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

CASE NO: 2022/11927

(1) Reportable: No

(2) Of interest to other Judges: No

(3) Revised

Date: 10/06/2025

In the matter between:

**TECHNOLOGIES ACCEPTANCES RECEIVABLES
PTY (LTD)**

First Plaintiff

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

Second Plaintiff

and

THAVALERIE TRAVEL CC

First Defendant

MHLALISI, NONTHUTUZELO VALERIE

Second Defendant

JUDGMENT

MAIER-FRAWLEY J:

Introduction

1. This is an opposed application for summary judgment in which the plaintiffs claim, *inter alia*, payment from the defendants, jointly and severally, the one paying the other to be absolved. The plaintiffs seek the following order:

“Summary Judgment in favour of the 1st Plaintiff:

CLAIM A

- A1. Confirmation of termination of the Rental Agreement;
- A2. Return of the 1 X MY IP PBX SYSTEM with serial number U[...];
- A3 Payment of the amount of R11 158.64;
- A4. Interest on the amount of R11 158.64 calculated at 5% above the prime interest rate as applicable from time to time per annum, from 30 DECEMBER 2021 to date of final payment;
- A5. Costs of suit on the scale between attorney and client;

CLAIM B

- B1. Return of the 1 X XEROX 7225 PRINTER with serial number 3[...];
- B2. Payment of the amount of R104 009.98; 83.
- B3. Interest on the amount of R104 009.98 calculated at 5% above the prime interest rate as applicable from time to time per annum, from 30 DECEMBER 2021 to date of final payment;
- B4. Costs of suit on the scale between attorney and client;

Summary Judgment in favour of the 2nd Plaintiff:

CLAIM C.

- C1. Return of the 1 X ADDITIONAL EQUIPMENT with serial number: Q[...];
- C2. Payment of the amount of R69 218.90;
- C3. Interest on the amount of R69 218.80 calculated at 5% above the prime interest rate as applicable from time to time per annum, from 30 DECEMBER 2021 to date of final payment;
- C4. Costs of suit on the scale between attorney and client;”

2. In addition to their plea on the merits, the defendants filed two special pleas relating to (i) a lack of this court’s jurisdiction and (ii) a lack of *locus standi* in respect of the first defendant on the basis that it was deregistered on 3 February 2020.

3. At the conclusion of oral arguments presented on behalf of the parties at the hearing, I allowed the matter to stand down to allow the second defendant, who at all

material times represented the first defendant, to produce proof of the first defendant's current status. Both parties were given an opportunity to file additional heads in respect thereof. Only the plaintiffs did so on 28 May 2025.¹

4. A CIPC report was produced which revealed that the first defendant was finally deregistered on 21 January 2024. In their heads dated 28 May 2025, the plaintiffs indicated that they would therefore not persist with the relief sought against the first defendant in the application.²

Plaintiff's claims

5. The plaintiffs sue in their capacity as cessionaries of the financiers (Fintech and Sunlyn) of equipment³ rented by the first defendant in terms of two Master Rental agreements and a second equipment schedule thereto.

6. The first Master Rental Agreement was concluded between the first defendant and Fintech on 1 November 2026. The second Master Rental Agreement was concluded between the first defendant and Sunlyn on 2 November 2017. On 9 November 2017, the first defendant and Sunlyn entered into a second equipment schedule (referred to in the papers as the third rental agreement) in terms of which the first defendant rented certain additional equipment from Sunlyn.

¹ This was hardly surprising, as the defendants had also failed to file heads of argument in respect of the application for summary judgment.

² Once a company is deregistered, it loses its legal status as of the date of the removal from the companies register and with immediate effect becomes dormant and/or inactive. Its removal entails that it can no longer operate in its name as it does not have the legal and contractual capacity to enter into any binding transactions because it is not recognized as a legal person. Likewise, claims by creditors of a deregistered company for debts owed to them will no longer be enforceable because the deregistered company does not have legal personality. That essentially means that such deregistered company can no longer litigate or be litigated against and all the assets within the company (in the case where there were still assets held within the company) are declared *bona vacantia* i.e. are considered forfeited to the State. See: *Walker Engineering CC t/a Atlantic Steam Services v First Garment Rental (Pty) Ltd* 2011 (5) SA 14 (WCC) As Rogers J put it in *ABSA Bank Ltd v Companies and Intellectual Property Commission of South Africa and Others* 2013 (4) SA 194 (WCC), para 61:; "nothing done by the company and no action taken against the company during the period of dissolution is of any effect " because the deregistered company has ceased to exist.

