

**SAFLII Note:** Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**REPUBLIC OF SOUTH AFRICA  
IN THE HIGH COURT OF SOUTH AFRICA  
HELD AT PRETORIA**

**CASE NO: 2023-114200**

**DOH: 28 JANUARY 2025**

**DECIDED: 05 JUNE 2025**

1) REPORTABLE: NO

2) OF INTEREST TO OTHER JUDGES: NO

3) REVISED.

**SIGNATURE**

**DATE: 05 June 2025**

In the matter between:

**SB GUARANTEE COMPANY (RF)  
PROPRIETARY LIMITED  
(REGISTRATION NO. 2006/021576/07)**

Respondent/Plaintiff

And

**HAVA TAYOB (ID: 7[...])**                      Excipient/ Defendant

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on Caselines. The date of hand down shall be deemed to be 05 June 2025.

---

**ORDER**

---

1. The exception is dismissed with costs on the scale as between attorney and client.

---

## JUDGMENT

---

### **Bam J**

#### *Introduction*

1. The Plaintiff, SB Guarantee Co (RF) (Proprietary) Limited, (SB) instituted action proceedings against the defendant, arising from breach of her home loan agreement with Standard Bank of South Africa Limited, (the bank). The plaintiff alleges in its Particulars of Claim, PoC, that the home loan agreement was subject to certain terms. They include, *inter alia*, the conclusion of two further agreements, namely, the guarantee issued by the plaintiff to the bank, guaranteeing the defendant's performance in respect of the home loan agreement, and the Indemnity signed by the defendant, undertaking to hold the plaintiff harmless against any claim made by the bank on the basis of the guarantee. The same terms required that the defendant register a mortgage bond over the property purchased in favour of the plaintiff in the amount of R 4 500 000,00 plus an additional amount of R 1 150 000.00.
2. The PoC allege that during or about May 2022, the defendant fell into arrears with her monthly installments and further failed to regularize such payments after receiving a notice directing her to do so. Acting on indemnity, the plaintiff instituted the action. The summons initiating the plaintiff's claim was issued and served on 2 and 7 November 2023, respectively. The defendant took an exception to the particulars of claim, suggesting that the plaintiff had failed to allege facts to sustain a cause of action.

3. In summary, it was submitted on behalf of the defendant that since the plaintiff has made no allegation that the plaintiff and the bank are registered credit providers, both the indemnity signed by the defendant and the guarantee provided by the plaintiff to the bank will be rendered void in terms of the National Credit Act<sup>1</sup>. It was further submitted on behalf of the defendant that if the main loan is void, there is no obligation that could trigger the guarantee and, if the guarantee itself is void, the causa for the mortgage bond falls away, entitling the plaintiff to claim only on enrichment or some other causa.
4. Premised on the alleged failure to allege registration as credit providers, the defendant submitted that failure to register as a credit provider, where the lender was required to register, renders the credit agreement unlawful and void *ab initio*, in terms of Section 89(2) (b) of the Act, and, in terms of Section 89 (5) this court is enjoined to pronounce them void and further make any order that is just and equitable.

### *Parties*

5. SB, is a ring fenced privately incorporated company with limited liability, with its principal place of business at 9<sup>th</sup> Floor, Standard Bank Centre, [...] S[...] Street, Johannesburg. The defendant is Ms Hava Tayob, an adult female whose *domicilium citandi et executandi* is 3[...] B[...] Street, Laudium, 0037.

### *Background*

6. As to the background, the particulars of claim allege the following: On 14 March 2017, the bank and the defendant entered into a written Home Loan Agreement for the purchase of an immovable property. In terms of the home loan agreement, the defendant was obliged to make monthly payments to the bank to discharge the home loan. The Home Loan agreement attached to the PoC further evinces that the bank is a registered credit provider with registration number N[...].

---

<sup>1</sup> Act 34 of 2005.

