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

Case No: 2024-021034

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED: YES / NO

DATE 31 July 2025

SIGNATURE

In the matter between:

WARDA BELEGGINGS (PTY) LTD
(Registration no: 1996/011288/07)

Plaintiff

and

DANIËL JACOBUS JANSEN VAN
RENSBURG
(ID No: 5[...])

Defendant

Coram:	Groenewald, RJ (AJ)
Heard on:	30 July 2025
Delivered:	31 July 2025 - This judgment was handed down electronically by uploading to Caselines.

JUDGMENT

GROENEWALD AJ

[1] This is an application where the Plaintiff seeks summary judgment against

the Defendant, ostensibly based upon monies lent and advanced in terms of an oral loan agreement.

[2] The Plaintiff contends that on or about 9 August 2021, and at Pretoria, whilst it was duly represented by the late Mr Fred Cornelius, it entered into an oral loan agreement with the Defendant, who was acting in person.

[3] The Plaintiff further contends that the salient express, alternatively implied, alternatively tacit terms of the loan agreement were as follows:

[3.1] The Plaintiff would lend and advance an amount of R600 000-00 to the Defendant on its special instance and request;

[3.2] Interest would be payable at the prime rate plus 1%, therefore 8.25% per annum, calculated from 9 August 2021, being the date that the loan amount was paid into the account nominated by the Defendant;

[3.3] The loan amount was paid into the bank account nominated by the Defendant, being that of an entity only identified to the Plaintiff as The Danelle Trust; and

[3.4] The Defendant would have repaid the full capital amount and interest to the Plaintiff within 3 (three) months of the loan date, but in any event by no later than 30 November 2021.

[4] The Plaintiff contends that it complied with all of its obligations and that payment was made in accordance with the terms of the oral loan agreement.

[5] In addition, it is contended in paragraph 8 of the particulars of claim that the Defendant gave an undertaking during a telephonic discussion between the Plaintiff's legal representative, NDBV Incorporated, regarding a payment arrangement, wherein the Defendant undertook to:

[5.1] Make a payment of R100 000-00 immediately; and

[5.2] And thereafter to make monthly lumpsum payments until the full amount (capital, interest and costs) owing to the Plaintiff was repaid.

[6] The Plaintiff further contends that pursuant to NDBV Incorporated following up on the payment that one Ms Benitha Addinall responded thereto on 28

August 2023, ostensibly on behalf of the Defendant, in an e-mail attached to the particulars of claim wherein it was stated that payment will be made “*in due course*”. The full text of the relevant e-mail is as follows:

“Good day

We take note of the below e-mail and we will make payment in due course. Please may you send the banking details.

Kind regards

Benitha Addinall

Office Administration”

- [7] In paragraph 3 of the Defendant’s plea, he contends that on 9 August 2021, “*a meeting was attended to by the Defendant, Fred Cornelius and Nico Prinsloo*”. The Defendant then denies that an oral loan agreement was concluded between the Plaintiff and the Defendant. The Defendant made no reference in the Plea that the loan was concluded with the late Mr Cornelius.
- [8] The Defendant also admits to a telephone discussion with the Plaintiff’s attorney, but denies the content of the discussion. Save for the denial, the Defendant contends that the content of the discussion was on a without prejudice basis and is therefore inadmissible.
- [9] The Defendant also disavows prior knowledge of the correspondence directed by Ms Addinall to the Plaintiff.
- [10] From the affidavit in support of the application for summary judgment, it is confirmed that Mr Fred Cornelius has since passed away. It does not appear that the deponent to the affidavit in support of the summary judgment application was privy to the discussion, which ostensibly gave rise to the loan and subsequent transfer of the funds, between the late Mr Cornelius and the Defendant.
- [11] In opposing the application for summary judgment, the Defendant contends that:
- [11.1] He and Mr Cornelius were on very good terms, being “*very good*

friends until the day he died", and the relationship between them stretched over many years, as friends, during which time they would "constantly help each other out".

[11.2] The Defendant contends that during 2015, his son-in-law bought a house and an amount of R600 000-00, which was loaned to him by a company named Expectra 265 (Pty) Ltd, had to be urgently repaid during August 2021;

[11.3] On 9 August 2021, a "*social gathering*" (albeit that in the plea it is referred to as a meeting) the issue of the R600 000-00 was raised and Mr Cornelius offered not only to advance the R600 000-00 but to advance an amount of R1.2 million to assist in repayment of the loan in the amount of R600 000-00 and the balance to be used to do renovations to the house;

[11.4] According to the Defendant, he indicated that he "*would obviously pay back the money to Mr Cornelius*", to which the latter responded "*solank jy my net binne vyf jaar terugbetaal is dit reg*"; and

[11.5] The Defendant contends that no interest or monthly payment terms were ever discussed.

[12] Therefore, on the Defendant's version:

[12.1] The Loan Agreement was concluded between himself and the late Mr Cornelius in his personal capacity and not with the Plaintiff;

[12.2] That repayment had to be made within five years without fixed instalments; and

[12.3] The amount was paid into the Defendant's son in law's nominated account.

