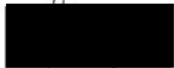




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
	
31/01/2025	
DATE	SIGNATURE

**APPEAL CASE NUMBER: A201/2023
TRIAL CASE NUMBER: 21647/2021**

In the matter between:

**CELLSECURE MONITORING AND
RESPONSE (PTY) LTD**

FIRST APPELLANT

**CELLSECURE INTERACTIVE
MANAGEMENT SOLUTIONS (PTY) LTD**

SECOND APPELLANT

CELLSECURE HOLDINGS (PTY) LTD

THIRD APPELLANT

and

**SOUTH AFRICAN SECURITISATION
PROGRAMME (RF) LIMITED**

RESPONDENT

This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *Caselines* and by release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 31 January 2025.

JUDGMENT

Oosthuizen-Senekal AJ (Mngqibisa-Thusi J and Wanless J concurring)

- [1] This is an appeal against the judgment and order of Koovertje J ("the Court *a quo*") delivered on 25 November 2022, wherein summary judgment was granted against the appellants. The Court *a quo* also granted an order for the rectification of the rental schedule to the rental agreement. The rectification involved the substitution of the user described as "Cellsecure Holdings (Pty) Ltd — 2001/007287/07" to reflect the correct entity, "Cellsecure Monitoring and Response (Pty) Ltd — 1999/020357/07".
- [2] On 8 February 2023 the Court *a quo* refused an application for leave to appeal. Subsequently, special leave to appeal to this Court was granted by the Supreme Court of Appeal on 12 May 2023.

Grounds for Appeal

- [3] The grounds for appeal can be summarized as following:

[3.1] The appellants argued that summary judgment was improper in respect of the claim for rectification, as such a judgment is not permissible when rectification of an agreement is sought. This is because rectification inherently involves a dispute over the existing terms of the agreement and the terms proposed for amendment, which requires evidence and proper adjudication, rendering summary judgment unsuitable in such cases. Furthermore, the claim for payment was directly dependant on the outcome of the rectification claim and could only be addressed after the rectification had been successfully determined.

[3.2] The appellants argued that Mr. Kuhgen Govender, the deponent of the affidavit in support of the summary judgment application, was not a person qualified to swear positively to the facts of the matter. Govender, who is not employed by the respondent but represents a cessionary three steps removed from the original transaction, lacked the necessary personal knowledge. It was further submitted by the appellants that the affidavit contained several factual inaccuracies.

[3.3] It was submitted by the appellants that the particulars of claim failed to disclose a complete cause of action.

[3.4] The appellants alleged that the Court *a quo*, in the judgment granting summary judgment, made several critical errors, including:

[3.4.1] Failing to recognize obvious defects in the respondent's papers.

[3.4.2] Misinterpreting the legal implications of the 2019 amendments to Rule 32.

[3.4.3] Disregarding the appellants' plea and affidavit resisting summary judgment.

[3.4.4] Overlooking established legal principles governing summary judgment adjudication.

[3.4.5] Failing to exercise the mandatory discretion required in summary judgment applications.

Issues on Appeal

[4] The central issue for determination in this appeal relates to the granting of summary judgment. Specifically, the question is whether the respondent, South African Securitisation Programme (RF) Ltd ("SASP"), met the requirements under Rule 32 for summary judgment. This includes whether the appellants

provided a *bona fide* defence or raised a triable issue, particularly regarding the rectification of the rental schedule in the agreement.

- [5] Moreover, a key consideration is whether the appellants' plea and affidavit opposing summary judgment adequately addressed the merits of the respondent's rectification claim. Among other issues, the appellants' plea disputed the following:

[5.1] The monthly rental due and payable.

[5.2] Delivery of the equipment.

[5.3] Whether the second and third appellants having bound themselves as guarantors and co-principal debtors.

[5.4] The cession of rights.

[5.5] The first appellant's breach of the rental agreement, and

[5.6] The applicability of the National Credit Act, Act 34 of 2005 ("the NCA")

- [6] In the affidavit resisting summary judgment the appellants introduced the following defences:

[6.1] The rental agreement failed to correctly record the true nature of the transaction between the parties.

