every plaintiff must make and the *facta probantia*, which are secondary allegations upon which the plaintiff will rely in support of primary factual allegations. Generally speaking, the latter are matters for particulars for trial and even then are limited; for the rest they are matters for evidence.

(h) In *Absa Bank Ltd v Boksburg Transitional Local Council (Government of the Republic of South Africa, third party)* 1997 2 SA 415 (WLD) at 422 it was held that it is sufficient if a defendant knows adequately what a plaintiff's case is or sufficiently shows the defendant the case which he is called upon to meet.

(i) As already stated in *Levitan v Newhaven Holiday Enterprises CC* (cited *supra*) an exception that a pleading is vague and embarrassing ought not to be allowed unless the excipient should be seriously prejudiced if the offending allegations were not expunged.

[35] During argument plaintiff's counsel clearly stated that the plaintiff's cause of action against the defendant is based on an acknowledgement of liability and undertaking to pay and that an acknowledgement could be oral or in writing. The excipient's counsel conceded that an oral acknowledgement of debt is enforceable. Plaintiff's counsel further argued that annexures "D" (mandate) and "F" (signed agreement of sale) do not form part of the cause of action against the third defendant and therefore no misstatement nor confusion has been brought about by the particulars of claim. The *onus* rests with the excipient to prove that the pleadings are vague and embarrassing and lacks the averments to sustain a cause of action.

[36] A court seized with this type of an application should carefully consider whether the complaining party is in fact embarrassed or engaged in a game of delaying the prosecution of the action. The excipient in her contention under vagueness and embarrassment raises matters which are totally outside the scope of the plaintiff's particulars of claim as the particulars of claim clearly refer to an oral agreement during negotiations between the first, second and third defendants whereby the third defendant acknowledged its liability towards plaintiff and undertook to pay commission to the plaintiff (*vide* paragraph 8 of the particulars of claim). At paragraph 10 of the particulars of claim plaintiff clearly states that the *facta probanda* giving rise to the cause of action against the third defendant is the acknowledgement of liability and undertaking to pay given by the excipient to the plaintiff during the negotiations between the parties.

In so far as an exception that the particulars of claim do not contain averments necessary to disclose a cause of action is concerned, in her exception the excipient has imported some averments which are totally irrelevant to the pleadings by bringing annexures "D" and "F" in issue which were only applicable to the first and second defendants.

[37] Having taken into account the following:

(a) the approach by Harms, JA as to how to deal with exceptions in *Telematrix*'s case in paragraph 28 *supra*;

(b) the test applicable in deciding exception based on lack of particularity as summed up in the *Lockhat* and *Quinlan* cases referred to in paragraph 29 above;

(c) the approach adopted in *Francis v Sharp* referred to in paragraph 30 *supra* and as to how an oral commercial agreement should be treated (in this particular case an acknowledgement of debt to an oral agreement involving an estate agent's commission is in its nature a commercial agreement);

(d) the reference to enforceability of good faith negotiations in the *Southernport Developments* case referred to in paragraph 31 above;

(e) whether the excipient has been prejudiced or not by the plaintiff's particulars of claim with reference to *Levitan*' case referred to in paragraph 26 *supra*;

the court is not convinced that the excipient will be prejudiced if the exception is not entertained.

(f) Whether the excipient has persuaded the court that the pleading is excipiable on every interpretation that can reasonably be attached to it.

(g) Further considerations and principles as laid down by Heher, J in *Jowell v Bramwell-Jones* referred to in paragraph 34 above.

(h) The excipient failed to read the pleading as a whole and direct her exception at the pleadings as a whole, instead she directed them at annexures "D", "E" and "F" (see *Erasmus* in paragraph 29 *supra*).

[38] In the premises the exception must fail.

[39] The following order is made:

(a) The exception is dismissed with costs.

P L C MASETI
ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

29689-2012

DATE OF HEARING: 14 MARCH 2014
DATE OF JUDGMENT: 4 APRIL 2014
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