³ A PABX system; a Xerox printer and certain additional equipment.

7. The plaintiffs' pleaded claims against the second defendant are based on two written guarantees that were signed by the second defendant. The plaintiffs averred that on 1 November 2016 at East London, the second defendant signed an unlimited deed of guarantee (the first guarantee) in terms of which she bound herself as guarantor and as a principal and independent obligation in favour of Fintech, for the due and punctual and complete payment of all amounts due by the first defendant to Fintech arising from any cause whatsoever or arising from the non-performance by the first defendant of any of its obligations in terms of any agreement entered into between the first defendant and Fintech.

8. The plaintiffs further averred that on 15 September 2017 and at East London, the second defendant signed an unlimited written deed of guarantee (the second guarantee) in terms of which she bound herself as guarantor and co-principal debtor with the first defendant, jointly and severally, in favour of Sunlyn or its cessionaries, as a primary and continuing obligation for the due and proper fulfilment of all the obligations of the first defendant arising from or out of the terms of the second rental agreement between the first defendant and Sunlyn and all and any other indebtedness to Sunlyn, whether actual or contingent, present or future and howsoever arising.

9. Both deeds of guarantee contained a certificate clause and a renunciation of benefits on the part of the guarantor.⁴

10. Sunlyn ceded the second and third rental agreements to Fintech. Thereafter, there was a sale and transfer by Fintech to the first plaintiff of the first and second rental agreements, followed by a sale and transfer by Fintech to the second plaintiff of the third rental agreement.

⁴ In terms of the first guarantee, a certificate signed by any manager or director of the creditor as to the amount of the guarantor's indebtedness, would be prima facie evidence of the amounts of indebtedness shown in the certificate. The second defendant renounced the benefits and exceptions of no cause of debt, revision of accounts, errors in calculation, division and all other benefits and exceptions which could be taken to the guarantor's liability in terms of the guarantees. .

In terms of the second guarantee, a certificate signed by any manager of the Hirer or its cessionaries would constitute prima facie proof of the amount due and owing by the guarantor. The second defendant renounced the benefits of excussion, division and cession of action.

11. The money claims against the defendants are for payment of arrear rentals (Claims A, B and C) including future rentals (claims B and C) as a result of the first defendant's breach of its payment obligations under the rental agreements. The plaintiff averred that the rental agreement forming the subject matter of claim A had terminated by effluxion of time, whilst specific performance was sought in respect of the rental agreements forming the subject matter of claims B and C..

12. The plaintiffs accept that the claims for the return of the equipment are not competent as against the second defendant in view of the fact that the second defendant guaranteed payment of the amounts due under the rental agreements only.

13. The plaintiffs rely on certificates of indebtedness in respect of the amounts due and owing by the second defendant under the guarantees *apropos* the first defendant's liability under the rental agreements.

14. In their plea, the defendants do not dispute :

14.1. The conclusion of the rental agreements by the first defendant with Fintech and Sunlyn respectively;

14.2. That the second defendant represented the first defendant in the conclusion of the rental agreements;

14.3. The terms of the agreements as pleaded;

14.4. That the different equipment referred to in the rental agreements were delivered to the first defendant;

14.5. That Fintech and Sunlyn respectively complied with their obligations under the respective rental agreements;

14.6. That the plaintiffs are entitled to repossession of their equipment, the return of which was tendered in the plea;

14.7. That the second defendant concluded the deeds of guarantee relied upon by the plaintiffs on the terms contained therein.