7. It is alleged in the PoC that on the same day, 14 March, the plaintiff furnished the bank with a written Guarantee in terms of which it, *inter alia*, guaranteed the punctual payment of all sums payable or which may become due by the defendant to the bank, pursuant to the loan.
8. The defendant, on 14 March 2017, executed a written Indemnity Agreement (Indemnity) in favour of the plaintiff and its successors in title or assigns. In terms thereof, the defendant, *inter alia*, indemnified and held the plaintiff harmless from any loss or damage the plaintiff may suffer as a result of any claims which may be made against it by the bank or the transferee arising out of the guarantee. If the defendant did not pay any amount due and payable to the bank, immediately following a notice of demand, the plaintiff upon being notified by the bank would have the right to and be obliged to take all steps as may be reasonably necessary to realise the mortgage bond and, out of the proceeds, pay the bank's or transferee's claims in accordance with the provisions of the guarantee and the costs provided for in the Indemnity.
9. Pursuant to the conclusion of the loan agreement, the defendant caused a mortgage bond to be registered over the immovable property, in favour of the plaintiff, as security for the defendant's indebtedness to the bank under the loan agreement for the amount of R 4 500 000.00, with the additional sum of R 1 125 000.00. It is, according to the particulars of claim, a material term of the mortgage bond that in the event the defendant (i) fails to observe or perform any of the provisions of the mortgage with bond; or (ii) fails to pay any sum which may be legally claimable by the plaintiff, or (iii) fails to perform any other obligation on the due date thereafter or at all; then all amounts secured by the mortgage bond would become immediately due and payable in full, at the plaintiff's option, even if the plaintiff made use of any other right it may have, and the plaintiff may institute proceedings for the recovery thereof and for an order declaring the immovable property specially executable.

*Defendant's breach*

10. The particulars of claim allege that the defendant fell into arrears on or about May 2022. Attempts by the bank to have her pay the arrears proved

unsuccessful. Thus, on 14 August 2023, the bank notified the plaintiff of the defendant's breach. The plaintiff was thus required forthwith to discharge of its obligations to the bank in terms of the guarantee, by promptly proceeding against the defendant in a competent court on the strength of the indemnity, by calling up and foreclosing on the mortgage bond and enforcing any other remedy it may have in law. To this end, the plaintiff sent a demand to the defendant on 16 August 2023 for payment of the full amount due in terms of the Indemnity.

### *The law on exception*

11. It is trite that '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.'<sup>2</sup> The 'burden rests on an excipient, who must establish that on every interpretation that can reasonably be attached to it, the pleading is excipiable. The test is whether on all possible readings of the facts no cause of action may be made out; it being for the excipient to satisfy the court that the conclusion of law for which the plaintiff contends cannot be supported on every interpretation that can be put upon the facts.'<sup>3</sup> It is further trite that 'an exception taken against a pleading is not directed at a particular paragraph or paragraphs within the pleading. An exception is directed at the formulation of the claim as a whole. No paragraphs can be read in isolation.'<sup>4</sup>

### *Discussion*

12. The single ground of attack is that the particulars of claim do not allege that the plaintiff and the bank are registered providers in terms of the NCA. That failure, claims the defendant, renders the particulars excipiable on the basis that they do not allege facts as to sustain a cause of action.

---

<sup>2</sup> *Telematrix (Pty) Ltd v Advertising Standards Authority SA* (459/2004) [2005] ZASCA 73; [2006] 1 All SA 6 (SCA); 2006 (1) SA 461 (SCA) (9 September 2005), paragraph 3; *Luke M Tembani and Others v President of the Republic of South Africa and Another* (Case no 167/2021) [2022] ZASCA 70 (20 May 2022, paragraph 14).

<sup>3</sup> *Luke M Tembani, supra*.

<sup>4</sup> *Adise v Minister of Defence and Military Veterans* (32474/2022) [2023] ZAGPPHC 732 (21 August 2023)

13. The defendant relies for her exception on several authorities emanating from this court. These include, *inter alia*, *Van Heerden v Nolte*, where the court upheld the defendant's exception. It is important to set out the court's reasoning in that case:

'[16] It follows that when an unregistered credit provider who is required to be registered lends money to a consumer[,] he or she will have no contractual cause of action..'

[17] ...The failure to plead such facts renders the summons excipiable for want of necessary averments on which to found a contractual cause of action. This is not a matter that should be left for evidence at trial. Registration as a credit provider is an essential allegation in an action on a credit agreement ... in the absence of which the particulars fail to disclose a cause of action.