[6.2] The certificate of acceptance was signed in error and no equipment had been delivered.

[6.3] The certificate of balance relied upon by the respondent regarding the first appellant's indebtedness does not constitute *prima facie* proof of its indebtedness as it was required to be signed by a manager of

Alternate Rental Solutions (Pty) Ltd ("ARS"), previously known as TBI Asset Rentals (Pty) Ltd and not by SASFIN.

[6.4] No certificate of balance had been provided in relation to the indebtedness of the second and third appellants.

Background

- [7] In July 2018, the respondent, along with ARS, formerly known as TBI, ("the cedent") entered into a rental agreement for certain equipment with the first appellant. The rental agreement commenced on 1 August 2018, with a term of 60 (sixty) months, and the monthly rental instalments were set at R107,825.62.
- [8] Had the appellants performed fully in terms of the agreement over the 60 (sixty)-month term, the total rental payable would have amounted to R6,468,937.20. However, the first appellant ceased payments after 18 months, having paid a total of R2,140,980.39 during this period. Consequently, an outstanding balance of R4,327,956.81 was alleged to remain due and payable in terms of the agreement.
- [9] In addition to the first appellant's obligations, the second and third appellants formally bound themselves as guarantors and co-principal debtors, jointly and severally liable with the first appellant for the obligations arising from the agreement.
- [10] Furthermore, the rental agreement was subject to multiple cessions involving various parties. Initially, ARS ceded all rights, title, and interest in the rental agreement to Sunlyn (Pty) Ltd, the originator of SASFIN. Subsequently, a second cession occurred in favour of Fintech Underwriting (Pty) Ltd. The final cession transferred these rights to the respondent, the SASP. Through these cessions, SASP ultimately acquired the right to enforce the obligations under the rental agreement.
- [11] The first appellant also signed a written certificate of acceptance, formally acknowledging receipt and acceptance of the equipment delivered under the

terms of the rental agreement. This document confirmed that the equipment was delivered in accordance with the parties' agreement and that the rental obligations commenced thereafter.

Legal Framework

- [12] An appeal is a mechanism through which higher courts review decisions made by lower courts to ensure that the law has been correctly applied and that justice has been achieved in the original proceedings. It is not a forum for the reintroduction of facts, arguments, or evidence that could have been presented during the initial hearing but were not. The function of the Appellate Court is to determine whether there were legal errors or misapplication of the law that materially affected the outcome of the case.
- [13] In *Maharaj v Barclays Bank Ltd*¹, the Appellate Division (now the Supreme Court of Appeal) emphasized that the role of the Appeal Court is not to serve as a second trial. It is tasked with determining whether the Court *a quo*'s judgment was legally correct and whether the procedures followed in the trial were just and fair.
- [14] In *Dadoo Ltd v Krugersdorp Municipal Council*², the Court recognized that the appeal process is not meant to allow parties to retry their case, nor to entertain arguments that were not properly presented at the original hearing.
- [15] This was reiterated by the Constitutional Court in *National Director of Public Prosecutions v King*³, where it was said that appeals are concerned with errors of law or fact that significantly affect the outcome of a case, and not with re-litigating the factual matters already addressed by the lower court. It was highlighted that litigants may not use the appeal to introduce new evidence that was available at the time of the original trial but was not presented.

¹ *Maharaj v Barclays Bank Ltd* (1976) 1 SA 418 (A).

² *Dadoo Ltd v Krugersdorp Municipal Council* (1920) AD 530

³ *National Director of Public Prosecutions v King* (2009) ZACC 13, also see *Thint (Pty) Ltd v Minister of Justice and Constitutional Development* (2002) 4 SA 106.

