



**IN THE HIGH COURT OF SOUTH AFRICA,
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: D4936/18

In the matter between:

JEANY INDUSTRIAL HOLDINGS (PTY) L TD
(Registration Number 2002/018137/074)

First Plaintiff / Applicant

IAN LAVERNE DONJEANY

Second Plaintiff/ Applicant

LEE SPENCER DONJEANY

Third Plaintiff/ Applicant

and

ZUNGU -ELGIN ENGINEERING (PTY) L TD
(Registration Number 2002/017207/07)

Defendant / Respondent

ORDER

1. Summary judgment is granted against the Defendant / Respondent for payment of the sum of R250 000.
2. Interest on the said sum at the prescribed rate *a tempore morae* to date of final payment.
3. Costs of suit on the scale as between attorney and client, such costs to include that of senior counsel where so employed.

JUDGMENT

Chetty J:

[1] The plaintiffs instituted an action against the defendant for the amount of R250 000.00 based on its right of recourse as a surety against the principal debtor in circumstances where the plaintiffs made payment to a creditor (Hollard Insurance) to whom the defendant was indebted. As will appear from what follows, the plaintiff's action was defended, resulting in an application for summary judgment which was set down on the opposed roll. The determination of that application called for an analysis of what are essentially two legal questions. There were no disputes of fact on the papers which presented themselves.

[2] Central to understanding the basis of the plaintiff's claim against the defendant is a background to the matter. The defendant operates its business in the engineering sector, in which it manufactures heavy duty parts and equipment for the sugar and petro chemical industries. The second and third plaintiffs are the erstwhile directors of the defendant, which was formerly called Elgin Engineering (Pty) Ltd. The second plaintiff resigned from the defendant on 30 November 2016, with the third plaintiff resigning on 19 April 2005. This appears from a company search report. According to the defendant, at the time when both the second and third plaintiffs were directors of Elgin an agreement was concluded in September 2013 pursuant to the defendant having been awarded a large contract to carry out the manufacture of a tank at Saldhana in the Western Cape. The agreement between the defendant and Hollard Insurance contained the provision of a performance guarantee bond by Hollard to Sunrise Energy (Pty) Ltd, the entity which contracted with Elgin to carry out the fabrication and delivery of certain tanks for the storage of liquid petroleum gas.

[3] It is not disputed that Hollard forwarded the performance guarantee to Sunrise in October 2013. A material term of the agreement is that Hollard would, in the event of a breach of the defendant's obligation to Sunrise, upon written demand by Sunrise, would pay to Sunrise an amount not exceeding R33 951 466, representing 25 per cent of the contract price. In February 2015 Sunrise furnished a written demand to Hollard pursuant to the terms of the agreement for a performance guarantee for the sum referred to above. Hollard honored the guarantee and paid the amount to Sunrise over a period from 17 to 31 March 2015 in four payments. In terms of a written reciprocal indemnity and suretyship agreement concluded on 20 September 2013 between Hollard as the insurer and seven 'principal' companies or 'signatories' as they are referred to in the particulars of claim, including Elgin, the signatories undertook to indemnify Hollard from any claims which Hollard may sustain by reason of executing any guarantees on behalf of one of the signatories to the agreement. As a consequence of Hollard's payment of R33 951 466 to Sunrise, Elgin (in terms of the provisions of the indemnity and suretyship agreement as set out above) became indebted to Hollard in the said amount.

[4] A further term of the agreement was that each of the signatories including the plaintiff and the first respondent undertook to indemnify Hollard against all claims of whatever nature which it (Hollard) sustained as a consequence of having executed any guarantees on behalf of any of the signatories. Each of the signatories agreed to bind themselves as surety and co-principal debtor jointly and severally with each other for any guarantee executed by Hollard in respect of any debt owed by any of the signatories. Although this term of the contract is expressed in a rather convoluted fashion, as I understood Mr *King SC* who appeared for the plaintiffs, where Hollard paid Sunrise, as in this instance, as a result of a breach committed by any of the signatories, each of the other signatories became liable to Hollard as a surety for the other principals' breach. Mr *Lafer*, who appeared for the defendant did not take issue with that interpretation of the indemnity and surety agreement signed by those representing Elgin. That being the case, the first plaintiff (Jeany) bound itself as surety and co-principal debtor with Elgin for all debts owed by Elgin to Hollard. On the same date as the indemnity and suretyship agreement was entered into, the second and third plaintiffs bound themselves as sureties and co-principal debtors in

respect of any debt that Elgin owed to Hollard under the indemnity agreement of 20 September 2013.

