



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE

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

DATE 15/7/24 SIGNATURE [Redacted Signature]

Case No: 55598/2020

In the matter between:

BATA BRANDS SA

Plaintiff

and

REXVIEW INVESTMENTS (PTY) LTD

First Defendant

EGASEN REDDY

Second Defendant

NOVITA SHOES (PTY) LTD

Third Defendant

JUDGMENT

DM LEATHERN, AJ:

[1] This is an exception against amended particulars of claim wherein the plaintiff seeks relief against three defendants being Rexview Investments (Pty) Ltd (hereinafter referred to as "Rexview"), Egasen Reddy (hereinafter referred to as "Reddy") and Novita Shoes (Pty) Ltd (hereinafter referred to as "Novita"). The plaintiff is Bata Brands SA (hereinafter referred to as "Bata") who seeks interdicts against Rexview and Novita from infringing the rights acquired by two of the plaintiff's trademarks, against Rexview and Novita from passing off its shoes as those of the plaintiff, against Rexview and Novita from infringing the plaintiff's copyright in its protected works, and against Novita and Reddy from aiding and / or abetting or causing Rexview to infringe the plaintiff's copyright and registered trademarks and pass off its goods as being those of the plaintiff and related relief.

[2] The exception has been filed by Reddy and is occasioned by the relief sought against him interdicting Novita and him from aiding and / or abetting and / or causing Rexview to infringe the plaintiff's copyright and registered trademarks and passing off its goods as being those of the plaintiff.

[3] The exception is brought on the basis that the particulars of claim do not disclose a cause of action against the second defendant, alternatively are vague and embarrassing, with the result that the second defendant does not know what case it is being called upon to meet.

[4] In essence, the excipient submits on the strength of the matter of *Viskase Corporation v Columbit (Pty) Ltd & Herold Henry Zeh* 1986 BP 432 (CP) that no facts have been alleged which if proved would show that Mr

Reddy was in fact abetting Novita. In support this submission, it was argued that there are only four facts alleged against Mr Reddy, namely:-

[4.1] that he is the sole director of Novita;

[4.2] that he signed the deed of assignment in respect of trademark application 2010/11554 on behalf of both Rexview and an entity registered as Toughclass CC;

[4.3] he signed the merchandise supply agreement with Edcon Limited on behalf of Rexview on 27 November 2014; and,

[4.4] he signed two powers of attorney filed at the Trademarks Office on behalf of Rexview on 25 July 2004 and 22 March 2016.

[5] It was further argued that it was only pleaded that Mr Reddy is the sole director of Novita and signed agreements on behalf of Rexview which if proved are manifestly insufficient to establish the conclusions of law drawn in the particulars of claim. This argument was taken further by submitting that as directors of a company are not ordinarily liable for the actions of the company even where they have total control of the company it does not mean that a director is party to or responsible for a delict committed by his company.

[6] It is now trite that in determining an exception either on the ground that it is vague and / or embarrassing or fails to disclose a cause of action:-

[6.1] the pleading must be read as a whole;

[6.2] the facts alleged in the pleading must be accepted as correct;

[6.3] there is a movement away from an overly technical approach to determining exceptions, as it destroys the usefulness of the exception procedure, “which is to weed out cases without legal merit”¹;

[6.4] Courts have been reluctant to decide exceptions in respect of fact bound issues².

[7] A proper reading of the entire amended particulars of claim reveals *inter alia* the following pleaded as facts:-

[7.1] there were previous proceedings in the KwaZulu-Natal Division where the plaintiff's predecessor BB SARL also instituted trademark infringement proceedings against Novita and its then sole member Reddy;

[7.2] this related to the conduct of Novita and Reddy in respect of the sale of footwear where the trademark was infringed;

[7.3] after the assignment of the sole patent trademarks, the present plaintiff was given leave to join those proceedings;

[7.4] in March 2019 a judgment was given interdicting the respondents (including Reddy) from infringing a certain trademark with ancillary relief;

¹ Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority of South Africa 2006 (1) SA461 (SCA).

² Living Hands (Pty) Ltd v Didz 2013 (2) SA 368 (GSJ)

[7.5] this related to the first infringing shoe and first infringing trademark;

[7.6] since 2016 Rexview has been manufacturing and / or distributing and / or offering for sale the first infringing shoe depicting the first infringing trademark which formed the subject of the previous litigation;

[7.7] Rexview has been manufacturing and / or distributing or offering for sale the second sale footwear ("the second infringing shoe");

[7.8] the first infringing trademark and the second infringing trademark are used in the course of trade by Rexview and so nearly resemble the plaintiff's registered sole patent trademarks so as to be likely to deceive or cause confusion since at least October 2021 Novita has been manufacturing and / or distributing and / or offering for sale the second infringing shoe;

[7.9] Rexview and Novita share the same premises;

[7.10] Reddy was the sole member and manager of Novita when it was a close corporation and since conversion to a private limited company has been the sole director;

[7.11] the second infringing shoe was discovered on and is produced, manufactured and / or distributed from and in the same facility and premises as that of Novita;

[7.12] Reddy has represented Rexview not only in the merchandise supply agreement but also in the signature of powers of attorney.

[8] Bata submits that the facts as pleaded in the amended paragraph 12 A of the particulars of claim are sufficient to establish a *prima facie* case that Mr Reddy as the sole member of Novita and director of Rexview were aware of the infringing shoes being marketed and sold in his companies and that if the act of aiding and abetting requires intention, this is implicit in the fact that aiding and abetting has been alleged. Bata goes further to argue that one can only conclude *inter alia* through his actions as pleaded which are the signing of the commercial documentation referred to, the premises of both entities being on the same property and them having the same email address that he is in fact “the glue that binds them” and would have been aware of the conduct being perpetrated in Novita and Rexview. Relying on the order granted in the KwaZulu Natal Division the submission is made that the infringement could not have occurred or continued without Mr Reddy’s say so.

[9] I am of the opinion that on reading the particulars of claim as a whole the submission that it could not have occurred or continued without Mr Reddy’s say so is an understatement. Taking a practical and common sense approach to what has been pleaded in this matter it is quite clear that not only is Mr Reddy “the glue that binds” but that on the facts as alleged the only conclusion is that if he is not the instigator and guiding mind to these actions, he at the very least abets Novita and Rexview.

[10] While it was argued that the word “through” used in the particulars of claim was vague and caused embarrassment to Reddy as he could not know what actions constituted the alleged aiding and abetting it is obviously coloured and explained by the other facts alleged and particularly those referred to in paragraph 7 above.

[11] It necessarily follows that the exception must fail.

[12] There is no reason why the costs should not follow the event. In the premises the following order is made:

1. The second defendant’s exception is dismissed.
2. The second defendant is to pay the plaintiff’s costs including the costs of two counsel, such to be taxed on scale C.


DM LEATHERN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was handed down electronically by circulation to the parties’ legal representatives by e-mail. The date and time for hand-down is deemed to be 14h00 on the 15th of June 2024.

COUNSEL FOR THE PLAINTIFF RESPONDENT:

Adv. R. Michau SC

Adv. H. Worthington

COUNSEL FOR THE SECOND DEFENDANT / EXCIPIENT:

Adv. G. Marriott

Adv. N Nyembe