- [16] Rule 32 of the Uniform Rules of Court (“the Rules”) governs the procedure for summary judgment. It requires the plaintiff to deliver an affidavit verifying the cause of action and alleging that the defendant has no *bona fide* defence and has entered an appearance solely to delay proceedings. A defendant resisting summary judgment must satisfy the Court that it has a *bona fide* defence by disclosing fully the nature and grounds of the defence and the material facts relied upon.
- [17] The case of *PSL Consulting (Pty) Ltd v Coetzee*⁴ provides valuable insights into the application of summary judgment, a legal mechanism designed to expedite claims where the defendant does not have a *bona fide* defence. Summary judgment is a stringent remedy, as it allows the Court to grant judgment without a full trial. This matter revolved around whether the defendant’s opposition to the summary judgment application disclosed a *bona fide* defence that warranted the matter proceeding to trial. The judgment considered procedural compliance with Rule 32 of the Rules, as well as the substantive adequacy of the defendant’s affidavit resisting summary judgment.
- [18] *PSL Consulting supra* reinforces that defendants opposing summary judgment must comply strictly with the requirements of Rule 32 of the Rules by providing detailed and specific defences supported by facts. Courts remain mindful of the need to ensure procedural fairness while upholding the purpose of summary judgment to prevent frivolous defences. Furthermore, the defence disclosed in the affidavit resisting summary judgment must align with the plea to avoid contradictions and the impression of an afterthought.

Analysis

Rectification

- [19] Rectification is a remedy available when a written agreement does not accurately reflect the true intention of the contracting parties due to a common mistake. As correctly noted in *Brits v Van Heerden*⁵ the primary requirement is proof of the

⁴ *PCL Consulting (Pty) Ltd v Tresso Trading 119 (Pty) Ltd* [2007] SCA 9 (RSA).

⁵ *Brits v Van Heerden* 2001 (3) SA 257 (C) at 283B.

parties' continuing common intention, which is not reflected in the written document. This principle is well-established in South African law and reiterated in cases such as *Brits v Van Heerden (supra)*.

[20] The *onus* is on the party seeking rectification to prove, on a balance of probabilities, that:

[20.1] There was a prior consensus between the parties.

[20.2] The written agreement does not reflect that consensus due to a mutual mistake.

This burden was properly acknowledged and applied in the judgment of the Court *a quo*.

[21] The respondent's claim for rectification of the rental schedule was based on an allegation of a *common error*. The respondent pleaded that the description of the user as "Cellsecure Holdings (Pty) Ltd" was incorrect and should have been "Cellsecure Monitoring and Response (Pty) Ltd." The respondent supported this claim with evidence demonstrating the common intention of the parties.

[22] The appellants, in their plea and affidavit opposing summary judgment, failed to meaningfully engage with the merits of the rectification claim. The plea amounted to bare denials and did not disclose any factual basis to contest the respondent's allegations of a *common error* or mutual intention. A mere denial is insufficient to raise a triable issue or establish a *bona fide* defence.

[23] The Court *a quo* correctly found that the rental schedule erroneously identified the third appellant as the "user" instead of the first appellant. This error was evidenced by the Master Level Agreement and its addendum, both of which consistently identified the first appellant as the "user." The Court *a quo*'s conclusion that the parties' common intention was for the first appellant to be the "user" aligns with the requirements for rectification.

Bona fide defence

- [24] Bare denials, as seen in the appellants' plea, typically entitle the respondent to relief. As noted in *Bragan v Firststrand Bank Ltd*⁶, the purpose of the "old" Rule 32 was *inter alia* to prevent defences raised at the summary judgment stage from diverging materially from the plea. The amendments allow summary judgment applications only after the delivery of a plea, requiring defendants to fully disclose their defences in a manner consistent with the plea. This ensures procedural fairness and prevents the opposing party from being ambushed with inconsistent defences.
- [25] Furthermore, the rationale for the amendments to Rule 32 are to adjudicate summary judgment applications based on a defendant's pleaded defence. The amendments aim to align the defences in the affidavit opposing summary judgment with those pleaded, ensuring that disputes are well-defined and that the defendant's case is disclosed with sufficient clarity.
- [26] Subrule 32(3) requires defendants resisting summary judgment to set out the nature, grounds, and material facts of their defence fully. Bald or bare denials are inadequate. Defendants must provide sufficient particularity to disclose a *bona fide* defence. While exhaustive detail is unnecessary, the facts and grounds must be coherent and plausible to establish a reasonable prospect of success at trial.
- [27] In the present matter the appellants raised defences in their opposing affidavit that were inconsistent with their plea, including disputes over the rental amount, delivery of equipment, and the nature of the rental agreement. These defences were not in harmony with their plea, which relied solely on bare denials. Such inconsistency undermines the credibility of the defences and suggests they were an afterthought rather than a *bona fide* contention.
- [28] Pleadings serve to define the issues for adjudication and allow parties to prepare effectively for trial. The appellants failed to comply with subrule 18(4) and 22(2)

