REPUBLIC OF SOUTH AFRICA

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

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

19 October 2023

DATE SIGNATURE

CASE NUMBER:

21595/2021

In the matter between

ACDC DYNAMICS (PTY) LTD	Excipient/Plaintiff
and	
SHRINIK RETAILING (PTY) LTD t/a ACDC	First Respondent/First Defendant
INBENATHAN JAYASEELAN GOVENDER	Second Respondent/ Second Defendant

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JUDGMENT

DOSIO J:

Introduction

[1] This is an exception whereby the plaintiff ('the excipient'), takes exception to the first defendant's ('first respondent's) counterclaim, on the basis that it is vague and embarrassing, alternatively, that it does not disclose a cause of action.

[2] Should the excipient's exception be upheld, the excipient requests an order that the first respondent be granted leave to amend its counterclaim within 20 days of the date of this order, failing which the excipient be granted leave to apply on papers, supplemented if necessary, for the dismissal of the first respondent's counterclaim.

[3] The application is opposed.

Background

[4] The summons in the main action was served on 3 May 2021. The action arises out of a written credit agreement in terms of which the excipient agreed to supply goods to the first respondent, subject to the term that payment will be received 30 days from the date on which the first respondent received the statement from the excipient.

[5] The first respondent from time to time placed further orders with the excipient for goods. On 3 December 2015 the second respondent signed a written deed of suretyship and bound himself as co-principal debtor with the first respondent. The excipient claims judgment from the first and second respondents in the amount of R2.841.447,53.

[6] On 17 November 2021, the first respondent delivered a notice of its intention to amend its counterclaim. In this notice it placed its reliance upon the Consumer Protection Act 68 of 2008 ('the Consumer Protection Act) and contended for a counterclaim based upon an alleged unjustified enrichment, alternatively, allegedly fraudulent or negligent misrepresentations ('the first proposed amendment').

[7] On 15 December 2021, the excipient objected to the first proposed amendment.

[8] Pursuant to the objections raised by the excipient to the first proposed amendment, on 10 January 2022, the first respondent delivered a second proposed amendment ('the second proposed amendment').

[9] The second proposed amendment was also based upon an alleged enrichment, alternatively, alleged misrepresentations 'but with improvements in the formulation thereof to address the respondent's objections to the first proposed amendment'.

[10] On 21 January 2022, the excipient objected to the second proposed amendment.

[11] By virtue of the excipient's objection to the second proposed amendment, the first respondent made application for leave to amend its counterclaim on 4 February 2022.

[12] The first respondent's application for leave to amend was dismissed by Molahlehi J on 7 November 2022.

[13] By virtue of the dismissal of the second proposed amendment, the initial counterclaim delivered by the first respondent applies. The first respondent failed to remove the causes of complaint, as a result, the excipient delivered its exception.

[14] The excipient relies on six grounds of exception, namely:

(i) The first ground of exception is premised on the non-joinder of Infinity Brands CC ('Infinity').

(ii) The second ground of exception takes issue with the fact that the first respondent has not alleged that the franchise agreement was entered between it and the excipient and therefore failed to allege that the supply agreement upon which it relies came into effect.

(iii) The third ground of exception is that the first respondent's counter claim has not set out how the excipient contravened s13, s40, s41 or s48 of the Consumer Protection Act:

-How and/or what respects the excipient allegedly used coercion, undue influence, pressure, duress, harassment, unfair tactics or similar conduct in its dealings with the first respondent;

-How the excipient stated implied false, misleading or deceptive representations to the first respondent;

-How the excipient supplied or offered to enter into an agreement on the terms that were unfair, unreasonable or unjust and who the excipient allegedly supplied or

offered to enter into an agreement on the terms that were unfair, unreasonable or unjust.

(iv) The fourth ground of exception is premised on the fact that the first respondent has not set out a basis to claim legal costs against the excipient.

(v) The fifth ground of exception is premised on the lack of particularity pertaining to the calculations and detailed basis upon how the first respondent arrives at its loss of gross profits or damages and detailed prices of other wholesalers who approached the first respondent.

(vi) The sixth ground of exception is premised on whether the provisions of the Consumer Protection Act are applicable to this case more specifically the fact that the first respondent's turnover exceeds the threshold in terms of s6 of the Consumer Protection Act and the transaction between the supplier and consumer is not within the definitions of the Consumer Protection Act. Furthermore, the first defendant has not pleaded the existence/conclusion of a valid franchise agreement thereby failing to disclose a cause of action.

