

REPUBLIC OF SOUTH AFRICA



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

CASE NO : 2023/098331

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE YES/NO
- (2) OF INTEREST TO OTHER JUDGES YES/NO
- (3) REVISED

[REDACTED]

SIGNATURE

DATE 20 November 2024

In the matter between:

TCI-TISO (RF) (PTY) LIMITED

Plaintiff

and

INTERVENT-UNIVERSAL (PTY) LIMITED
(Registration No. 1937/010400/07)

Defendant

JUDGMENT

THERON AJ:

- [1] This is an application for summary judgment brought by the Plaintiff consequent upon the Defendant's failure to make payment of amounts in accordance with an acknowledgement of debt. The Defendant filed an affidavit instead of a plea, which was accepted by the Plaintiff as the Defendant's plea and the Plaintiff accordingly brought a summary judgment application.
- [2] In its plea (affidavit), the Defendant raised the following defences:
- [2.1] that the court does not have jurisdiction as the amount for which the Defendant is in fact indebted falls within the jurisdiction of the Magistrates' Court;
- [2.2] the acknowledgement was entered into under duress;
- [2.3] certain payments have been made.
- [3] The Defendant filed an affidavit resisting summary judgment wherein it persists with the defences and in which it sought to rely on new defences although these defences were not pleaded. The added defences were the following:

- [3.1] that there was a non-joinder of the deponent to the affidavit resisting summary judgment, being a guarantor;
 - [3.2] the Plaintiff was not entitled to claim interest *in duplum* of the original capital amount;
 - [3.3] the Plaintiff had not advanced the sum as set out in the acknowledgement of debt;
 - [3.4] the Plaintiff had not alleged that the invoice was paid and that the Respondent refused or failed to pay over the invoice so paid;
 - [3.5] the condition precedent to the invoice discounting agreement had not been fulfilled, although the Defendant does not set out the terms of such agreement and whilst indicating that it was in writing, does not annex a copy of the written portion thereof; and
 - [3.6] payment of R50 000,00 was made on 19 July 2023.
- [4] Although changes have been brought to the procedure seeking summary judgment, a defendant must still in its affidavit resisting

summary judgment satisfy the court by affidavit that it has a *bona fide* defence to the action and such affidavit must disclose fully the nature and grounds of the defence and the material facts relied upon therefor.¹

[5] What the rule requires is that the Defendant sets out in the affidavit sufficient facts which, if proven at trial, would constitute an answer to the Plaintiff's claim and the court must be appraised of the facts upon which the Defendant relies with sufficient particularity and completeness so as to enable the court to hold that if these statements of fact are found at trial to be correct, judgment should be given for the Defendant.²

[6] The provision of the rule that the Defendant must disclose fully the nature and grounds of his defence is peremptory.³

[7] The grounds of the defence relates to the facts upon which the

¹ See Rule 32(3) and **PCL Consulting (Pty) Limited t/a Phillips Consulting SA v Tresso Trading 119 (Pty) Limited** 2009 (4) SA 68 (SCA) at paragraph [8]

² See **Marsh and Another v Standard Bank of SA Limited** 2000 (4) SA 947 (W) at 949 A

³ **PCL Consulting (Pty) Limited t/a Phillips Consulting SA v Tresso Trading 119 (Pty) Limited** 2009 (4) SA 68 (SA)

defence is based.⁴

[8] The Defendant is required to deal with the Plaintiff's explanation as to why the defence in the plea does not raise issues for trial and a failure to do so is at the Defendant's peril.⁵

[9] A Defendant cannot raise a defence in its affidavit which is not raised in its plea without amending same.⁶

[10] In this matter the Defendant does so without attempting to amend its original plea or to add thereto.

[11] Over and above this, the Defendant does not in fact join issue with the Plaintiff's affidavit to the extent that it ought to. The conclusion of duress unsupported by primary facts is not dealt with despite a challenge in the Plaintiff's affidavit.

[12] The defence of a lack of jurisdiction is simply untenable as the sum

⁴ See **Chairperson Independent Electoral Commission v Die Krans Ontspanningsoord (Edms) Beperk** 1997 (1) SA 224 (T) at 249 G – 250 F

⁵ See **Tumileng Trading CC v National Security & Fire (Pty) Limited** 2020 (6) SA 624 (WCC) at paragraphs [41] to [50]

⁶ **Belrex 95 CC v Barday** 2021 (3) SA 178 (WCC) and **Vukile Property Fund Limited v True Ruby Trading 1002 CC t/a Postnet**, unreported GJ case number 2020/9705 at paragraph [13] and **Nedbank Limited v Uphuhliso Investments Projects (Pty) Limited** [2022] 4 All SA 827 GJ at paragraph 30

sued for exceeds the Magistrates' Court's jurisdiction and even if it did not, this court has the jurisdiction to entertain a matter even if it is within the jurisdiction of the Magistrates' Court.⁷

- [13] The guarantor in the acknowledgement of debt does not have a legal interest in the matter and the non-joinder point is bad.
- [14] The defence based on duress is bald, vague and sketchy and not supported by any primary facts despite challenge.
- [15] The claim is supported by a certificate of balance which has not been attacked and the make-up of the amount claimed has not been broken down to indicate that there is in fact a charge *in duplum*.
- [16] There is simply no evidence that the amount exceeds the original capital amount.
- [17] The Defendant alleges that it made payment of R50 000,00 in July of 2023.
- [18] This date precedes the date of the certificate of balance.

⁷ **Standard Bank of South Africa Limited and Others v Mpongo and Others** 2021 (6) SA 403 (SCA)

[19] The certificate of balance has not been impeached in any way.

[20] In the circumstances, I grant the following order:

1. Payment of the amount of R672 000,00;
2. Interest thereon at the prevailing prime rate plus 2% per month capitalised in arrears from 25 October 2022 to date of payment in full;
3. Costs of suit on the scale as between attorney and client.



THERON AJ
Acting Judge of the High Court

Date of hearing: 7 November 2024

Date of judgment: 20 November 2024

Appearances:

Counsel for Plaintiff: J G Dobie
Instructed by: Roseboom Attorneys

Counsel for Defendant: M Sithole
Instructed by: Rams Attorneys