[5] Following the discharge of its obligations in terms of the performance guarantee and its payment of R33 951 466 by Hollard to Sunrise, the former instituted proceedings against the plaintiffs for payment of the said amount based on the indemnity and suretyship agreements which had been entered into. Judgment was taken on 24 June 2016 by Hollard against the plaintiffs for the said amount together with interest. On 7 December 2016 a settlement agreement was concluded between the plaintiffs and Hollard in terms of which the parties entered into a compromise agreement to make payment of the amount of R33 951 466 to Hollard payable in terms of a schedule agreed to, together with an additional amount relating to the recovery of third party claims. In the discharge of its obligations under the compromise agreement and as surety for the defendant's indebtedness to Hollard, the plaintiffs made payment in three installments to Hollard between October 2017 and April 2018 totaling R250 000. It is this amount that the plaintiffs now claim from the defendant in summary judgment. As stated at the outset, the plaintiffs' claim arises from a surety's right of recourse against the principal debtor where the surety has made payment to a creditor to whom the debtor was indebted.

[6] The defendant has filed a detailed affidavit setting out its defences. The matter was fully argued on the opposed roll. The defendant has fully set out what it considers to be a bona fide defence and contends on that basis that summary judgment should be refused. I do not intend restating the authorities as to what is required of a litigant to ward off an application for summary judgment save that counsel for both parties were in agreement that the issues raised in this application turn on points of law. If the application were refused, the arguments presented to me would be no different to that which would be argued at a trial – which, seeing that there are no disputes of fact, would more likely take the form of an opposed motion. There was no further information that was relevant to the determination of the dispute between the parties as the pleadings to date fully set out the respective positions of both parties. The defendant's opposition to summary judgment is premised on the following grounds: that when the defendant went into business rescue, that constituted a compromise of all of its pre-business rescue debts and that

debt which the defendant owed Hollard constituted one of them. It further contends that no cause of action lies against the defendant and what it refers to a “additional considerations” suggesting that the plaintiffs claim (if they had one) against the defendant, had in any event prescribed.

[7] In the matter of *Oos-Randse Bantoesake Administrasieraad v Santam Versekeringsmaatskappy Bpk en Andere (2)*¹ Colman J had the following to say in relation to the obligations of a defendant in a summary judgment application in demonstrating that he has a bona fide defence:

‘What is required of him is not a great deal. But he must lay enough before the Court to persuade it that he has the genuine desire and intention of adducing, at the trial, evidence of facts which, if proved, would constitute a valid defence. In order to achieve that degree of persuasiveness the defendant must do more than assert his intention to establish his defence by evidence at the trial. He must place on affidavit enough of his evidence to convince the Court that the necessary testimony is available to him, and that, if it is accepted, it will constitute a defence. That applies even if the *onus* of negating the defence will ultimately rest upon the plaintiff as, for example, in a case where the plaintiff is claiming enforcement of a contract, and the defence is a denial that such a contract was concluded.’

[8] The court has an overriding discretion whether on the facts averred by the plaintiff, it should grant summary judgment or on the basis of the defence raised by the defendant, it should refuse it. The discretion is unfettered and if the court has any doubt as to whether the plaintiff’s case is unanswerable at trial, such doubt must result in the application being refused. The requirement of whether the defence raised by the defendant is bona fide has been expressed differently - as to whether on the facts before it, a court is able to conclude that the defence raised is bogus or is bad in law. It is only when there is no doubt that the plaintiff has an unanswerable case that it should be granted. The defendant has set out fully the facts on which its defences are based. It cannot be faulted in that regard. The pivotal issue is whether the facts alleged by the defendant constitute a good defence in law and whether that defence appears to be bona fide.

¹ *Oos-Randse Bantoesake Administrasieraad v Santam Versekeringsmaatskappy Bpk en Andere (2)* 1978 (1) SA 164 (W) at 171G-172A.