The law

[15] It is common practice that every pleading must comply with Uniform Rule 18, more specifically, pleadings must contain clear and concise material facts upon which the pleader relies on his claim to enable the other party to plead thereto.[1]

[16] In the matter of *Kahn v Stuart*[2] the Court held that:

'In my opinion, the Court should not look at a pleading with a magnifying glass of too high power. If it does so, it will be almost bound to find flaws in most pleadings ….' [my emphasis]

[17] It was emphasised in the following cases *Kennedy v Steenkamp*[3] *('Kennedy'), Amalgamated Footwear & Leather Industries v Jordon & Co Ltd*[4] ('*Amalgamated*'), *Kitching v London Assurance CO*[5] ('*Kitching*'), *Fairlands (Pty) Ltd v Inter-Continental Motors (Pty) Ltd*[6] ('*Fairlands*') that:

'The particulars of claim or declaration may in some cases, disclose a cause of action even where a necessary allegation which is omitted cannot be implied. Where, because a necessary averment is

[1] Uniform Rule 18(4) Superior Court Practice, Erasmus, 2nd edition.

[2] *Kahn v Stuart* 1942 CPD 386.

[3] *Kennedy v Steenkamp* 1936 CPD 113 at 115.

[4] *Amalgamated Footwear & Leather Industries v Jordon & Co Ltd* 1948 (2) SA 891 (C).

[5] *Kitching v London Assurance CO* 1959 (3) SA 247 (C).

[6] *Fairlands (Pty) Ltd v Inter-Continental Motors (Pty) Ltd* 1972 (2) SA 270 (A).

omitted, it may be read in two or more possible ways, and one of these possible readings discloses a cause of action, then the particulars of claim or declaration cannot be excepted to as disclosing no cause of action...' [my emphasis]

[18] As stated in the matter of *Jowell v Bramwell Jones*[7] (*Jowell*') and *Vodacom (Pty) Ltd v GM Graphix (Pty) Ltd*[8] ('*Vodacom*') a plaintiff is required to plead his / her case in a lucid, logical and intelligible format and must only plead the *facta probanda* and not the *facta probantia*.

[19] The purpose of pleadings is to allow parties to define issues that are material to their dispute. Each party is required to set out in its pleadings a clear and concise statement of the material facts upon which it seeks to rely for its claim with sufficient particularity for its opponent to reply thereto.

[20] In the matter of *McKenzie v Farmers Co-operative Meat Industries Ltd*[9] the Appellate Division, (as it then was), summarised the meaning of *facta probanda* as follows:

'Every fact necessary for the Plaintiff to prove. If traversed, in order to support his right to the 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.'[10]

[21] A plaintiff does not need to plead the evidence and the other party is only entitled to such information as to put it in the picture as to what the issues are.[11]

[22] In the matter of *Trope v South African Reserve Bank*[12] ('*Trope*') the Court held that an exception to a pleading on the ground that it is vague and embarrassing involves two considerations, firstly, whether it is vague and secondly, whether it causes embarrassment of such a nature that the excipient is prejudiced.[13]

[23] The ultimate test is whether the other party will be prejudiced if the pleading is allowed to stand as is. The onus is thus on the party raising the exception to show both vagueness and embarrassment amounting to prejudice.

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[7] *Jowell v Bramwell Jones* 1998 (1) SA 836 at 903 A.

[8] *Vodacom (Pty) Ltd v GM Graphix (Pty) Ltd* 18241/2018 2019 ZAGP JHC 73 (12 March 2019) at para 45.

[9] *McKenzie v Farmers Co-operative Meat Industries Ltd* 1922 AD 16 at 23.

[10] Ibid at page 23.

[11] *Reid, N.O. v Royal Insurance Co. Ltd* (1951) (1) 713 (T) at 717 D and *Coop & Another v Motor Union Insurance Co Ltd* 1959 (4) WLD 273 at 278 A.

[12] *Trope v South African Reserve Bank* 1992(3) SA (208) (T) it was held at (210-211).

[13] Ibid at page 210-211.