⁶ *Bragan Chemicals (Pty) Ltd v Devland Cash and Carry (Pty) Ltd and Another* (11096/20) [2020] ZAGPPHC 397 (5 August 2020)

of the Rules, which require clear and concise disclosure of material facts in their plea. Without this, SASP, the respondent and the Court *a quo* could not either adequately assess whether the defence raises a genuine triable issue.

[29] A *bona fide* defence requires a defendant to disclose material facts sufficient to establish a reasonable possibility of success at trial. Courts do not assess probabilities at summary judgment stage but determine whether the defence is legally valid and plausible. The Court *a quo* correctly determined that the appellants' bare denials and inconsistent defences fell short of meeting the required standard.

[30] It is evident that the appellants lacked any defence, let alone a *bona fide* defence, against the respondent's claim. Had the appellants possessed a valid defence, it should have been fully disclosed in the affidavit, as required by Rule 32(3)(b).

[31] At the summary judgment stage, the Court evaluates whether the appellants disclosed facts constitute a legally sound defence. The appellants failure to provide a coherent and credible defence supports the conclusion that their opposition was dilatory and lacked *bona fides*.

[32] In essence, the appellants failed to:

[32.1] Align their opposing affidavit with their plea.

[32.2] Disclose material facts with sufficient particularity to establish a *bona fide* defence.

[32.3] Present a defence that raised triable issues for consideration.

Additional Defences

[33] The appellants raised several additional defences, including disputes over the rental schedule's amount, vagueness, and missing parts of the equipment. However, they failed to substantiate these defences with material facts. This failure to disclose sufficient detail renders the defences inadequate, as

emphasized in subrule 32(3) of the Rules, which requires full disclosure of the nature and grounds of a defence.

- [34] The appellants claimed that the certificate of acceptance was signed without being read, which they argued constituted *justus error*. However, the Court *a quo* correctly rejected this argument as no evidence was presented to demonstrate that the mistake was induced by the respondent or was reasonable.
- [35] The Court *a quo* emphasized that the appellant's failure to read the certificate was due to their own negligence, rather than any misrepresentation or action by the respondent. This principle is firmly rooted in various case law, which holds that a contracting party cannot evade liability due to their own lack of diligence. In *George v Fairmead (Pty) Ltd*⁷, the Court of Appeal erstwhile Appellate Division established that a party who signs a contract is generally bound by its terms, even if that party failed to read or understand it, unless they can demonstrate that they were misled or induced into error by the other party. Similarly, in *Afrox Healthcare Ltd v Strydom*⁸, the Supreme Court of Appeal reaffirmed that the duty to exercise reasonable care in reading and understanding contractual terms rests with the contracting parties. Accordingly, the Court *a quo*'s finding is consistent with these principles, underscoring the importance of diligence in contractual dealings.
- [36] The certificate clearly outlined the purpose and consequences of signing it. This undermines the appellants' claim of mistake, as the terms were unambiguous and would have been apparent had the document been read.
- [37] The Court *a quo* also correctly noted that the defence of *justus error* was not pleaded in the appellants' plea. Instead, the plea consisted of bare denials, which did not disclose a valid defence or material facts to support *justus error*.

⁷ *George v Fairmead (Pty) Ltd* 1958 (2) SA 465 (A).

⁸ *Afrox Healthcare Ltd v Strydom* 2002 (6) SA 21 (SCA).

Certificate of Balance

[38] A certificate of balance, when agreed upon in a contract, serves as *prima facie* evidence of indebtedness. It was incumbent on the appellants to discharge an evidential burden in respect thereof.

[39] In the present matter, Clause 2.10.3 of the Master Lease Agreement explicitly established the evidentiary value of the certificate of balance, which rendered the need to prove the appointment of the certifying person unnecessary.

