

SOUTH AFRICA / JUDGMENT

Macsteel Trading Welkom v Hattingh (2710/2020) [2021] ZAFSHC 173; 2022 (2) SACR 511 (FB) (3 August 2021) [2021] ZAFSHC 173

COURT

Free State High Court, Bloemfontein

BEFORE

M Voges

CASE / FILE NUMBER

2710/2020

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IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Case No: 2710/2020

In the matter between:

MACSTEEL SERVICE CENTRES SA (PTY) LTD

t/a MACSTEEL TRADING WELKOM PLAINTIFF

and

DANIEL JOHAGEM JACOBUS HATTINGH EXCIPIENT/1stDEFENDANT

CORAM: VOGES, AJ

HEARD ON: 30 JULY 2021

DELIVERED ON: 03 AUGUST 2021

[1]

INTRODUCTION

In this matter the First Defendant/Excipient filed an exception against the Plaintiff's particulars of claim on the grounds that it lacks averments that are necessary to sustain a cause of action.

The Plaintiff opposes the exception.

[2] PARTICULARS OF CLAIM

The Plaintiff claims payment of the amount of R9 022 054.87 for the sale of goods to the principal debtor, Octa Engineering,

Kroonstad. The Excipient is the First Defendant in the main action, in his capacity as surety of Octa Engineering, Kroonstad.

[3] The plaintiff relies upon an ACCOUNT APPLICATION FORM (POC1) incorporating Terms and Conditions of Sale, Deed of Suretyship and Purchaser's details and claims that the principal debtor failed to perform its obligations in terms of the written agreement by failing to pay the amounts set out in the Plaintiff's invoices and/or statements within 30 days.

[4] EXCEPTION

The basis of the exception is that the written agreement and the Plaintiff's particulars of claim lacks averments that are necessary to sustain a cause of action in that it does not contain:

1. A description of what is being sold
2. The agreed upon price at which the goods are sold

[5] It was argued on behalf of the Excipient that the agreement (POC1) does not specify that goods will be sold, nor does it set out what goods will be sold and what price was agreed upon. Lacking these essential averments, there was no valid contract of sale on which the Plaintiff could base its claim.

[6] The Plaintiff pointed out that the Excipient's argument that the agreement does not set out an undertaking to sell does not form part of the notice of exception and that such an averment is, in any case, not essential.

Plaintiff is further of the opinion that the referral in the agreement to "each order which the Purchaser gives to Macsteel and which is accepted by Macsteel is a separate and independent transaction" as well as par 8.1: "The Plaintiff complied with its obligations in terms of the agreement by selling and delivering goods to the Principal Debtor from time to time" is a sufficient basis for the Plaintiff's claim.

As far as what goods were sold, evidence can be led.

The price agreed upon is the "purchase price set out in Macsteel's invoices and statements", as per Part B.2 of the agreement.

[7] LEGAL PRINCIPLES

7.1 Rule 23(1) of the Uniform Rules provides as follows:

"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

7.2 The excipient has the duty to persuade the court that upon every interpretation which the pleading can reasonably bear, no cause of action or defence is disclosed. See: *Theunissen v Transvaalse Lewendehawe Koöp Bpk* 1988

(2) SA 493 (A) te 500D

7.3 For the purpose of deciding an exception a court must assume the correctness of the factual averments made in the relevant pleading, unless they are palpably untrue or so improbable that they cannot be accepted. See: *Voget and others v Kleynhans* 2003 (2) SA 148 (C) at 151H

Theunissen V Transvaalse Lewendehawe Koöp Bpk, supra at 498D

7.4 A charitable test is used on exception in deciding whether a cause of action is established and the pleader is entitled to a benevolent interpretation. See: *First National Bank of Southern Africa Ltd v Perry NO and other* 2001 (3) SA 960 (SCA) at 972I

7.5 In order to disclose a cause of action, the plaintiff's pleading must set out "every (material) fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved" - *Mackenzie v Farmer's Co-operative Meat Industries Ltd* 1922 AD 16 at 23

7.6 In *MacKelvey v Cowan NO* 1980 (4) SA 525 (Z) at 626D it was stated:

"It is a first principle in dealing with matters of exception that, if evidence can be led which can disclose a cause of action alleged in the pleading, that particular pleading is not excipiable. A pleading is only excipiable on the basis that no possible evidence led on the pleadings can disclose a cause of action".

7.7 In *Vermeulen v Goose Valley Investments (Pty) Ltd* 2001 (3) SA 986 (SCA) at par 7 it is stated:

"It is trite law that an exception that a cause of action is not disclosed by a pleading cannot succeed unless it be shown that ex facie the allegations made by a plaintiff and any document upon which his or her cause of action may be based, the claim is (not may be) bad in law"

[8] APPLICATION OF LAW

The Plaintiff's Particulars of Claim sets out that the claim is based on the "selling and delivering of goods to the Principal Debtor" (par 8.1), that the Plaintiff complied with its obligations and that the Principal Debtor failed to pay the amounts set out in the Plaintiff's invoices and/or statement within 30 days (par 9.1).

On reading the Particulars of Claim there can be no doubt about the cause of the action.

[9] It is further clear that the price of the goods will be proved by the invoices and statements of the Plaintiff

- [10] The agreement (Account Application Form POC1) makes it clear that it applies to goods ordered from the Plaintiff by and delivered to the principal debtor. The nature of the goods/description thereof can be proved by leading evidence.
- [11] The agreement further sets out that the price to be paid will, by agreement, be the price on the invoices of the Plaintiff. I can, therefore, not find that the contract of sale is invalid because no purchase price was agreed upon.

[12]

CONCLUSION

For the reasons set out above the exception cannot be upheld.

[13] ORDER

The exception is dismissed with costs

M. VOGES, A J

On behalf of the plaintiff Adv J Els

Instructed by:

EG Cooper Madjiedt Inc

BLOEMFONTEIN

On behalf of the defendant: Adv. M Louw

C\O Du Plooy INC

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Prepared on 13 October 2026 · Esheria