[24] In the matter of *Spearhead Property Holdings v ED Motors (Pty) Ltd*,[14] the Supreme Court of Appeal stated that:

'It is equally trite that since pleadings are made for the court and not the court for the pleadings, it is the duty of the court to determine the real issues between the parties, and provided no possible prejudice can be caused to either, to decide the case on those real issues.'[15] [my emphasis]

[25] In the matter of *Francis v Sharp*[16] ('*Francis'*), the Court held that an excipient must satisfy the court that it would be seriously prejudiced if the offending pleading were allowed to stand and an excipient is required to make out a very clear, strong case before the exception can succeed.[17]

[26] In the matter of *Trope*,[18] the Supreme Court of Appeal stated that the test for vague and embarrassing is that the vagueness must strike at the root of the cause of the action and not its legal validity.[19]

[27] In the matter of *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA*[20] ('*Telematrix*'), the Supreme Court of Appeal stated that exceptions are also not to be dealt with in an over-technical manner.[21]

[28] In the matter of *First National Bank of Southern Africa Ltd v Perry N.O*.,[22] the Supreme Court of Appeal held that a court looks benevolently instead of over-critically at a pleading.[23] The Supreme Court held further that where an exception is raised on the ground that a pleading lacks averments necessary to sustain a cause of action, the excipient is required to show that upon every interpretation that the pleading in question can reasonably bear, no cause of action is disclosed.[24]

[29] In the matter of *Living Hands (Pty) Ltd v Ditz*[25] the Court held that:

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[14] *Spearhead Property Holdings v ED Motors (Pty) Ltd* 2010 (2) SA (SCA).
[15] Ibid at 15A – 16A.
[16] *Francis v Sharp* 2004 (3) SA 230 (C).
[17] Ibid at 240 E-F and 237 D-I.
[18] *Trope* (note 12 above).
[19] Ibid at 269I.
[20] *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA* 2006 (1) SA 461 (SCA).
[21] Ibid page 465H.
[22] *First National Bank of Southern Africa Ltd v Perry N.O.* 2001 (3) SA 960 (SCA).
[23] Ibid.
[24] Ibid page 965 C.
[25] *Living Hands (Pty) Ltd v Ditz* 2013 (2) SA 368 (GSJ).

'(a) In considering an exception that a pleading does not sustain a cause of action, the court will accept, as true, the allegations pleaded by the plaintiff to assess whether they disclose a cause of action.

(b) The object of an exception is not to embarrass one's opponent or to take advantage of a technical flaw, but to dispose of the case or a portion thereof in an expeditious manner, or to protect oneself against an embarrassment which is so serious as to merit the costs even of an exception.

(c) The purpose of an exception is to raise a substantive question of law which may have the effect of settling the dispute between the parties. If the exception is not taken for that purpose, an excipient should make out a very clear case before it would be allowed to succeed.

(d) An excipient who alleges that a summons does not disclose a cause of action must establish that, upon any construction of the particulars of claim, no cause of action is disclosed…

(e) An over-technical approach should be avoided because it destroys the usefulness of the exception procedure, which is to weed out cases without legal merit.

(f) Pleadings must be read as a whole and an exception cannot be taken to a paragraph or a part of a pleading that is not self-contained.

(g) Minor blemishes and unradical embarrassments caused by a pleading can and should be cured by further particulars.'[26] [my emphasis]

[30] In the matter of *Pretorius and Another v Transport Pension Fund and others*[27] ('Pretorius'), the Constitutional Court held that:

'in deciding an exception the court must accept all allegations of fact made in the particulars of claim is true, and may not have regard to any other extraneous facts or documents, it may uphold the exception to the pleading only when the excipient has satisfied the court that the cause of action or conclusion of law in the pleading cannot be supported on every interpretation that can be put on the facts. The purpose of an exception is to protect litigants against claims that are bad in law or against an embarrassment which is so serious as to merit the costs even of an exception. It is a useful procedural tool to weed out bad claims at an early stage, but an overly technical approach must be avoided.'[28] [my emphasis]

[31] In the matter of *Delmas Milling Co Ltd v Du Plessis*[29] ('*Delmas*'), the Appellate Division (as it then was), stated 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.

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[26] Ibid para 15.

[27] *Pretorius and Another v Transport Pension Fund and others* 2019 (2) SA 37 (CC).

[28] Ibid para 15.

[29] *Delmas Milling Co Ltd v Du Plessis* 1955 (3) SA 447 (A).

