



OFFICE OF THE CHIEF JUSTICE  
REPUBLIC OF SOUTH AFRICA

**IN THE HIGH COURT OF SOUTH AFRICA,**

**MPUMALANGA DIVISION, MBOMBELA**

**(MAIN SEAT)**

- |     |                                  |
|-----|----------------------------------|
| (1) | REPORTABLE: NO                   |
| (2) | OF INTEREST TO OTHER JUDGES: /NO |
| (3) | REVISED: YES                     |

**H BRAUCKMANN**  
SIGNATURE

13 AUGUST 2021  
DATE

**Case No: 1857/2020**

In the matter between:

**BENDREW TRADING**

Plaintiff

and

**SIHLE PROPERTY DEVELOPERS AND PLANT HIRE**

Defendant

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**JUDGMENT**

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**BRAUCKMANN AJ**

[1] In this matter the Defendant filed four exceptions against the Plaintiff's amended Particulars of Claim.

**THE EXCEPTIONS:**

[2] The exceptions can be summarized as follows:

**First ground of exception:**

[2.1] Rule 18 of the Uniform Rules of Court ("the Rules") states:

*"A party who in his pleading relies on a contract shall state whether the contract is written or oral and when, where and by whom it was concluded. ..."*

[2.2] Further in terms of Rule 18(4) of the Rules:

*"Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading, as*

*the case may be, with sufficient particularity to enable the opposite party to reply thereto."*

[2.3] The Defendant states that the Plaintiff failed to plead any particularity regarding the alleged oral agreement. So it is stated that the Defendant has to guess, infer or assume what the material terms of the alleged oral agreement are.

[2.4] The first exception is a general exception.

**Second ground of exception:**

[2.5] The Defendant pleads that not sufficient particulars are provided to it to plead as in terms of paragraph 5 of the Particulars of Claim it was stated:

*"It was a material term of the agreement that the Plaintiff would pay the aforesaid amount of money in favour of the Defendant's service provider known as Trumod, and whose particulars are to the Plaintiff unknown."*

[2.6] Defendant states that it should not have to guess, infer or assume who Trumod is and that the Plaintiff is obliged to plead

sufficient particulars to enable it to properly respond to the allegation.

[2.7] Further, Defendant alleges, the Plaintiff fails to plead sufficient particulars about the alleged payment made on behalf and at the request of it to Trumod.

**Third ground of exception:**

[2.8] In paragraph 6 of the Particulars of Claim it is stated:

*“Further, it was a material term of the agreement that the payment of R2,000,000.00 (two million Rand) made by the Plaintiff in favour of Trumod was made on behalf and at the request of the Defendant.”*

[2.9] Further in paragraph 7 that:

*“Another material term of the agreement was that the Defendant would repay the amount borrowed from the Plaintiff on or before 30 November 2019.”*

[2.10] In paragraph 8 of the Particulars of Claim it is stated:

*“Pursuant to the oral agreement between the parties, the Plaintiff made a payment of R2,000,000.00 (two million Rand) in favour of Trumod on 13 August 2019 as per the request of the Defendant. This is depicted in the notification of payment by First National Bank, attached hereto marked as ‘PT1’.”*

[2.11] Defendant states that payment was made to Trumod, but on the other hand the Plaintiff states that the amount was borrowed from the Plaintiff by the Defendant. It states that it cannot be ascertained from the pleading what the Plaintiff's basis of the alleged claim is and cannot plead accordingly.

**Fourth ground of exception:**

[2.12] Paragraph 9 of the Particulars of Claim states:

*“According to the notification of payment, the reference is depicted as ‘SIHLE-002D-1’.*

[2.13] The word “SIHLE” is derived from the Defendant's name known as “Sihle Property Developers and Plant Hire”.

[2.14] Further that the Defendant failed to repay the amount of R2,000,000.00 on 30 November 2019 and therefore continues to be in breach of the agreement between the parties.

