

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 39869/21

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

Date: 10 March 2025

E van der Schyff

In the matter between:

FIRST RAND BANK LIMITED t/a FIRST NATIONAL BANK

Plaintiff

and

V & N AGENCIES CC

First Defendant

MUKESH NARSING THACOR

Second Defendant

JUDGMENT

Van der Schyff J

Introduction

- [1] This is an application for summary judgment. The plaintiff issued a simple summons. The cause of action is a written acknowledgment of liability executed by the first and

second defendants on 21 June 2021. The defendants filed a notice of intention to defend, whereafter the plaintiff filed a declaration. The plaintiff's case is based on the written acknowledgment of liability.

- [2] The defendants deny concluding and signing an acknowledgment of liability agreement. They acknowledge that a credit facility was afforded to them by the plaintiff and claim that the plaintiff had not assessed the first defendant's financial situation and affordability prior to affording the first defendant a credit facility.

- [3] Counsel for the plaintiff submitted that the court should disregard what it coined a bare denial. If regard is had to the *facta probanda* contained in the summons, it is difficult to grasp how the defendants should have phrased their plea other than denying that they signed any acknowledgment of liability.

- [4] It is trite that the onus of proving the existence of a contract, the acknowledgment of liability agreement, rests on the person who alleges that the contract exists.¹ By denying that the acknowledgment of liability agreement was concluded or signed by the second defendant, the defendants raise a justiciable issue and avert summary judgment being granted against it.

ORDER

In the result, the following order is granted:

- 1. The application for summary judgment is dismissed with costs on scale B.**


E van der Schyff
Judge of the High Court

¹¹ *Union Spinning Mills (Pty) Ltd v Paltex Dye House (Pty) Ltd and Another* 2002 (4) SA 408 (SCA) at para [6].

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the plaintiff:

Adv. R van Dyk

Instructed by:

Schüler Heerschop Pienaar Xaba Inc.

For the defendants:

Adv. K. Randall

Instructed by:

ZAF Khan

Date of the hearing:

4 March 2025

Date of judgment:

10 March 2025