[32] In the matter of *Sun Packaging (Pty) Ltd v Vreulink*[30] ('*Sun Packaging*'), the Appellate Division, (as it then was), stated that Courts are reluctant to decide upon exception questions concerning the interpretation of a contract.

[33] Courts have been reluctant to decide exceptions in respect of fact bound issues.[31]

[34] In the matter of *Francis*[32] the Court held that:

'…it happens more often than not that parties enter into agreements, either in writing or orally, of which the terms are ambiguous, uncertain or disputed. While it is the function of the court to resolve those ambiguities and uncertainties, the exception is generally not an appropriate vehicle for resolving such disputes.' [my emphasis]

Evaluation

First ground

[35] The excipient contends that paragraph 2.1 of the first respondent's counterclaim is vague and embarrassing in that the first respondent alleges that Infinity appointed it as a franchisee for the excipient. However, Infinity has not been joined as a party to these proceedings.

[36] The excipient's first ground of exception premised on non-joinder clearly is not directed to any defect inherent in the pleadings.

[37] Where additional facts need to be placed before the court to show that there has been a misjoinder or non-joinder, a special plea is generally used.[33]

[38] It is clear that the first respondent's primary relief is directed against the excipient and not Infinity. The excipient has not alleged or substantiated why Infinity has a direct and substantial interest in the matter. The relief sought by either the excipient or the first respondent does not concern Infinity and therefore no prejudice is occasioned thereby.

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[30] *Sun Packaging (Pty) Ltd v Vreulink* 1996 (4) SA 176 (A).

[31] *Klokow v Sullivan* 2006 (1) SA 259 (SCA).

[32] *Francis* (note 16 above).

[33] see *Flemix, Jacobs Johannes v Russel Jacobus Johannes Herbstein and Van Winsen* (44521/2014) [2016] ZAGPJHC 182 (6 July 2016), *Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa*, (5th Edition), Internet: ISSN 2224-7319, Jutastat e-publications at V *Procedure for raising the objection of non-joinder or misjoinder* at 5th Ed, 2009 ch6-p238 to p241 with reference to *Skyline Hotel v Nickloes* 1973 (4) SA 170 (W) at 171F–172A.).

[39] The excipient has not demonstrated any prejudice by Infinity not being cited as a party.

[40] The omission of citing Infinity does not strike at the root of the cause of the first respondent's action. The excipient has not established that the omission of Infinity renders the first respondent's counterclaim contradictory or capable of more meanings. Neither does the excipient demonstrate that the omission of Infinity renders the first respondent's pleadings defective or unable to distil a clear meaning.

[41] The first ground is accordingly dismissed with costs. The excipient can raise a special plea.

Second ground

[42] The excipient contends that the first respondent's failure to allege that a valid and binding franchise agreement was entered into between itself and the excipient renders the counterclaim vague and embarrassing, alternatively, same does not disclose a contractual cause of action.

[43] This Court disagrees. The first respondent is the franchisor, and the excipient is the supplier. The first respondent has annexed to its counterclaim a copy of the written supply agreement as annexure CC1, wherein the pertinent clauses and terms and conditions of the supply agreement concluded between the first respondent and excipient are set out. The commencement date and duration of the supply agreement are also set out. Annexure CC1 further elaborates on the duties and obligations of the franchisor, franchisee and supplier. The additional contents of the supply agreement are self-explanatory. This Court notes that the supply agreement duly contains the signatures of the first respondent and the excipient, as a result, it is clear that a supply agreement came into effect and exists.

[44] In addition, in paragraphs 2 and 2.1 of the counterclaim, the first respondent alleges that on 3 December 2015 Infinity appointed it as an AC/DC franchisee and offered to enter into a written franchise agreement with it. In paragraphs 2.2 and 2.3 of its counterclaim, the first respondent alleges that as 'a prospective franchisee' it entered into a written supplier agreement and made an application for a trading facility with the plaintiff. In paragraph 4 of its counterclaim, the first respondent alleges that the supply agreement would commence on the

effective date of the franchise agreement and would endure for an initial period of five years, subject to the automatic termination of the supplier agreement in the event of a termination of the franchise agreement. In paragraph 5 of its counterclaim the first respondent alleges that:
'Any trading facility agreement constituted by the plaintiff's acceptance of the first defendant's application, was in turn subject to and dependent upon a valid franchise and supplier agreements having been concluded and remained operative with the first defendant.' In paragraph 9 of its counterclaim the first respondent alleges that the terms of sections 5(1), 5(6) and 5(7) of the Consumer Protection Act was applicable to all transactions concluded between it and the excipient.