[2.15] The Defendant states that the Plaintiff fails to properly illustrate the reference to "SIHLE" on the proof of payment is vague.

[2.16] It is lastly alleged that the Plaintiff failed to illustrate on which basis the Defendant should repay the money which the Plaintiff paid to Trumod on the Defendant's behalf and at its request.

### **THE LAW IN BRIEF**

[3] Before I turn to deal with the specific grounds, I wish to deal briefly with the law on exceptions.

[4] Where a pleading is vague and embarrassing, or lacks averments which are necessary to sustain an action or a defence, as the case may be, the opposing party may within the period allowed for the filing of a subsequent pleading, deliver an exception and may apply to the Registrar to set it down for argument.

- [5] The excipient must allow the counter-party the periods as set out in Rule 23 of the Rules to remove the excipient's cause for complaint, failing which the excipient may then file its exception within the period allowed therefor and apply to have it set down for hearing.
- [6] An exception is a legal objection to the opponent's pleading and a defect inherent in the pleading. For the purposes of an exception one must admit for the moment that all the allegations in the Particulars of Claim are true.<sup>1</sup>
- [7] The Court must look at the pleading excepted to as it stands. No facts outside the pleading can be brought to issue except in the case of inconsistency.
- [8] The object of an exception is to dispose of the case or a portion thereof in an expeditious manner or to protect a party against an embarrassment which is so serious as to merit the costs even of an exception.<sup>2</sup>

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<sup>1</sup> See **Brooks v. Minister of Safety and Security**, 2008(2) SA 397 (C) at 402 I.

<sup>2</sup> **Francis v. Short**, 2004(3) SA 230 (C) at page 237 C to F.

- [9] An exception should be dealt with sensibly and not in an over-technical manner.<sup>3</sup>
- [10] The exception that the pleading is vague and embarrassing cannot be 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.<sup>4</sup> In such an event the exception will not be allowed unless the excipient will be seriously prejudiced if the offending allegations were not expunged.<sup>5</sup>
- [11] The ultimate test as to whether or not the exception should be held is whether the excipient will be prejudiced.<sup>6</sup>
- [12] The onus is on the excipient to show both vagueness amounting to the embarrassment and the embarrassment amounting to prejudice.<sup>7</sup>
- [13] The Court would not decide the validity of an agreement relied upon and whether a contract is void for vagueness by way of exception.<sup>8</sup>

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<sup>3</sup> **Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking & Advertising Standards Authority SA**, 2006(1) SA 461 (SCA) at 465 H.

<sup>4</sup> **Joell v. Bramwell-Jones**, 1998(1) SA 836 (W) at page 899 G.

<sup>5</sup> **Levitan v. Newhaven Holiday Enterprises CC**, 1991(2) SA 297 (C) at 298 A; and **Gallagher Group Ltd. v. IO Tech Manufacturing (Pty) Ltd**, 2014(2) SA 157 (GNP) at 166 G to H.

<sup>6</sup> **Trope v. South African Reserve Bank**, *supra*, at page 211 B.

<sup>7</sup> **Calendar-Easby v. Grahamstown Municipality**, *supra*, at 813 A.

<sup>8</sup> **Francis v. Sharp**, 2004(3) SA 230 (C) at 240 F to G.



- [14] The object of an exception is not to embarrass the opponent. It is to settle a case (or part of it) in an inexpensive and easy fashion, or to protect the excipient against an embarrassment that is so serious that it merits the costs of an exception.<sup>9</sup>
- [15] Where the wording of a Particulars of Claim is ungrammatical and ambiguous, the uncertainty attaching to the pleader's intention cannot avail the excipient unless he shows that on either construction of the ambiguous claim it is excipiable.<sup>10</sup>
- [16] A Particulars of Claim that is so inherently contradictory and accordingly vague and embarrassing, and a contradiction between the Particulars of Claim as well as the annexures, will result in a pleading to be vague and embarrassing and should be set aside.<sup>11</sup>
- [17] The purpose of an exception is to determine whether a pleading is vague and embarrassing and to save the costs as if it is found that the pleading is vague and embarrassing like is alleged *in casu*, it would put an end to the case unless an amendment is effected if the other party is allowed to do so.