[9] The defendant does not take issue with the factual matrix leading to the conclusion of the suretyship agreement and indemnity signed by the plaintiffs, as set out above. It denies that the plaintiffs have a claim against it following the payment of monies by them to Hollard. The defendant placed before the court facts (which were not denied by the plaintiff) that on 11 March 2015 at the behest of the Industrial Development Corporation ('the IDC') and in terms of 131 of the Companies Act² (the 'new Companies Act') the defendant was placed under business rescue. Pursuant to this, a business rescue practitioner was appointed and gave notice to all affected persons with a claim against the defendant to file their claims with the practitioner. It is common cause that the plaintiffs did not lodge a claim nor did they participate in the rescue plan that eventuated. The defendant submits that the plaintiffs had knowledge of the business rescue proceedings and acted mala fide in not participating in the plan. Essentially, it is contended that the plaintiffs avoided participating so as to hold out for a better deal once the plan has been discharged. While other creditors, including Hollard – which was classified as a 'contingent creditor' – lodged claims to the value of R124 million, they would have received approximately R13.8 million on the basis that the amount available for payment of claims was approximately 15 cents to the Rand.

[10] Counsel for the defendant contends that what the plaintiffs' are now seeking to obtain is a 100 per cent satisfaction of a claim (if proven) whereas other creditors with claims at the time had to be satisfied with significantly less from the business rescue practitioner. It was submitted that the business rescue plan adopted is binding on every creditor and holder of security in terms of the so-called 'cramdown' principle which binds even disgruntled creditors.³ Having regard to the purposes of business rescue as set out in *Oakdene Square Properties (Pty) Ltd & others v Farm Bothasfontein (Kyalami) (Pty) & others*⁴ it was submitted that to allow a claim by a surety in the present circumstances would undermine the purposes of the Act. It was contended that the business rescue proceedings had the effect of distinguishing between the 'old Elgin' (pre business rescue) and the 'new-Elgin' (post business

² 71 of 2008.

³ See Cassim et al, *Contemporary Company Law* 2 ed (2012) Ch.18.8.3.

⁴ *Oakdene Square Properties (Pty) Ltd & others v Farm Bothasfontein (Kyalami) (Pty) & others* 2013 (4) SA 539 (SCA).

rescue. To allow a claim by the plaintiffs at this stage would be to saddle the new company with the debts of the old.

[11] The defendants placed much emphasis on the provisions of s 154(2) of the new Companies Act which reads:

‘Discharge of debts and claims

(1) A business rescue plan may provide that, if it is implemented in accordance with its terms and conditions, a creditor who has acceded to the discharge of the whole or part of a debt owing to that creditor will lose the right to enforce the relevant debt or part of it.

(2) If a business rescue plan has been approved and implemented in accordance with this Chapter, a creditor is not entitled to enforce any debt owed by the company immediately before the beginning of the business rescue process, except to the extent provided for in the business rescue plan.’

[12] The defendant contends that the claim of the plaintiffs, based on a suretyship agreement, is analogous to the recovery of a debt, and the considerations whether such a debt has prescribed under the Prescription Act⁵ must apply. The plaintiffs’ contend that their right of recourse against Elgin only arose at the time when they made payment to Hollard. If that is the case, then they would not have had a claim at the time of the business rescue proceedings and were unable to participate as a claimant in that process. It was submitted that the defendant’s debt to the plaintiffs was owed prior to the commencement of business rescue proceedings and that the plaintiffs claim would have qualified as that of a ‘contingent creditor’. The defendant relies on the decision of *Eravin Construction CC v Bekker NO & others*⁶ where the issue was whether the payment of monies by a company under liquidation to the appellant, Eravin, is recoverable at the instance of the liquidators as a void disposition in terms of s 341(2) of the old Companies Act,⁷ or whether recovery is precluded under the new Companies Act on the basis that it was a pre-business rescue debt which may not be enforced. Landman J declared the payment to be void and ordered the repayment of the money. The court a quo found that the ‘claim arises when the cause of action is complete’ and that the debt was not a pre-

⁵ 68 of 1969.

⁶ *Eravin Construction CC v Bekker NO & others* 2016 (6) SA 589 (SCA).

⁷ 61 of 1973.

business rescue debt and its recovery was enforceable. The Supreme Court of Appeal said the following:

[18] Despite his own warning of the dangers of importing the concepts in the Prescription Act into the different context of the old and new Companies Acts, Landman J did precisely that. In so doing, he ignored a fundamental difference between the two.

[19] The Prescription Act is concerned with fixing a time when a debt falls due – when it may be claimed – because it has determined that to be the point at which prescription starts to run. That point is only reached when the creditor knows “the identity of the debtor and of the facts from which the debt arises”.

[20] Section 341(2) of the old Act and s 154(2) of the new Act are different. They are not concerned with when debts are due and can be claimed, but with when they are owed. On this account, the prescription analogy is not apposite and, as was demonstrated in this case, is apt to mislead.