[45] This Court finds that there is sufficient information pleaded in the counterclaim to suggest that a franchise agreement was entered between it and the excipient

[46] Even if this Court is wrong, in line with the reasoning in the matters of *Kennedy*,[34] *Amalgamated*,[35] *Kitching*[36] and *Fairlands*,[37] the excipient has failed to show that the omission of a necessary averment means that no cause of action has been disclosed.

[47] Furthermore, in line with the reasoning of the cases of *Pretorius*,[38] the excipient has failed to show that because of the said omission, the first respondent's pleadings and cause of action cannot be supported on every interpretation that can be put on the facts.

[48] As stated in the matter of *Jowell*,[39] minor blemishes are irrelevant. In addition, the excipient must not adopt an overly technical approach, pleadings must be read as a whole and no paragraph must be read in isolation.

[49] As stated in the matter of *Sun Packaging*,[40] Courts are reluctant to decide upon exception questions concerning the interpretation of a contract. The contents of the supply agreement will be interpreted during the trial.

[50] As a result the second exception is dismissed with costs.

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[34] *Kennedy* (note 3 above).
[35] *Amalgamated* (note 4 above).
[36] *Kitching* (note 5 above).
[37] *Fairlands* (note 6 above).
[38] *Pretorius* (note 27 above).
[39] *Jowell* (note 7 above).
[40] *Sun Packaging* (note 30 above).

Third ground

[51] The excipient contends that paragraphs 11, 12 and 14 of the counterclaim, are so vague and embarrassing that the excipient cannot plead or properly prepare for trial. The excipient stated that the first respondent fails to provide particularity relating to:

(i) how and/or in what respects the excipient allegedly used coercion, undue influence, pressure, duress, harassment, unfair tactics or other similar conduct in its dealings with the first respondent;
(ii) how the excipient stated or implied false, misleading or deceptive representations to the first respondent;
(iii) how the excipient supplied or offered to enter into an agreement on terms that were unfair, unreasonable or unjust; and
(iv) who, on the excipient's behalf, allegedly supplied or offered to enter into an agreement on terms that were unfair, unreasonable or unjust.

[52] The excipients third exception conflates the concepts of *facta probanda* with *facta probantia*. The questions regarding when, where and how the inducement, coercion, harassment, duress, deceptive representation have occurred or any of the above questions raised above, actually relate to the *facta probantia*, which is evidence to be led at the trial to prove the *facta probanda* and need not be pleaded by the first defendant to sustain its cause of action.

[53] More importantly, the excipient has failed to aver that the omission of the aforesaid particularity seriously prejudices the excipient and that the excipient is unable to plead thereto.

[54] The excipient can simply plead to the averments made in the counterclaim by admitting, denying, confessing or avoiding same. In turn, the first respondent will at the trial lead evidence to supplement its cause of action.

[55] In light of the excipient's failure to aver any prejudice, the third exception is dismissed with costs.

Fourth ground

[56] The excipient contends that the conclusion in paragraph 15 of the counterclaim is not sustained by allegations contained in the preceding paragraphs and that no basis has been laid for a declaration either that the supply transactions were wholly unconscionable, unjust, unreasonable or unfair. In addition, that the first respondent has failed to allege on what basis it is entitled to legal costs.

[57] Section 21(1)(c) of the Superior Court's Act, 10 of 2013, stipulates that a court can make a declaratory order, in its discretion, at the instance of an interested party notwithstanding that there is no claim for consequential relief, if satisfied that an order should be granted.

[58] Therefore, it is clear a Court has a discretion to award the first respondent costs from a declaratory order despite no claim for consequential relief being set out in its counter claim.

[59] The question of costs does not strike at the root of the action. A party can ask for consequential relief and it is in the Court's discretion to grant it.

[60] The excipient has failed to adduce any prejudice.

[61] As a result, the fourth exception is dismissed with costs.

