



Reportable:	YES / <u>NO</u>
Circulate to Judges:	YES / <u>NO</u>
Circulate to Magistrates:	YES / <u>NO</u>
Circulate to Regional Magistrates:	YES / <u>NO</u>

**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

CASE NO: 1204/2021

In the matter between:

STEWARTS & LLOYDS HOLDINGS (PTY) LTD PLAINTIFF

AND

OXY TRADING 295 (PTY) LTD

Trading as DL CONSTRUCTION

Registration Number 2017/490587/07

1st DEFENDANT

LOTTER, DEVAN PIERRE

2nd DEFENDANT

VAN ROOYEN FIONA

3rd DEFENDANT

BARZANI DEVELOPMENT (PTY) LTD

4th DEFENDANT

Heard: 22 NOVEMBER 2024

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **3 FEBRUARY 2025**.

ORDER

The following order is made:

1. The exception by the plaintiff is upheld.
2. The defendants' plea is struck out.
3. The defendants are ordered to pay the costs of the application on scale B.

JUDGMENT

DJAJE DJP

[1] The plaintiff filed an exception in respect of the first to third defendants' plea to its particulars of claim. The fourth defendant is not a party to these proceedings, therefore reference to defendants relates to the first, second and third defendants. Summons commencing action against the defendants were issued on **9 July 2021** for breach of a credit agreement. The defendants applied for a purchase and credit facility with the plaintiff which was duly accepted. Upon acceptance by the plaintiff of the application, the first defendant was granted incidental credit and the sale of goods in accordance with the orders received. The first defendant on **30 September 2020** was indebted to the plaintiff in the amount of R2 852 872,47 (two million eight hundred and fifty-two thousand eight hundred and seventy-two rand and forty-seven

cents) which was due and payable on or before **31 October 2021**. The first defendant failed to make the payment.

[2] On **13 August 2020** the first defendant ceded to the plaintiff all rights, title and interest in and to all monies due to the first defendant by the fourth defendant. In accordance with the cession agreement the fourth defendant is indebted to the plaintiff in the amount of R 1 142 039.00 (one million one hundred and forty-two thousand and thirty-nine rand). This arises from goods supplied by the plaintiff to the first defendant. On **30 September 2020** the fourth defendant was indebted to the plaintiff in the amount of R 1 142 039.00. The second and third defendants signed suretyship in favour of the first defendant.

[3] The defendants delivered their first plea on **9 September 2021** and the plaintiff noted an exception on **27 October 2021**. On **25 January 2024** the exception was upheld, and the plea was set aside. The defendants were ordered to file another plea within 20 (twenty) days of the order. A new plea was delivered on **26 February 2024** to which the plaintiff filed another exception on **30 April 2024**. In this exception the plaintiff raises twelve grounds of objection. These will be dealt with collectively in this judgment.

[4] Rule 23(1) of the Uniform Rules of Court provides that:

“23 Exceptions and Applications to Strike Out

(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 set it down for hearing in terms of paragraph (f) of subrule (5) of rule (6): Provided that where a party intends to take an exception that a pleading is vague and embarrassing he shall within the period allowed as aforesaid by notice afford his opponent an opportunity of removing the cause of complaint within 15 days: Provided further that the party excepting shall within ten days from the date on which a reply to such notice is received or from the date on which such reply is due, deliver his exception.*"

[5] In **Trope v South African Reserve Bank 1992 (3) SA 208 (T)** the court held that:

"An exception to a pleading on the ground that it is vague and embarrassing involves a two-fold 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. As to whether there is prejudice, the ability of the excipient to produce an exception proof plea is no the only, or indeed the most important test. If that were the only test the object of pleadings to enable parties to come to trial, prepare to meet other's case and not be taken by surprise may well be defeated."