[21] The question to be answered in this case is thus when the debt was owed. That must be answered in the first instance with reference to s 341(2) of the old Act. It states expressly that a disposition in the terms contemplated by it “shall be void”. The recipient has no right, on this account, to retain it. Consequently, it owes a debt to the body which made the prohibited disposition, and that debt is owed as soon as the disposition was received.

[22] Section 154(2) of the new Act is as clear: if a debt was owed by a company “before the beginning of the business rescue process” – before, in other words – the filing of the resolution when a company places itself under business rescue – then the creditor “is not entitled to enforce” that debt.’ (Footnotes omitted)

[13] Counsel for the defendant submitted that irrespective of whether the plaintiffs were given notice of the business rescue proceedings and alerted to their right to lodge a claim with the business rescue practitioner, the moratorium imposed by s 154 applies to all creditors and prevents them from enforcing pre-business rescue debts. It further contends that the plaintiffs claim arose in February 2015. I can only assume that this relates to the date when Sunrise delivered its demand to Hollard, which provided a performance guarantee for Elgin. As the summons was only issued in May 2018, the claim, it is contended, has prescribed.

[14] The crux of the matter is when the plaintiffs claim arose and whether the institution of the action in May 2018 is precluded by virtue of the defendant having

been placed under business rescue on 11 March 2015. The additional consideration which arises is whether the plaintiffs claim can be said to have prescribed.

[15] The first of the defences raised is that business rescue proceedings had the effect of discharging Elgin from its obligations under the performance guarantee and subsequent indemnity agreement. As a consequence, the defendant contends that its obligations to the plaintiffs', as sureties, was also discharged. In any event, the defendant further contends that the plaintiffs failed to lodge any claims under business rescue, which are now precluded by the moratorium imposed under s 152 (4). Mr *King* contended that this defence has effectively been rejected by the Supreme Court of Appeal in *New Port Finance Co (Pty) Ltd & another v Nedbank Ltd*.⁸ In *New Port* the bank lent money to a company on the strength of two sureties. The company defaulted and the bank obtained judgment against the company. The company subsequently went into business rescue resulting in the bank's claim being compromised. The bank however, on the strength of the suretyship agreement, pursued the sureties who were unable to pay. They applied for an interdict to prevent the bank from pursuing its claim, which application was dismissed by the High Court. In the SCA they argued that the business rescue proceedings altered the sureties' obligations as a result of the compromise being reached. The SCA dismissed this argument, which is instructive in the matter before me. The Court said the following:

[8]At the heart of the submissions on behalf of Mr Mostert and New Port was the proposition that the successful outcome of the business rescue proceedings would be that the sureties would have been relieved of any indebtedness to Nedbank over and above the payment of the amounts already received by Nedbank under those two plans. For various reasons that would not have been the case.

[9] The first reason is that Nedbank had obtained judgments that served to fix the liability of the sureties. There were no grounds for rescinding those judgments nor any attempts to do so and they had become final, with no avenue open for them to be challenged on appeal. Even if it is accepted that they did not novate the claims under the deeds of suretyship, but merely strengthened those claims and replaced the right of action on the deeds of suretyship by a right to execute on the judgment, the fact remained that the liability of the sureties was thereby established. If any payment were made by the principal debtor thereafter that would

⁸ *New Port Finance Co (Pty) Ltd & another v Nedbank Ltd* 2016 (5) SA 503 (SCA).

enure to the benefit of the sureties, but that would follow from the fact that the judgment established joint and several liability so that, in the time-honoured expression, if the one paid the others would be absolved. But we were referred to no authority and I have discovered none, in which it has been held that a compromise of the principal debtor's liability under the judgment, whether as a result of business rescue or otherwise, would accrue to the advantage of the surety after judgment had been taken against them. There can be no question of the surety's rights or interests being prejudiced thereby, because the extent of the surety's liability for the debt in question has been fixed and determined. How the creditor thereafter sets about executing the judgment against the principal debtor does not affect either the nature or the extent of the surety's liability.' (Footnotes omitted)

[16] Counsel for the plaintiffs submitted that the present case is very similar to that in *New Port* in that apart from Hollard obtaining a judgment against the sureties (the present plaintiffs'), the deed of suretyship in clauses 3 to 6 specifically cater for the same situation which the bank in *New Port* found itself. The Court said the following in para 10:

'The second reason is that the terms of the deeds of suretyship in this case, as is frequently the situation, had been drafted so as to cater for this very eventuality. Clauses five, six and seven entitled the bank to pursue the sureties notwithstanding their dealings with the principal debtor and the grant of any extension of time, or any compromise in relation to the scope and extent of the principal debtor's indebtedness. Any default on the part of the principal debtor entitled the bank to sue the sureties. The benefit of excussion was waived. I will not lengthen this judgment by quoting the clauses. They were relatively standard clauses to be found in most commercial deeds of suretyship'.