[19] The particulars of claim are also excipiable on the grounds that they do not allege compliance with section 129 of the NCA ... If the agreements are credit agreements, then the averments in the particulars of claim must include allegations that the plaintiff has complied with the provisions of section 129 and 130 of the NCA, which permit a credit provider to enforce an agreement only once alternative procedures have been pursued.'<sup>5</sup>

14. The court in *Van Heerden* relied on the *ratio* in the cases of *IS and GM Construction CC v Tunmer* 2003 (5) SA 218 (W), *Tyrone Seimon Properties (Pty) Ltd v Phindana Properties 112 (Pty) Ltd*, [2006] 1 All SA 545 (C). More recently, in the case of *AD All CC t/a Millenium Bodyguards v Joinbach (Pty)*, it was said that the plaintiff had to plead that it was a registered security service provider, in terms Private Security Industry Regulation Act, 56 of 2001. As the plaintiff had not done so, it had failed to establish its legal entitlement to payment and its particulars of claim thus failed to disclose a cause of action.<sup>6</sup>

---

<sup>5</sup> (19428/11) [2014] ZAGPPHC 12; 2014 (4) SA 584 (GP) (28 January 2014), paragraphs 16.17 and 19.

<sup>6</sup> Ltd (22464/2022) [2025] ZAGPPHC 143 (14 February 2025).

15. The court in *Millenium Bodyguards* cited, amongst others, *Taljaard v TL Botha Properties*, where the Supreme Court of Appeal confirmed that an estate agent who claims remuneration in conflict with s 34A, that is without being in possession of a valid fidelity fund certificate when she performed the relevant act, she will be prevented from enforcing her/his claim. However, the court in *Taljaard* was concerned not with an estate agent enforcing their claim to remuneration but a recovery of the commission paid in circumstances where no fidelity fund certificate had been issued to the agent concerned.
16. Are the cases mentioned in paragraphs 12-14 in this judgment of any assistance to the defendant in the present case? I think not. As I demonstrate, it seems to me that the defendant's exception is not well founded and appears to be built on stilts. The test on exception is 'whether on all possible readings of the facts no cause of action is made out. It is for the defendant to satisfy the Court that the conclusion of law for which the plaintiff contends cannot be supported upon every interpretation that can be put upon the facts.'<sup>7</sup>

*The alleged failure to allege that the bank is a registered credit provider*

17. I first dispose of the attack against the home loan concluded with the bank, and the alleged failure to allege that the bank is a registered credit provider. It is a fact that the bank is a registered credit provider with registration number 15. This is evident from, amongst others, the home loan agreement annexed to the PoC. Pleadings, according to the Supreme Court of Appeal in *Telematrix*, must be read as a whole. In deciding the exception in *Telematrix*, the court did not confine itself to the allegations in the PoC but on allegations fleshed out by means of annexures, including documents that were handed in which did not form part of the pleadings. The reasoning of the court was that pleadings must be read as a whole; and in deciding an exception a court is not playing games, blindfolding itself. I am bound by the ratio of the court in *Telematrix*.

---

<sup>7</sup> *Trustees for the time being of Children's Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others* (050/2012) [2012] ZASCA 182; 2013 (2) SA 213 (SCA); 2013 (3) BCLR 279 (SCA); [2013] 1 All SA 648 (SCA) (29 November 2012), paragraph 36.

18. Thus, regard must be had to the loan agreement, one of the annexures to the PoC, which makes plain that the bank is a registered provider as is required in Section 40 of the Act. The PoC further set out in detail the bank's allegation on compliance with the relevant protective legislation, namely, the Act. These include the notice in terms of Section 129 of the Act, dispatched on 29 September 2023 via registered mail. The fact that the matter of breach of the home loan is not before an ombudsman, and further that the bank had complied with Section 130 of the Act. *Van Heerden* espouses, amongst others, that alleging compliance with the protective legislation is essential.

19. In all the cases set out in paragraphs 13-15 of this judgment, the facts established that the plaintiffs, who were required to be registered with the relevant regulators, in line with the protective legislation quoted in those judgments, were not registered. There is no such question in this case, as the PoC attach a home loan agreement evincing that at the time of the agreement, the bank was a registered credit provider. I may further add in conclusion that the plaintiff's claim is based on the Indemnity signed by the defendant and not on the home loan.

*The absence of an allegation that the plaintiff is a registered credit provider*

20. On the issue of registration of the plaintiff as a credit provider, this court has in several of its judgments held that the Indemnity relied on by the plaintiff is not a credit agreement. In *SB Guarantee Company (RF) Proprietary Limited v Edwoud Frederick Botes*<sup>8</sup>, this court dismissed the idea that the Indemnity is a credit agreement stating that: (i) the Defendant entered into a Loan Agreement with Standard Bank (the Credit Provider) subsequent to which funds were advanced to the Defendant by Standard Bank with which he purchased the immovable property; and that the *vinculum juris* between the plaintiff and defendant flows from the Indemnity agreement.