[6] The defendants admit that they applied for a credit facility and in addition the second and third defendants chose their *domicillia citandi et executandi*. However, in the plea they deny their *domicilium* address. The denial by the defendants of the application for a credit facility is bad in law and renders the plea

excipiable. The plaintiff is not able to respond to such a plea when the defendants are blowing hot and cold.

- [7] In the plea the defendants admit the deed of cession and plead that the cession exonerates the defendants from payment. The defendants have not provided any legal basis that they rely on for that plea as the deed of cession provides that '*this Deed of Cession in no way limits the Buyer's liability towards the Supplier*'. This makes the defendants' plea contradictory and excipiable.
- [8] There is a denial of the credit agreement by the defendants but the is that fact the goods were delivered and no payment made. This plea discloses no defence and is vague and embarrassing.
- [9] The plea that the credit facility application was not accepted by the plaintiff does not disclose a defence. The plaintiff performed in terms of the agreement as goods were indeed supplied to the defendants. It is improbable that the plaintiff would perform without any agreement with the defendants.
- [10] The defendants contradict themselves when pleading that the goods were never delivered when in the same plea states that the goods delivered by the plaintiff were of commercial quality. In addition, the defendants admit in the plea that the fourth defendant is indebted to the plaintiff as a result of goods supplied by the plaintiff. This plea of denial of delivery of goods is vague and embarrassing and cannot be considered a defence.

[11] There is an acknowledgement of debt signed by the defendants wherein they acknowledge their indebtedness to the plaintiff. In the plea there is a denial of indebtedness which is a clear contradiction to the acknowledgment of debt signed. This contradiction is bad in law and renders the plea excipiable.

[12] The second and third defendants aver in the plea that “*at no stage was it indicated by the plaintiff that by signing the application for credit , annexure D, they would be bound as surety*’. The application for credit facility that was signed by the defendants incorporated the plaintiff’s standard terms of agreement and suretyship. In the very same plea the defendants admit that ‘*on or about 8 April 2019 and at Klerksdorp, the first defendant represented by the second and third defendant, duly authorised made an application for the grant of Incidental facility in a composite document styled STEWARTS AND LLOYDS APPLICATION FOR PURCHASE AND CREDIT FACILITIES.*”

[13] According to the defendants the National Credit Act 34 of 2005 (“NCA”) is applicable and there was no compliance by the plaintiff. The first defendant is a juristic person and the credit limit in terms of the agreement was for an amount of R 2 000 000.00 (two million rand). Section 4(1) of the NCA provides that: “*4(1) Subject to sections 5 and 6, this Act applies to every credit agreement between parties dealing at arm’s length and made within, or having an effect within, the Republic, excepta credit agreement in terms of which the consumer is-* 5 (i) *a juristic person whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic persons, at the time the*

agreement is made, equals or exceeds the threshold value determined by the Minister in terms of section 7(1); Threshold determination and industry tiers 7. (1) On the effective date, and at intervals of not more than five years, the Minister, (a) a monetary asset value or annual turnover threshold of not more than R 1 000 000 for the purpose of section 4(1); and (b) two further monetary thresholds for the purposes of". It is trite that the National Credit Act is not applicable to juristic persons. This plea lacks the necessary averments to sustain a defence.

[14] The entire plea by the defendants does not disclose a defence and cannot stand. The awarding of costs is in the discretion of the court and in my view, there is no reason why a cost order should not be made against the defendants.

Order

[15] Consequently, I make the following order:

1. The exception by the plaintiff is upheld.
2. The defendants' plea is struck out.
3. The defendants are ordered to pay the costs of the application on scale B.

J T DJAJE

DEPUTY JUDGE PRESIDENT

HIGH COURT, NORTH WEST DIVISION

APPEARANCES

DATE OF HEARING : 22 NOVEMBER 2024

DATE OF JUDGMENT : 3 FEBRUARY 2025

COUNSEL FOR THE PLAINTIFF : ADV ROUX

COUNSEL FOR THE DEFENDANT : ADV DE BRUIN