15. In their plea, the defendants baldly deny:

15.1. Re the first agreement: the first defendant's breach thereof; the entitlement to claim arrears; the amount of the arrears as at date of termination; and that the agreement terminated by effluxion of time. As regards the certificate of indebtedness, annexure 'M' to the particular of claim, the defendant pleaded that the amount reflected therein did not take into account all payments made by the defendants until the year 2021;

15.2. Re the second and third agreements: the first defendant's breach thereof; the entitlement to claim arrear and future rentals; that demand was made for payment of arrears; and the amount certified as due and owing to the plaintiffs thereunder;

15.3. That the National Credit Act 34 of 2005 (NCA) is not applicable to the rental agreements on the basis that interest was charged under the agreements;

15.4. In their affidavit resisting summary judgment, the defendants denied that the facts alleged in the affidavit filed in support of summary judgment fell within the knowledge of the deponent thereto.

Discussion

Special plea: Lack of jurisdiction

16. In their opposing affidavit, the defendants averred that the agreements of 1 November 2016 and 15 September 2017 (being a reference to the first rental agreement and the third rental agreement which, on the defendants' version, was concluded on 15 September 2017) were concluded in East London and as such, this court lacks jurisdiction 'to adjudicate this matter'. They further aver that "*the fact that the agreements were offers that were accepted by cedents in Johannesburg as alleged by the Plaintiffs, does not confer jurisdiction to this Honourable Court to adjudicate on this matter. The cause of action did not occur within the jurisdiction of this Court.*"

17. It is common cause that: (i) the second defendant signed the rental agreements on behalf of the first defendant in East London; (ii) the agreements, on their express terms, constituted offers by the first defendant which were to be

accepted by the owners on signature thereof; and (iii) that a representative of the respective owners signed the agreements in Waverley, Johannesburg, thereby accepting the offers.

18. It is trite that the place where a contract is concluded is where the offer is received, and acceptance dispatched,⁵ which in *casu*, occurred in Waverley, Johannesburg.

19. The special plea thus fails to raise a genuine triable issue. In *Raumix*,⁶ a full court considered the amended Rule 32 and held thus:

“The purpose of a summary judgment application is to allow the court to summarily dispense with actions that ought not to proceed to trial because they do not raise a genuine triable issue, thereby conserving scarce judicial resources and improving access to justice....” (emphasis added; footnote omitted)

Defences on Merits:

20. The core defence appears to be one of impossibility of performance due to the Covid-19 Pandemic. The defendants’ allegations in their plea, which were repeated in the opposing affidavit, were the following:

20.1. Since the 3rd February 2020, the first defendant has been de-registered and is no longer in existence. The defendants advised the Plaintiffs of the *closing down of the business* and the challenges designed by the unprecedented coronavirus;⁷

20.2. The Defendants made payments to the Plaintiffs until the company shut down and requested the Plaintiff to cancel the agreement and collect its equipment on the 3rd of February 2020, but the Plaintiff failed and/or refused

⁵ See: *Cape Explosive Works Ltd v SA Oil and Fat Industries Ltd* 1921 CPD 244 at 266; *Kergeulen Sealing & Whaling Co Ltd v CIR* 1939 AD 467 at 503-5.

⁶ *Raumix Aggregates (Pty) Ltd v Richter Sand CC and Another and similar matters* 2020 (1) SA 623 (GJ) at par 16.

⁷ Plea, par 8 (at 02-252) - re claim A

to collect and cancel the agreement. To date, the equipment is ready for collection;⁸

20.3. A copy of the correspondence sent to the Defendants to collect the equipment, dated 14 September 2022, “is attached as ‘TT-001’” (this is in contradistinction to that which is referred to in par 20.2 above) In addition, the Defendants requested the Plaintiffs to cancel the agreement as the First Defendant had shut down its business, was no longer operational and was not generating any income;⁹

20.4. Payments were made by the defendants until the year 2021¹⁰ (this is also in contradistinction to that that which is referred to in par 20.2 above);

20.5. Payments were made until the deadly pandemic struck the company in the year 2020, “*when borders and travel was not permitted, which downfall was brought to the attention of the Plaintiffs and the Plaintiffs were alerted of the consent to cancel the agreements and hand over the machines to the Plaintiffs, this alert was deliberately ignored*”;¹¹

20.6. The First Defendant ceased to be operational and could not generate an income, as a result, the second defendant requested the Plaintiffs to cancel the agreement and collect the equipment as it was no longer in use. The Plaintiffs elected not to comply.¹²

21. The defendants’ reliance on a defence of impossibility of performance, albeit somewhat vaguely pleaded, does also not raise a genuine triable issue.