Fifth ground

[62] The excipient contended that in making the allegations in paragraph 16 and 17 of the first respondent's counterclaim, the first respondent has failed to allege:

(i) the detailed basis, calculations and specifications upon which the average gross profit percentage of 30.2% calculation is based,
(ii) the detailed basis, calculations and specifications upon which the average gross profit percentage of 46.4% calculation is based,
(iii) the details and prices of the other wholesalers who the first respondent approached; and
(iv) the detailed calculations and specifications on which the overcharged sum and aggregate amount is based.

[63] In the matter of *Coop & Another v Motor Union Insurance Co Ltd*,[41] the Court held that:

[41] *Coop & Another v Motor Union Insurance Co Ltd* 1959 (4) WLD 273.

'A plaintiff does not need to show a defendant precisely how a claim is arrived at. A plaintiff is not required to put a monetary value on each item claimed'.[42]

[64] In the matter of *Cete v Standard and General Insurance Co Ltd*[43] the Court held that neither party can accurately assess damages, and same will only be finally adjudicated after the evidence has been led and tested.[44]

[65] As stated in the matter of *Jowell,*[45] when the lack of particularity relates to mere detail, the remedy of a defendant is to plead to the averment made and to obtain the particularity required by: (i) means of discovery/inspection of the document procedure in terms of the Rules; or (ii) by means of a request for particulars for trial to enable the defendant to prepare for trial.[46]

[66] The first respondent has set out adequately its claim for damages or loss of gross profits in a simple and logical format. The counterclaim of the respondent provides the excipient sufficient basis to understand the manner in which the first respondent's damages have been quantified. The excipient can conduct its own investigations or procure any information it requires through discovery or a request for further particulars for trial. It is for the trial Court to determine whether there is merit to such a claim.

[67] The excipient is not left remediless and no prejudice has been averred. The excipient can plead and accordingly the fifth ground is dismissed with costs.

Sixth ground

[68] In determining whether the asset and/or turnover at the time of the transaction between the excipient and first respondent exceeds the threshold it is pertinent to scrutinize the determination of the threshold in terms of the Consumer Protection Act.

[69] The threshold determination and method of calculation is set out in section 1,2,3 and 4 of the Government Notice 1 April 2011, '*Determination of the threshold in terms of the*

[42] Ibid at 277 A – G.
[43] *Cete v Standard and General Insurance Co Ltd* 1973 (4) 349 (WLD).
[44] Ibid at 353 H – 354 G.
[45] *Jowell* (note 7 above).
[46] Ibid at 902 B.

Consumer Protection Act 2008' These sections set out explicitly how to calculate a juristic person's annual turnover and further the requisite documentation required to calculate such.

[70] There are various sections the excipient will need to comply with prior to the plaintiff establishing whether the first respondent's annual turnover exceeded the requisite threshold of the Consumer Protection Act.

[71] Such documentation shall be procured during the discovery or preparation for trial stages. The excipient cannot make a bald statement that the first respondent's annual turnover exceeded the threshold without any substantive documentation.

[72] As stated in the matter of *Sun Packaging*[47] the court at this stage need not burden itself with whether the interpretation of the Consumer Protection Act is applicable, as exceptions should not be premised on the interpretation of contracts and/or acts. Furthermore, as stated in the matter of *Troskie v Von Holdt and Others*,[48] a Court at the stage of an exception need not decide whether there is merit in the case as pleaded.[49]

[73] The first respondent has set out the material facts and conclusions of law in respect to the contravention of the Consumer Protection Act relied upon to inform and enable the excipient to plead thereto.

[74] The excipient has failed to adduce prejudice in respect to the sixth ground and it is accordingly dismissed with costs.

[75] The pleadings have been pleaded in a lucid, intelligent and logical format. The counterclaim has set out sufficient information on which the excipient can plead and this Court finds that Uniform Rule 18 has been complied with.

Order

[76] The exception is dismissed with costs.

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[47] *Sun Packaging* (note 30 above).

[48] *Troskie v Von Holdt and Others* (2704/2012) [2013] ZAECGHC 31 (11 April 2013).

[49] Ibid para 34.

JUDGE OF THE HIGH COURT
JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 19 October 2023

Date Heard:	2 October 2023
Judgment handed down:	19 October 2023

Appearances:

On behalf of the excipient:	Adv D. Van Niekerk
Instructed by:	CLIFF DEKKER HOFMEYR INC
On behalf of the first respondent:	Adv D. Moodliyar
Instructed by:	D’AMICO INCORPORATED