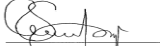




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2020-16910

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
<u>07/11/2025</u> DATE
 SIGNATURE

In the matter between:-

DEVLAND CASH AND CARRY(PTY) LTD

Plaintiff

and

G4S CASH SOLUTIONS SA PTY LIMITED

Defendant

JUDGMENT

Mfenyana J

- [1] The excipient (Devland), who is the plaintiff in the main action, sued out a summons against the defendant for payment of an amount of R644 400.20 for damages allegedly arising from a breach of contract by the defendant. The basis of the plaintiff's claim is that in 2005, the parties concluded an agreement in terms of which the defendant would collect, convey, store and deliver money from the plaintiff's business. This would be done in accordance with the defendant's operating methods, using stop loss bags and sealed containers supplied or approved by the defendant.
- [2] In terms of the agreement, the defendant would not be liable for any loss or damage suffered by the plaintiff pursuant to the provision of services by the defendant, unless such loss or damage is the direct result of the gross negligence or theft by the defendant's employees, acting within the course and scope of their employment, and occurs while the money is in the custody of the defendant. The agreement defines 'custody' as the possession of money from the moment of physical collection by the defendant, against an official Fidelity receipt, by Fidelity employees acting in the course and scope of their employment, and occurs while the money is in the custody of the defendant.
- [3] To mitigate the plaintiff's risk, the defendant would render a minimum service of two cash point collections per working day.

- [4] On 9 September 2019, the employees of the defendant collected money from the plaintiff's premises as agreed. The first collection was at approximately 11h12 in the amount of R644 400.20. The amount was to be delivered to the defendant's branch office or deposited into the plaintiff's bank account or into the bank account of the plaintiff's nominated supplier. At 16h13, the employees of the defendant made the second collection in the amount of R1 059 376.63. A total amount of R1 703 776.83 was thus collected by the defendant.
- [5] On the same day, the employees of the defendant were robbed of the amount of R1 703 776.83 in a cash-in-transit heist. The defendant notified the plaintiff of the robbery on 10 September 2019. On 26 September 2019, the plaintiff submitted a claim form to the defendant in respect of the incident.
- [6] On 15 July 2020, the plaintiff instituted a delictual claim against the defendant, claiming an amount of R644 400.20. The defendant defended the action and filed a plea. On 23 May 2023, by agreement between the parties, an order was granted, separating (i) "whether the defendant can be held delictually liable to the plaintiff in respect of the services...performed" in terms of the contract between the parties and (ii) whether the conduct of the defendant would constitute reckless, grossly negligent or negligent

conduct and whether the plaintiff's claim is subject to the limitation of liability clause.

[7] The issue of delictual liability served before Moorcroft AJ, who found that the defendant cannot be held delictually liable to the plaintiff in respect of the services performed pursuant to the contract between the parties. Moorcroft AJ further afforded the plaintiff an opportunity to file an amendment if the plaintiff so elected.

[8] The plaintiff proceeded to amend the particulars of the claim on 22 August 2023 and set out a claim predicated on contract, relying on the terms of the agreement between the parties, and in particular, that the defendant would collect and deliver the cash amount to the defendant's branch office or deposit it into the plaintiff's bank account or into the account of a supplier's bank account nominated by the plaintiff. The plaintiff, thus, contends that the defendant did not comply with its contractual obligations setting out when collection and delivery of monies and invoices should take place.

[9] The defendant, in turn, delivered a special plea of prescription, contending that the plaintiff's new cause of action, as set out in the amended particulars of claim, was introduced by the plaintiff on 22 August 2023, when the amendment was effected, and at that time the claim had already prescribed. According to the defendant, the contractual claim prescribed on 8

September 2022, being 3 years from the date on which the incident occurred. In the alternative, the claim prescribed on 9 September 2022, 3 years after the defendant notified the plaintiff about the incident. Further, alternatively, it prescribed on 26 September 2022, being a period of 3 years from the date on which the plaintiff submitted a claim form to the defendant.

- [10] However, the plaintiff contends that the claim has not prescribed, on the basis that despite the determination by Moorcroft AJ that the delictual claim is incompetent, the contractual claim remains a live issue.¹ It further contends that the filing of the amendment did not introduce a new debt as the Prescription Act does not concern itself with causes of action, whether delictual or contractual. It refers to just a 'debt'.
- [11] The issue to be determined is whether or not the special plea of prescription in relation to the contractual claim raised in an amendment of the particulars of claim raises a *bona fide defence* to the plaintiff's claim.
- [12] Section 10, read with section 11(a)(d) of the Prescription Act, provides that a debt shall be extinguished by prescription after the lapse of a period of three years. The defendant contends that the plaintiff confuses the debt referred to in the Act with the cause of action. Where the underlying debt is

¹ The plaintiff incorrectly submitted that Moorcroft AJ did not dismiss the delictual claim.

the same, the introduction of a new cause of action does not trigger the prescription of a debt as envisaged in the Act.