22. It is well established that impossibility of performance must be *absolute* or objective, as opposed to *relative* or subjective.¹³ In LAWSA, the defence is explained as follows:

“The contract is void on the ground of impossibility of performance only if the impossibility is absolute (objective). This means in principle, that it must not be possible for anyone to make that performance. If the impossibility is

⁸ Plea, par 20 at 02-254 - re claim A

⁹ Par 17 of affidavit resisting summary judgment - re claim A

¹⁰ Plea, par 21 02-255 - re claim A

¹¹ Plea, par 15 at 02-253 - re Claim B

¹² Par 21, affidavit resisting summary judgment – re claim C

¹³ See *Unibank Savings and Loans Ltd (formerly Community Bank) v Absa Bank Ltd* 2000 (4) SA 191 (W) at 198 B-C

peculiar to a particular contracting party because of his personal situation, that is, if the impossibility is merely relative (subjective) the contract is valid and the party who finds it impossible to render performance will be held liable for breach of contract.”¹⁴

23. The hard lockdown that accompanied the Covid 19 pandemic only commenced in South Africa on 26 March 2020. I agree with the plaintiffs’ submission that the defendant’s allegation, namely, that the first defendant shut down prior to this date on 3 February 2020, sits uncomfortably with this fact, which has not been explained by the second defendant. So too the allegation in the plea (repeated in the affidavit resisting summary judgment) that the first defendant was deregistered on 3 February 2020, a date which was not only inaccurate, but as was subsequently revealed, untruthful. This, together with the defendants’ contradictory averments (mentioned in paras 20.3 and 20.4 above) evidence a lack of *bona fides* on the part of the defendants.

24. As pointed out in *Breitenbach v Fiat SA*,¹⁵ the court must be satisfied that there is a *bona fide* defence. A defendant is required to swear to a defence, valid in law, in a manner which is not inherently and seriously unconvincing. The defendant must set out in his affidavit the nature and grounds of his defence and the material facts relied upon therefore are to be fully disclosed. The statement of material facts must be sufficiently full to persuade the court that what the defendant has alleged, if proved at trial, will constitute a defence to the plaintiff’s claim. The court further explained that if the defence is averred in a manner which appears in the

¹⁴ Joubert, W.A (Ed) *et al The Law of South Africa* (Lexis Nexus) vol 5 (1) Reissue at par 160, citing *Frye’s (Pty) Ltd v Ries* 1957 (3) SA 575 (A).

In *Unibank Savings and Loans Ltd (formerly Community Bank) v Absa Bank Ltd* 2000(4) SA 191 (W) at 198 D-E, Flemming DJP held: “*Impossibility is furthermore not implicit in a change of financial strength or in commercial circumstances which cause compliance with the contractual obligations to be difficult, expensive or unaffordable.*”

¹⁵ *Breitenbach v Fiat SA (Edms) Bpk* 1976 (2) SA 226 at at 228 B-H.

See too: *Tumileng Trading CC v National Security and Fire (Pty) Ltd; E and D Security Systems CC v National Security and Fire (Pty) Ltd* 2020 (6) SA 624 (WCC), par 41 where Binns-Ward J cautioned that “*The effect of the amended requirements for a supporting affidavit is, however, to require the defendant to deal with the argumentative material in its opposing affidavit. A defendant that fails to do that, does so at its peril.*”

circumstances to be needlessly bald, vague or sketchy, this would impact on the requirement of *bona fides*.