[17] The decision in *New Port*, to the effect that business rescue proceedings and the moratorium does not have the effect of discharging the obligations of a surety has been followed in *Nedbank Ltd v Zevoli 208 (Pty) Ltd & others*.⁹ The court referred to *Investec Bank Limited v Bruyns*¹⁰ in which the moratorium against legal proceedings for the enforcement of debts in terms of s 133(1) of the new Companies Act in favour of a company that is undergoing business rescue proceedings was held to be a defence in personam. The section, it was held, does not protect a surety in

⁹ *Nedbank Ltd v Zevoli 208 (Pty) Ltd & others* 2017 (6) SA 318 (KZP).

¹⁰ *Investec Bank Limited v Bruyns* 2012 (5) SA 430 (WCC) at 434F-435C.

respect of the debt of a company which is subject to business rescue proceedings in terms of the Act. The Court in *Zevoli* noted in para 28 that:

'Implicit in the decided authorities is that the statutory moratorium in terms of s 133(1) of the Companies Act of 2008, is only intended to benefit the company which has been placed under business rescue proceedings. The immunity in question is therefore a personal privilege or benefit of the company in question. The sureties cannot claim such benefit since they are sued on the basis of their suretyships with the plaintiff. In the *Investec* case supra para 23 the court held that if the lawmaker had intended to prohibit creditors from enforcing their claims against sureties of companies undergoing business rescue proceedings it would have said so. It accordingly follows that the second to fourth defendants, being sued as sureties in the present matter, cannot claim such immunity in terms of the provisions of s 133(1) of the Companies Act of 2008.'

In *Hitachi Construction Machinery Southern Africa (Pty) Ltd v Botes & another*,¹¹ Williams J held that the defence that a business rescue plan does release sureties from their indebtedness is unsustainable. See too *Absa Bank Limited v Haremza*¹² on the effect of a business rescue plan on a defendant's liability as a surety.

[18] The defendant's case is that the plaintiffs' should have lodged their claim with the business rescue practitioner as at 11 March 2015. The argument of the plaintiffs, and one with which I am in agreement with, is that at this particular time the plaintiffs were not possessed of any claim that they could have lodged, or one that was capable of enforcement. Hollard made payment to Sunrise during March 2015. As Mr King correctly pointed out, it is even doubtful how Hollard could have participated in the rescue plan as it only started making payments to Sunrise on 17 March 2015 – *after* the commencement of business rescue. When Hollard made payment to Sunrise, this gave rise to a claim by Hollard against the plaintiffs', which it duly pursued, on the basis of them having signed a suretyship agreement. In contrast, the plaintiffs' claim against the defendant could only have arisen when they made payment to Hollard. Their claim is based strictly on a surety's right of recourse which accrued only once they commenced to pay Hollard. See *Wilde & another v Wadolf*

¹¹ *Hitachi Construction Machinery Southern Africa Co (Pty) Ltd v Botes & another* (205/2018) [2019] ZANCHC 7 (15 March 2019).

¹² *Bank Limited v Haremza* (12189/2014) [2015] ZAWCHC 73 (27 May 2015).

*Investments (Pty) Ltd & others*¹³ where the court said the following with regard to the rights of a surety:

'2. The *loci classici* of the position of a surety as a contingent creditor of a company are *Moti and Co v Cassim's Trustee* 1924 AD 720 at 728 and *Rossouw and Rossouw v Hodgson and Others* 1925 AD 97. In the latter case Innes CJ said this at 102–103:

"That at once raises the question whether the cause of the claim which a surety who has paid or been excused has against the principal debtor is to be found in the suretyship undertaking or in the payment. An examination of the basis of the claim indicates the original suretyship as the true cause. Where the guarantee has been entered into at the instance of the debtor – as happens in the vast majority of cases – the latter in effect gives a mandate to the surety to bind himself, and that implies a liability to make good any expenditure or loss to which he may be put in consequence of the execution of the mandate."