[13] Even on the Defendant's own version, he admits that he would be the party responsible for making repayment of the R600 000-00.

[14] The Defendant states that after Mr Cornelius passed away, he didn't hear anything further about the loan. The Defendant also did not take any steps to contact the executor of Mr Cornelius' estate to address the loan.

- [15] In addition, the Defendant seeks to disavow the Plaintiff's version of the telephone discussion between the attorney and the Defendant. There is therefore a dispute in respect of the contents of that discussion and whether the debt was acknowledged in respect of the Plaintiff or whether the Defendant conceded being indebted to the late Mr Cornelius in his personal capacity.
- [16] In dealing with the e-mail by Ms Addinall, the Defendant states that she is one of his employees, that she knew that the Defendant owed Mr Cornelius money as she had heard the conversation of 1 August 2023 and that she recorded '*that payment would be made in due course – therefore, not now*'. The Defendant appears to suggest that M Addinall wrote the e-mail out of her own volition and without first having discussed the matter with the Defendant. Ms Van der Merwe, for the Plaintiff, pointed out that Ms Addinall's confirmatory affidavit precedes that of the Defendant and is rendered ineffective as there was no affidavit in existence to confirm. Ultimately, nothing turns on this.
- [17] The Plaintiff contends that the Defendant has not advanced a *bona fide* defence to the Plaintiff's claim and that summary judgment should be granted against the Defendant.
- [18] The test of *bona fides* means that the Defendant's allegations ought not to be inherently and seriously unconvincing.¹ Boshoff J in ***Meek v Kruger 1958 (3) SA 154 (T) at 157*** observed, a principle which still rings true, that the summary judgment procedure:
- "[W]as not intended to "shut (a defendant) out from defending" unless it was very clear indeed that he had no case in the action; Sheppards v Wilkinson, 6 T.L.R. 13. It was intended to prevent sham defences from defeating the rights of parties by delay, and at the same time causing*

¹ Van Niekerk: "Summary Judgment – A Practical Guide, pg. 9-13.

great loss to plaintiffs who were endeavouring to enforce their rights; Jacobs v Booth's Distillery Company, 85 L.T.R. 263 (H.L.)."

[19] The object of Rule 32 is very much the same: the rule was designed to prevent a plaintiff's claim, based upon certain causes of action, from being delayed by what amounts to an abuse of the process of the court. In certain circumstances, therefore, the law allows the plaintiff to apply to court for judgment to be entered summarily against the defendant, thus disposing of the matter without putting the plaintiff to the expense of a trial. The procedure is not intended to shut out a defendant who can show that there is a triable issue applicable to the claim as a whole from laying his defence before the court.

[20] In the lodestar case on summary judgment, ***Breytenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T)***, it was held at **227G** that the statement of facts by a Defendant need only be:

"...sufficiently filled to persuade the court that what the defendant has alleged, if proved at trial, will constitute a defence to the Plaintiff's claim. "

[21] It is not incumbent upon the Defendant to formulate his or her opposition to the summary judgment application with the precision that would be required in a plea. It will be sufficient if the Defendant swears to a defence, valid in law, in a manner which is not inherently or seriously unconvincing (***Flugel v Swart 1979 (4) SA 493 (E) at 497-8.***) or put differently, if the Defendant shows that there is a reasonable possibility that the defence may succeed on trial.²

² ***Wright v Van Zyl 1951 (3) SA 488 (C); Lombaard v Van der Westhuizen 1953 (4) SA 84 (C); Soorju v Pillay 1962 (3) SA 906 (N).***

[22] The test of *bona fides* means nothing more than that the Defendant's allegations ought not to be inherently and seriously unconvincing.³

[23] A Defendant does not need to convince the Honourable Court of the correctness of the facts stated or, where the facts are disputed, that there is a preponderance of probabilities in their favour. (**See: *Arend v Astra Furnishers (Pty) Ltd 1974 (1) SA 298 (C) at 303-4.***)

[24] The Court hearing the summary judgment application should merely consider whether facts alleged by the defendant constitute a defence in law and whether that defence appears to be *bona fide*. In ***Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A)*** it was held at **426** that:

“Accordingly, one of the ways in which a defendant may successfully oppose a claim for summary judgment is by satisfying the Court by affidavit that he has a bona fide defence to the claim. Where the defence is based upon facts, in the sense that material facts alleged by the plaintiff in his summons, or combined summons, are disputed or new facts are alleged constituting a defence, the Court does not attempt to decide these issues or to determine whether or not there is a balance of probabilities in favour of the one party or the other.” (Own emphasis.)