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<sup>9</sup> *Gillyfrost 54 (Pty) Ltd v. Nelson Mandela Bay Metropolitan Municipality*, [2015] 4 All SA 58 (ECP)

<sup>10</sup> *Calendar-Eeasby v. Grahamstown Municipality*, 1981(2) SA 810 (E).

<sup>11</sup> *Drope & Others v. South African Reserve Bank*, 1993(2) All SA 278 (A).

- [18] Whether a matter is decided on exception, excipients must show that the pleading is excipiable on every interpretation which could reasonably be attached to it, the Plaintiff is confined to the facts alleged in the Particulars of Claim.<sup>12</sup>
- [19] A party that pleads must do so with sufficient clarity and particularity. The material facts upon which he/she relies for the conclusion of law upon which it relies, it wishes the Court to draw from those facts, must appear clearly from it. Such a party should therefore not plead a conclusion of law without pleading the material facts giving rise to it.<sup>13</sup>
- [20] As stated by Adv. Prinsloo, on behalf of the excipient, the object of pleadings are to define the issues as to enable the other party to know what case it has to meet.<sup>14</sup>
- [21] The Court should also not be over-technical. In this regard it was stated that:

*“A Court should be able, where necessary, to cut to the chase and to be practical about these matters. Resolution of matters*

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<sup>12</sup> ***First National Bank of South Africa v. Perry N.O. & Others***, 2001(3) All SA 331 (A).

<sup>13</sup> ***Radebe & Others v. Eastern Transvaal Development Board***, 1988(2) SA 785 (A) at 792 J to 793 G.

<sup>14</sup> ***FPS Ltd v. Trident Construction (Pty) Ltd***, 1989(3) SA 537 (A) at 541 J.

*on technicalities only serves to delay the resolution of matters much to the unnecessary escalation of dispensing justice.”<sup>15</sup>*

**First ground of exception:**

[22] The first ground of exception as referred to earlier in this judgment actually relates to and includes the other exceptions.

[23] For the purposes of this judgment, I will deal with each and every exception.

[24] The first ground is that the Plaintiff has failed to plead any particularity regarding the alleged oral agreement, specifically that it failed to plead the material terms of the oral agreement.

[25] Paragraph 4 of the Particulars of Claim refers to the oral agreement that was concluded. The balance of the Particulars of Claim sets out the material terms of the agreement. Paragraph 5 of the Particulars of Claim reads:

*“It was a material term of the agreement that ...”*

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<sup>15</sup> *Madlala v. City of Johannesburg & Another*, (23236/2017) [2019] ZAGPJHC 80 (8 February 2019).

[26] Paragraph 6 of the particulars of claim reads:

*“Further, it was a material term of the agreement that ...”*

[27] Paragraph 7 of the Particulars of Claim reads:

*“Another material term of the agreement was ....”*

[28] It is therefore not correct, as will be dealt with later on. The first ground of exception is therefore not based on any good reason or law and is hereby dismissed.

**Second ground of exception:**

[29] The Defendant relies on Rule 18(4) of the Rules to the effect that every pleading shall contain a clear and concise statement of the material facts relied upon by the pleader.

[30] It then complains about paragraph 5 of the Particulars of Claim which states that it was a material term of the agreement that the Plaintiff would pay [R2,000,000.00] in favour of the Defendant's service provider

known as Trumod and whose further particulars are to the Plaintiff unknown.

[31] The Plaintiff clearly states that Trumod, the Defendant's (excipient's) service provider, would be paid the amount of R2,000,000.0 by Plaintiff on behalf of the Defendant. The Defendant therefore do not have to guess, infer or assume who Trumod is.

[32] I am of the view that the Plaintiff provided sufficient particulars in the Particulars of Claim of who Trumod is. Trumod is simply the Defendant's service provider whom the Plaintiff paid an amount of R2,000,000.00 to on behalf of and at the request of the Defendant.