[19] I am in agreement with the submission of the plaintiffs' counsel that what the defendant essentially is contending for is that the claim of both Hollard and the plaintiffs' arose at the time when Hollard paid Sunrise. The one claim arising from the indemnity agreement and the other based on a right of recourse as sureties for the debt owed to Hollard. This cannot be so. A defendant in a summary judgment application must set out a defence which is good in law. The argument that the plaintiffs would have been a 'contingent creditor' in the business rescue plan also fails to find traction. Section 128 of the new Companies Act refers to an 'affected person'. There is no reference of any sort to a 'contingent creditor' as falling within this category. The closest reference which I have been able to a definition of this term in the context of business rescue is "an existing legal obligation, but the enforcement of the claim. . . is conditional or contingent".¹⁴ See in this regard *Ellerine Brothers (Pty) Ltd v Vestacor (Pty) Ltd; Rubenstein v Vestacor (Pty) Ltd & another (KNS Construction (Pty) Ltd Intervening)*¹⁵ where Lamont J cites *Henochsberg* as authority for the statement that 'a contingent creditor is a creditor for purposes of winding up and business rescue proceedings'. In seeking to provide a context to the definition of 'creditor' as contained in s 128(a) of the new Companies Act,

¹³ *Wilde & another v Wadolf Investments (Pty) Ltd & others* 2005 (1) SA 354 (W) at 358A-C.

¹⁴ P Delpont *Henochsberg on the Companies Act 71 of 2008* vol 1 service issue 15 at 445.

¹⁵ *Ellerine Brothers (Pty) Ltd v Vestacor (Pty) Ltd; Rubenstein v Vestacor (Pty) Ltd & another (KNS Construction (Pty) Ltd Intervening)* (2018/14040; 2018/0018922) [2019] ZAGPJHC 85 (5 February 2019) para 4.

*Henochsberg*¹⁶ states that in the context of a winding up, a creditor could also include someone who does not have a claim sounding in money but to whom something is due, for example, the transfer of land. Even if this were the case, the authorities are clear that a contingent claim must not be unliquidated. The learned author goes on to state:

‘A surety would, as a general rule, not fall within this definition (of a conditional or contingent claim) because prior to payment of the principal debt to the creditor, the surety does not have recourse against the debtor, and at best, only has anticipatory relief and is therefore not a contingent creditor: *ABSA Bank Ltd v Scharrighuisen* 2000 (2) SA 998 (C).’

[20] At the time when the business rescue plan was being drawn, the plaintiffs’ would have had no idea as to the extent of their claim against the defendant. Other than knowledge of the fullest extent of their liability as set out in the agreements, or the amount to be paid by Hollard to Sunrise (which itself was unknown as at 11 March 2015), the plaintiffs’ would have had no idea as to the liquidated amount of their claim.

[21] The point is made further in *Henochsberg*¹⁷ that a surety does not acquire a status to participate in business rescue plans. The learned author states:

‘However, because the surety is not a creditor (before the existence of the right of recourse) and therefore not an affected person in terms of s 128, a business rescue plan with the surety as party is not possible, whether as direct party or through a subsequent tripartite agreement “incorporated” in the business rescue plan as suggested in *Tuning Fork (Pty) Ltd t/a Balanced Audio*In the *Blignaut* case *supra* para 20, however, the Court said that the intention with business rescue is to come to the aid of financially distressed companies and those companies alone and it could not have been the intention of the Legislature to include sureties, ie by limiting or excluding their liability.

[22] In the result, I am satisfied that the defendant has not succeeded in setting up a bona fide defence which is good in law to the claim of the plaintiffs’.

[23] I make the following order:

¹⁶ Note 14 above.

¹⁷ *Henochsberg on the Companies Act 71 of 2008* vol 2 service issue 18 at 544.

1. Summary judgment is granted against the Defendant / Respondent for payment of the sum of R250 000.
2. Interest on the said sum at the prescribed rate *a tempore morae* to date of final payment.
3. Costs of suit on the scale as between attorney and client, such costs to include that of senior counsel where so employed.

Chetty J

Appearances

For the Applicants: Adv. JC King SC

Instructed by: Zeiler Jankey Incorporated
50 St Andrews Drive
Durban North

Ref: V Jankey / en / 04j008007

Tel: 031 564 1421

For the Respondent : Adv. A Laher

Instructed by: Edward Nathan Sonnenbergs
Ridgeside Office Park
Umhlanga

Tel: 031 563 8600

Ref: D Lambert / A Dalais / 0442846

Date reserved: 9 May 2019

Date delivered: 30 July 2019