[40] The appellants also challenged SASFIN's authority to issue the certificate of balance and argued that the certificate was defective. However:

[40.1] Clause 2.10.3 of the agreement explicitly authorized SASFIN to certify indebtedness.

[40.2] The certifying person was identified as a senior litigation manager with personal knowledge of the indebtedness.

[40.3] The appellants failed to provide any evidence or alternative version to challenge the respondent's calculation of the amount claimed.

[40.4] Without material facts, these defences are speculative and do not raise a triable issue.

[41] The Court *a quo* rightly emphasized the importance of aligning defences raised in opposing affidavits with the plea to ensure consistency and procedural fairness.

Conclusion

[42] The appellants' approach mirrors an attempt to rehear the application for summary judgment. In such applications, the plaintiff presents its case, and the defendant has the opportunity to respond with a *bona fide* defence. If the

defence is insufficient, the Court grants summary judgment. However, this does not allow the defendant to indefinitely challenge the plaintiff's claim, nor does it permit new defences or arguments to be raised after the Court's ruling. Similarly, the appeal process should not serve as a forum for re-arguing a case that has already been adjudicated.

[43] Allowing the appellants to re-argue their case on appeal would undermine the principle of finality in litigation. Repeatedly challenging a decision by re-presenting the same issues would delay justice, burden the judicial system with unnecessary re-hearings, and increase the cost and duration of litigation.

[44] The appellants attempt to re-argue their case during the appeal is an improper use of the appellate process. Repeating arguments that were already considered by the Court *a quo* undermines the integrity of the appellate process and the principle of finality in litigation.

[45] The Court *a quo* correctly rejected the defences raised in the affidavit resisting summary judgment as speculative and not *bona fide*. As discussed earlier in this judgment, the appellants clearly failed to demonstrate the existence of a *bona fide* defence, as required in terms of subrule 32(3).

[46] Furthermore, the Court *a quo* rightly emphasized the procedural requirement to amend pleadings when new defences are raised. This ensures fairness and clarity in litigation, allowing the respondent to address the appellants' version.

[47] The judgment of the Court *a quo* is legally sound and consistent with the principles of rectification and summary judgment. The Court *a quo* correctly granted rectification, finding that the rental schedule did not reflect the parties' common intention due to a mutual mistake. Furthermore, the appellants' failure to raise *bona fide* defences substantiated with material facts justified the granting of summary judgment in favour of the respondent.

[48] The Court *a quo* correctly applied the principles of contract law, evidentiary rules, and the procedure for summary judgment in rejecting the appellants' defences. The appellants' failure to amend their plea, align their defences, and substantiate

their claims rendered their position untenable. The judgment of the Court *a quo* upholds procedural fairness and preserves the integrity of contractual agreements.

[49] Thus, the Court *a quo*'s granting of summary judgment was correct, as the appellants' plea and affidavit resisting summary judgment did not meet the requirements of Rule 32. The appeal should therefore be dismissed, and the judgment of the Court *a quo* is upheld.

Costs

[50] The principles governing the awarding of costs are well-established, and this judgment will not be burdened unnecessarily therewith. This Court is unaware of any factors that would justify departing from the general rule that costs should follow the result. Accordingly, the appellants should pay the costs of this appeal. The scale of costs is determined by the rental agreement between the appellants and the respondent, which stipulates that costs are to be awarded on an attorney and client scale. The appellants have not provided any facts to warrant a deviation from those terms.

Order

[51] In the result, the following order is made:

[1] The appeal is dismissed.

[2] The appellants are to pay the costs of the appeal on an attorney and client scale, one paying the others to be absolved, such to include the application for leave to appeal to this Court as well as the application for special leave to appeal to the Supreme Court of Appeal.

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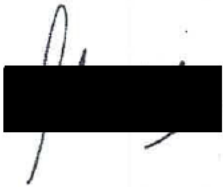
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**CSP OOSTHUIZEN-SENEKAL
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

I agree,




**N MNGQIBISA-THUSI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

I agree,



**B WANLESS
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

DATE OF HEARING:

20 November 2024

DATE JUDGMENT DELIVERED:

31 January 2025