- [13] The term ‘debt’ is not defined in the Prescription Act. The Constitutional Court in *Makate*² observed that the Appellate Court in *Escom*³ noted the term in the Prescription Act should be assigned the meaning ascribed to it in the Shorter Oxford English Dictionary, namely:

“1. Something owed or due: something (as money, goods or service) which one person is under an obligation to pay or render to another. 2. A liability or obligation to pay or render something; the condition of being so obligated.”⁴

- [14] The Constitutional Court in *Makate* did not venture to determine the exact meaning of the word, as the claim in that case did not fall within the scope of the word as determined in *Escom*.⁵

- [15] If regard is had to the definition of “debt” as stipulated in *Escom*, it makes no reference to a cause of action. The plaintiff referred to the judgment of

² *Makate v Vodacom (Pty) Ltd* [2016] ZACC 13 at para [85].

³ *Electricity Supply Commission v Stewarts and Lloyds of SA (Pty) Ltd* 1981 (3) SA 340 (A). The entity is now known as Eskom in terms of the Eskom Act 40 of 1987.

⁴ *Id* at para 344E – G.

⁵ *Makate* at para [92].

the SCA in *Rustenburg Platinum Mines*⁶ in support of this proposition, stating further that prescription is not triggered. In that case, the plaintiff instituted a civil claim predicated on unjust enrichment and subsequently amended its particulars of claim to include a claim based on contract. In response to the challenge that a contractual claim constituted a new cause of action and had therefore prescribed, the court held that introducing a new cause of action occasioned by an amendment does not necessarily result in a new 'claim' or 'debt.' Consequently, the special plea of prescription was not upheld.

[16] In contrast, the defendant's counsel referred to the judgment of the Appellate Division in *Evins*⁷, handed down almost 30 years before *Rustenburg Platinum Mines* and argued that this precedent should be preferred. He contended that it supports the position that the plaintiff has two separate rights or causes of action, each giving rise to a corresponding debt.

[17] As was the case in *Rustenburg Platinum Mines*, the plaintiff's claim in *casu* is based on a debt arising from an agreement with the defendant. In both instances, the amount claimed is R644,400.20. While it is correct that the causes of action are distinct, one being delictual and the other contractual,

⁶ *Rustenburg Platinum Mines v Industrial Maintenance Painting Services* [2009] 1 All SA 275 (SCA).

⁷ *Evins v Shield Insurance Co Ltd* 1980 (2) SA 814 (A).

they are both founded on the same debt from the same contract. In any event, it is not unusual for a party to sue for a single debt based on different, even alternative, causes of action. Thus, reference to *Evins* cannot be invoked to argue that there are two separate debts.

[18] That the plaintiff's reliance on contract in the amended particulars of claim introduces a new cause of action is, in my view, not borne out by the facts of this matter. The original particulars of claim evince a sense that the plaintiff was not oblivious to its rights emanating from the contract it concluded with the defendant. In para 14 of the plaintiff's unamended particulars of claim, the plaintiff asserts that the "...cause of action arose *ex contractu* and in delict (*actio legis aquiliae*)". I will be the first to admit that the original particulars of claim are not a model of clarity, and could have been susceptible to an exception. However, these do not constitute the introduction of a new cause of action, as the contractual claim already formed part of the original particulars of claim. It does not, therefore, implicate the Prescription Act in the manner described by the defendant. In the circumstances, the exception should succeed.

Order

[19] In the result, I make the following order:

- (a) The exception is upheld.

- (b) The defendant is ordered to pay the costs of the exception on a party and party scale, including costs of counsel to be taxed on Scale B.

S MFENYANA

Judge of the High Court

Johannesburg

Appearances

For the plaintiff:	H P van Nieuwenhuizen instructed by Ziyaad E Patel Attorneys info@zepattorneys.co.za admin@zepattorneys.co.za
For the defendant:	G Herholdt instructed by Eversheds Sutherland SA Inc. HelenWestman@eversheds-sutherland.co.za
Date of hearing:	27 May 2025
Date of judgment:	07 November 2025