25. As regards the various bare denials by the defendant's: (i) of the first defendant's breach; (ii) that demand was made to rectify same and (iii) the amount of the indebtedness owing, it cannot be said that these establish genuine triable defences. The allegations are belied by the letters of demand¹⁶ and the certificates of indebtedness ¹⁷ annexed to the particulars of claim. I deal with the denial of breach of the agreements by the first defendant further below.

26. The allegation that payments which were made until the year 2021 were not taken into account, lacks forthrightness, and is, in my view, deliberately vague for lack of particularity. The plea impliedly confesses to a breach of the rental agreements, due to the first defendant not being able to generate income as a result of the Covid 19 pandemic and therefore having to shut down. No details whatsoever were provided of the payments allegedly made, whether '*until the year 2021*' or at all.

27. In *Breitenbach*,¹⁸ the court observed as follows:

"It is difficult to imagine a balder statement of the defence of payment than that which the defendant had put forward. Payment, it may be remembered, is a defence in respect whereof the onus of proof of at the trial would have been on the defendant. He would have had to deal with the manner in which he discharged his obligation to pay, over a period...' or, if it was his case that a lesser sum had become payable by him, he would have had to say why. In his affidavit he does not say that he paid the rentals monthly as they fell due. He does not say when or how he made the payments relied upon or what their amounts were. What he has really done is to state the nature of his defence, but not the facts relied upon in support of it, which were, presumably, a series of payments by him. The defendant does not even allege that he had

¹⁶ Annexures "N1", "P1", and "R1"

¹⁷ Annexures "M", "O", and "Q" to the particulars of claim.

¹⁸ Above n 15, at 231 B.

paid all the rent which, according to the plaintiffs particulars of claim, became payable to it. He contents himself with the allegation that he had paid the plaintiff all that is due to it, without indicating what he concedes to have been due. That, in my judgment, is far less than can be expected from a defendant in summary judgment proceedings. It lacks the forthrightness, as well as the particularity, that a candid disclosure of a defence should embody. The impression which one receives is rather that the defendant was being deliberately vague, and was leaving it open to himself to say later, if necessary or convenient, that although he had paid only R7 000, that was all that he had owed." (emphasis added)

28. As regards the certificate of indebtedness relied on by the plaintiffs, a bare denial does not establish a genuine triable defence. The defendants adduced no evidence to show that the Plaintiffs' certificates of balance were not correct. In *Trust Bank of South Africa Ltd v Senekal*¹⁹ Nestadt J put it thus:

"To the same effect is the opinion of BLOCH, J., in *R. v. Mantell*, 1959 (1) SA 771 (C), that prima facie evidence if unanswered would justify men of ordinary reason and fairness in affirming the question which the party upon whom the onus lies is bound to maintain.... How far the defendant's evidence need go in order to answer a prima facie case depends upon the facts of each particular case. Whilst no onus of proof is cast on him he must adduce evidence sufficient to destroy the prima facie proof and thus prevent such proof from ripening into conclusive proof. Merely to cast suspicion on the correctness of the fact or facts prima facie established and mere theories or hypothetical suggestions will not avail the defendant: the defendant's answer must be based on some substantial foundation of fact." (emphasis added)

29. As regards the NCA defence, no grounds are set out for reliance on the contention that the agreements are subject to the provisions of the NCA.

30. In terms of the rental agreements, ownership in the hired equipment would not vest in the first defendant.

¹⁹ 1977 (2) SA 587 (W) at 593.

31. For a lease to be subject to the NCA, ownership of the goods must pass to the lessee at the end of the lease *in terms of the agreement*.

32. In *Absa Technology Finance Solutions (Pty) Ltd v Michael's Bid a House CC and Another*²⁰ it was held that although rental agreements (such as the agreement in *casu*) are usually leases, a "lease" as defined in the NCA is, by virtue of the requirement that ownership must pass to the lessee at the end of the agreement, the very antithesis of a common-law lease.

33. Further, the express terms and conditions of the rental agreements do not contain any provision for the deferment of any payment or the levying of any charge, fee or interest in respect of an amount deferred.