---

<sup>8</sup> (87458/2019) [2024] ZAGPPHC 161; [2024] 2 All SA 529 (GP) (15 February 2024), paragraphs 16.



21. The court further distinguished the Indemnity in question from transactions such as those in *Shaw & Another v Mackintosh & another* (267/17) [2018] ZASCA 53 (29 March 2018). *Mackintosh* was concerned with a guarantee to an agreement that was itself not subject to the Act, and *Firststrand Bank Ltd v Carl Beck Estates (Pty) Ltd and Another* (56174/2007) [2008] ZAGPHC 423 (25 September 2008). *Carl Beck* has no relevance to the issues in the present case.
22. In *Leshika v SB Guarantee Company (RF) Proprietary Limited* (2023-037065) [2024] ZAGPJHC 1030 (10 October 2024), this court dismissed the idea that the Indemnity is a credit agreement. In that case, it was argued, *inter alia*, that the Indemnity agreement did not exist independently of the mortgage agreement; that it did not create any special and/or separate and independent claim or cause of action; and that it did not create special immunity from the NCA. In rejecting the arguments, the court held that the Respondent, (plaintiff in the present case) had neither advanced any credit and/or funds to the Applicant (defendant in our case) in terms of which payment of an amount owed by one person to another is deferred. I conclude that the Indemnity is not a credit agreement, nor is the guarantee in question a credit transaction.
23. Section 8 (5) describes an agreement as a credit agreement if:
- ‘in terms of that agreement, a person undertakes or promises to satisfy upon demand any obligation of another consumer in terms of a credit facility or a credit transaction to which this Act applies.’ The guarantee between the bank and the plaintiff is simply not a credit agreement. In any event, it is repeated that the basis of the plaintiff’s claim against the defendant is the Indemnity. It follows that the exception is not well founded and cannot be upheld.

### *Concluding remarks*

24. Finally, I note from the defendant’s Heads of Argument that she neither denies the home loan between herself and the bank. Nor does she deny being party to the Indemnity signed in favour of the plaintiff. Similarly, the registration of the mortgage over her property and the material terms thereof have not been placed in dispute in her heads. Her default and failure to regularize the home even after

being issued with a notice in terms of Section 129 was not placed in dispute. In *Luke M Tembani and Others v President*<sup>9</sup>, the SCA observed:

‘ ...In *Maize Board v Tiger Oats Ltd* this Court held: ‘ . . . it now has to be accepted that a dismissal of an exception (save an exception to the jurisdiction of the court), presented and argued as nothing other than an exception, does not finally dispose of the issue raised by the exception and is not appealable. Such acceptance would on the present state of the law and the jurisprudence of this court create certainty and accordingly be in the best interests of litigating parties. If litigating parties wish to obtain a final decision, whichever way the decision of the court goes on an issue raised by an exception, they should make use of the procedure designed for that purpose namely the procedure provided for in Rule 33 and either agree on a special case in terms of that rule or request the court to direct that the issue be finally disposed of in an appropriate manner. If that is done any misunderstanding on the part of any of the parties and any resulting prejudice should be avoided.’

Maize Board has been consistently followed by this Court and it is well established that this Court will not readily depart from its previous decisions. It follows that the dismissal by the high court of the legal duty exception is not appealable.’

#### *Order*

In the result, the following order is granted:

1. The exception is dismissed with costs on the scale as between attorney and client.

**N.N BAM J**  
**JUDGE OF THE HIGH COURT OF SOUTH AFRICA,**  
**GAUTENG DIVISION, PRETORIA**

**Date of Hearing:**

**28 January 2025**

---

<sup>9</sup> Id, paragraph 27.

**Date of Judgment:**

**05 June 2025**

**Appearances:**

**Counsel for the Excipient / Defendant:**

Instructed by:

**Adv A.C Diamond**

Mahdiyyah Patel Attorneys Valhalla,  
Pretoria

**Counsel for the Respondent / Plaintiff:**

Instructed by:

**Adv S Webster**

Vezi & De Beer Inc  
Lynnwood, Pretoria