[33] I fail to see how the Defendant can allege that sufficient particularity was not provided as to who Trumod is. The Defendant asked the Plaintiff to pay the amount of R2,000,000.00 to Trumod.

[34] If Defendant does not know who Trumod is, it should plead accordingly.

[35] Furthermore, the Defendant did not indicate how it would be prejudiced at all if the Plaintiff's Particulars of Claim is not allowed to stand as it is.

[36] This ground of exception cannot be upheld.

**Third ground of exception:**

[37] Defendant complains that:

*"It cannot be ascertained from the pleading what the Plaintiff basis its alleged claim on and has therefore failed to plead with significant particularity for the Defendant to properly respond thereto."*

[38] I do not agree with the Defendant. Sufficient particularity is provided to the Defendant in paragraphs 6, 7 and 8 of its Particulars of Claim. In paragraph 6 of the Particulars of Claim it is stated that it was a material term of the agreement that the amount of R2,000,000.00 was to be paid by the Plaintiff to Trumod on behalf and at the request of the Defendant. Earlier in the Particulars of Claim Trumod is identified as the Defendant's service provider.

[39] In paragraph 7 of the Particulars of Claim the Plaintiff goes further and states that the amount thus paid over to Trumod and referred to in paragraph 6 of the Particulars of Claim as repayable to the Plaintiff by the Defendant on or before 13 November 2019. Should the amount

not be paid before the date, the Defendant would be *in mora* and therefore the Plaintiff would be entitled to issue Summons.

[40] The Plaintiff goes further in paragraph 8 of the agreement by stating that at further request of the Defendant it paid the amount of R2,000,000.00 to Trumod. It goes further by attaching a proof of payment from First National Bank to Trumod.

[41] If the Defendant denies that any payment was made on its behalf to Trumod, it could simply deny it.

[42] In the argument and in Heads of Argument on behalf of the Defendant I also cannot establish what prejudice the Defendant would suffer at all.

[43] The terms of the agreement are provided to the Defendant in clear terms. There is no reason why the Defendant cannot plead thereto. This ground for exception cannot be upheld.

**Fourth ground of exception:**

[44] As stated, when I dealt with the third ground of exception, this ground of exception is also without any merit.

[45] The Plaintiff states explicitly in paragraph 9 that “*the word SIHLE derived from the Defendant’s name known as Sihle Property Developers and Plant Hire*”. The Plaintiff connects the payment of the R 2 000 000.00 to Trumod on behalf of the Defendant by inserting the Defendant’s name, Sihle Property Developers and Plant Hire, in the notice of payment.

[46] It simply illustrates that the Defendant requested the Plaintiff to pay R2,000,000.00 to Trumod, which amount would be repayable by 30 November 2019 as it was a loan to the Defendant.

[47] It is difficult for me to establish how the Defendant could not plead to the allegations contained in these paragraphs.

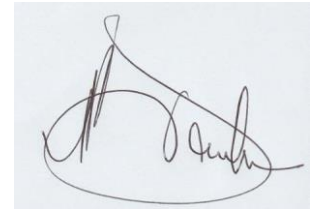
[48] The exception is also without merit.

[49] **ORDER**

The exceptions are dismissed and the Defendant is ordered to pay the costs.

DATED AT MIDDELBURG, MPUMALANGA ON THIS 13<sup>TH</sup> DAY OF AUGUST 2021.





**H.F. BRAUCKMANN**  
**ACTING JUDGE OF THE HIGH COURT**

**REPRESENTATIVE FOR THE APPELLANT: Adv J PRINSLOO**

**INSTRUCTED BY: WDT ATTORNEYS [elsie@wdtatt.co.za](mailto:elsie@wdtatt.co.za)**

**REPRESENTATIVE FOR THE RESPONDENT: MR N MKHOMBE**

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**DATE OF JUDGMENT: 13 AUGUST 2021**