34. Accordingly, the defendants have failed to establish a genuine triable defence in relation to the NCA defence.

35. Lastly, the defendants' denial of knowledge on the part of the deponent to the affidavit in support of summary judgment, is unsupported by material facts. The deponent averred that he is the litigation manager at Sasfin Bank Limited. Sasfin administers and manages all rental agreements that are ceded, transferred or sold by Fintech and Sunlyn to the plaintiffs and performs all litigious functions in relation to such agreements. In such position, he has all the files, records, documents and accounts relating to these agreements and the transactions forming the subject matter of the plaintiffs' claims in the action in his possession and control, and in the normal course of his duties, he has thereby acquired knowledge of the first defendant's financial standing with the plaintiffs.

36. First hand knowledge of every fact is not required by a person in that position. As long as there is direct knowledge of the material facts underlying the cause of action, which may be gained by a person who has possession of all of the documentation, that is sufficient. The deponent was entitled to rely on records in his

²⁰ 1977 (2) SA 587 (W) at 593.

possession and under his control for his personal knowledge and ability to swear positively to the facts stated in the summons.²¹

37. In all the circumstances, the defendants have failed to meet the required threshold to avoid summary judgment.

38. The rental agreements provide for costs to be payable on the attorney and client scale. The quantum of the plaintiffs' claims fall within the jurisdiction of the Magistrates Court.²²

39. The general rule is that costs follow the result. I see no reason to depart therefrom.

40. Accordingly, the following order is granted:

ORDER

1. Summary judgment is granted against the second defendant in favour of the first plaintiff as follows:

CLAIM A

1.1 Payment of the amount of R11 158.64;

1.2 Interest on the amount of R11 158.64 calculated at 5% above the prime interest rate as applicable from time to time per annum, from 30 DECEMBER 2021 to date of final payment;

²¹ See: *Rees & Another v Investec Bank* 2014 (4) SA 220 (SCA) at paras 10 – 11.

See too: *Stamford Sales & Distribution (Pty) Limited v Metraclark (Pty) Limited* (676/2013) [2014] ZASCA 79 (29 May 2014) at paras 10- 12 where the Supreme Court of Appeal dealt with the requirement of personal knowledge by a deponent to a verifying affidavit of all the material facts forming the basis for the cause of action, where the cessionary of a claim seeks summary judgment against the debtor.

At par 12, the following was said: "*The deponent in such a case was prima facie making the affidavit on behalf of a cessionary and there was nothing in the affidavit to indicate that the deponent had any connection with the cedent, which presumably would have enabled him to acquire this knowledge. To insist on personal knowledge by the deponent to the verifying affidavit on behalf of the cessionary of all of the material facts of the claim of the cedent against the debtor, emphasises formalism in procedural matters at the expense of commercial pragmatism.*"

²² s 48 of the Magistrates Court Act 32 of 1944 entitles a magistrate's court to grant "such judgment as to costs (including costs as between attorney and client) as may be just."

1.3 Costs of suit on the Magistrates Court scale as between attorney and client;

CLAIM B

1.4 Payment of the amount of R104 009.98;

1.5 Interest on the amount of R104 009.98 calculated at 5% above the prime interest rate as applicable from time to time per annum, from 30 DECEMBER 2021 to date of final payment;

1.6 Costs of suit on the Magistrates Court scale as between attorney and client.

2. Summary judgment is granted against the second defendant in favour of the second plaintiff as follows:

CLAIM C.

2.1 Payment of the amount of R69 218.90;

2.2 Interest on the amount of R69 218.80 calculated at 5% above the prime interest rate as applicable from time to time per annum, from 30 DECEMBER 2021 to date of final payment;

2.3 Costs of suit on the Magistrates Court scale as between attorney and client.

**AVRILLE MAIER-FRAWLEY
JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, JOHANNESBURG**

Date of hearing: 29 May 2025

Judgment delivered 10 June 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on Caselines and release to SAFLII. The date and time for hand-down is deemed to be have been at 10h00 on 10 June 2025.

APPEARANCES:

Counsel for Applicant: Adv JG Botha

Instructed by: OBDD Attorneys

Counsel for Plaintiff:

Adv Mphlanga

Instructed by:

Precious Muleya Attorneys