[25] It is also not incumbent upon the defendant, at the summary judgment stage, to satisfy the court that his allegations are true. It is sufficient if the defendant's affidavit shows that there is a reasonable possibility that the defence which he advances may succeed on trial. (**See: *Shepstone v Shepstone 1974 (2) SA 462 (N) at 467A; Marsh and Another v Standard Bank SA Ltd 2000 (4) SA 947 (W) at 949H.***)

[26] In ***Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA) at 11G–12D*** the Supreme Court of Appeal

³ Van Niekerk: “Summary Judgment – A Practical Guide, pg. 9-13; Farlam: “Superior Court Practice”, Vol 2, D1-282 to 384 and D1-408 to 416 and the authorities referred to therein.

held that:

“The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of her/his day in court. After almost a century of successful application in our courts, summary judgment proceedings can hardly continue to be described as extraordinary. Our courts, both of first instance and at appellate level, have during that time rightly been trusted to ensure that a defendant with a triable issue is not shut out. In the Maharaj case at 425G–426E, Corbett JA was keen to ensure, first, an examination of whether there has been sufficient disclosure by a defendant of the nature and grounds of his defence and the facts upon which it is founded. The second consideration is that the defence so disclosed must be both bona fide and good in law. A court which is satisfied that this threshold has been crossed is then bound to refuse summary judgment. Corbett JA also warned against requiring of a defendant the precision apposite to pleadings. However, the learned judge was equally astute to ensure that recalcitrant debtors pay what is due to a creditor.

Having regard to its purpose and its proper application, summary judgment proceedings only hold terrors and are “drastic” for a defendant who has no defence. Perhaps the time has come to discard these labels and to concentrate rather on the proper application of the rule, as set out with customary clarity and elegance by Corbett JA in the Maharaj case at 425G–426E.”

- [27] Whilst there may be good reasons to criticise the version presented by the Defendant, and the contradictions between the plea and the opposing affidavit, summary judgment is not designed to deal with the merits of the matter on probabilities.
- [28] The central elements of the Defendant’s version are that the Plaintiff was not the lender in terms of the loan, and there is also a difference in respect of the repayment term and whether interest would be applicable. To succeed with its claim, the Plaintiff must prove that it is the lender in terms of the loan

agreement. If it was established at trial that the late Mr Cornelius was acting in his personal capacity, then on the cause of action as pleaded, the Plaintiff could not succeed as it cannot enforce rights arising from a contract to which it is not a party. The exceptions to that principle do not find application in the present case.

[29] The contention advanced by the Defendant that he did not contract with the Plaintiff, but that he did contract with the late Mr Cornelius in his personal capacity, is not at variance with what was pleaded. The Defendant denied having concluded the contract with the Plaintiff. It is for the Plaintiff to both allege and prove that contract, which would, as a part thereof, include who the parties were to that contract.

[30] As held in ***Nogoduka-Ngumbela Consortium (Pty) Ltd v Rage Distribution (Pty) Ltd t/a Rage 2021 JDR 2622 (GJ) at par 7*** that the amended Rule 32 had not affected the rules regarding pleadings — the difference between *facta probanda* and *facta probantia* remained pertinent. The court held, further, that under the amended rule a defendant was not required to plead its defences in the same detail as it would have been entitled to do in an affidavit resisting summary judgment. A defendant was entitled in its affidavit to elaborate on its plea and the defences pleaded. This is what the Defendant did in the present case.

[31] Raising a denial of the identity of a contracting party as lender is not novel. In ***All Purpose Space Heating Co of SA (Pty) Ltd v Schweltzer 1970 (3) SA 560 (D)***⁴ the Court held at **561** that:

“The defendant's affidavit also contains a denial that he ever borrowed money from the plaintiff, as well as a denial that he ever requested the plaintiff to make any disbursement on his behalf, or that he ever agreed to pay any interest to the plaintiff. In addition, the defendant alleges that the aforesaid Timmerman was a director of another company registered as 'The Wanson Company of South Africa (Pty), Ltd.,' which

⁴ Albeit that in this case the Defendant also denied the existence of Plaintiff company.

company at some stage employed the defendant as an agent. If the plaintiff's claims have been derived from this company in any way, such as by cession, the defendant alleges a set-off of commissions owing to him by the Wanson Company. These are all obviously valid defences if they can be established at the trial of the action."

[32] Whilst the Defendant may have much to answer for during cross-examination when the matter comes to trial, the Defendant has presented a version which constitutes a triable issue. That being said, I do not consider the launching of the summary judgment application to have been unreasonable under the circumstances.

The order:

[33] The following order is made:

1. The application for summary judgment is refused;
2. The Defendant is granted leave to defend and he is directed to deliver his plea or other pleading as provided for in the Uniform Rules of Court;
3. That costs of the application shall be costs in the cause.

RJ GROENEWALD (AJ)
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 31 July 2025.

For the Plaintiff / Applicant	:	Adv J Van der Merwe
Instructed by	:	NDBV Incorporated
For the Defendant / Respondent	:	Adv W Wannenburger
Instructed by	:	Nolte Incorporated Attorneys
Matter heard on	:	30 July 2025 - Court 6C

Judgment date : 31 July 2025