IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA

CASE NO: 4440/2024

1. REPORTABLE: YES/ NO
2. OF INTEREST TO OTHER JUDGES: YES/NO
3. REVISED.

27 August 2025 **[SIGNED]**

DATE SIGNATURE

In the matter between:

FINNOVATION CAPITAL (PTY) LTD **PLAINTIFF**

and

THULANI EUSSY NKOSI **FIRST DEFENDANT**

FORTUNATE BONISIWE NKOSI **SECOND DEFENDANT**

JUDGMENT

Msibi AJ

[1] In this application, the plaintiff applies for a summary judgment against the defendants as follows:

> "(a) Payment of the sum of R10 036 783.88.
>
> (b) Interest at 18% per annum from date of default being 19 February 2020 up to the date of final payment.
>
> (c) Costs on attorney and own client scale; jointly and severally, one paying the other to be absolved."

[2] The plaintiff is a private company that entered into a loan agreement with Khosithi Artisan and Skills Training Institute (Pty) Ltd (which has since been liquidated). I will hereafter refer to it as the liquidated company. The liquidated company was represented by the first defendant. The first and second defendants, who are married in community of property, signed a deed of suretyship in favour of the loaned amount.

[3] The application is resisted by both defendants. It is trite that a summary judgment is based on an argument that there are no triable issues of fact, and the motion is initiated by a plaintiff who contends that all the necessary factual issues are settled and therefore need not be tried. If there are triable issues of fact in any cause of action or if it is unclear whether there are such triable issues, summary judgment must be refused as to that cause of action. The purpose of a summary judgment procedure is, therefore, to afford an innocent plaintiff who has an unanswerable case against an elusive defendant a much speedier remedy than that of waiting for the conclusion of the action.

Background facts

[4] The plaintiff entered into a written loan agreement with the liquidated company before its liquidation on 12 November 2019. In terms of the agreement, the plaintiff loaned the liquidated company an amount of R6 500 000.00. A monthly repayment amount of R158 067.00 was payable from January 2020. In terms of clauses 8 and 10 of the

agreement, the full balance of the loan, inclusive of the capital and interest, immediately becomes payable upon liquidation of the company's estate, be it provisional or final liquidation.

[5] As security for the indebtedness of the liquidated company, in terms of the loan agreement, the first and second defendants bound themselves as sureties in *solidum* and co-debtors for the full and proper fulfilment by the liquidated company on 13 November 2019. The liquidated company fell into arrears from February 2020. Despite demand, the liquidated company failed to pay its monthly instalments as undertaken, which resulted in the total amount paid by the liquidated company on 11 November 2023 being R3 054 201.00.

[6] In July 2024, a final winding-up order was issued against the liquidated company. According to the loan schedule, the company owes the plaintiff R10 036 783.88 with interest.

[7] On 2 September 2024, the plaintiff issued summons against the liquidated company for the payment of R10 036 783.88, with interest at 18% per annum from the date of default, being 19 February 2019, up to the date of final payment, with costs. The action was defended by the defendants.

[8] Having been served with an appearance to defend, the plaintiff launched the application at hand. The application is premised on the fact that the defendants do not have a bona fide defence to the plaintiff's claim and that the notice to defend had been filed solely for the purpose of delay.

[9] The application for Summary Judgment is also opposed by the defendants, who filed an opposing affidavit, together with confirmatory affidavits. The main facts are not in dispute. The defendants admit to signing as sureties and acknowledge default on most of the payments under the loan agreement, as alleged by the plaintiff, providing reasons for the arrears.

[10] In response to the application, the defendants raised a special plea of prescription as follows:

> "5. The plaintiff ought to have known that prescription against the Defendants will start to run on 19 February 2020 for a period of 3 (three) years as the company first fell into arrears on this date and did therefore become due on this date.
> 6. The Summons was only served on the Defendants on 3 September 2024 and after any alleged debt prescribed on 18 February 2023.
> **WHEREFORE THE DEFENDANT PRAY THAT THE SPECIAL PLEA BE UPHELD AND THE ACTION BE DISMISSED WITH COSTS**."

[11] In its replication to the special plea, the plaintiff stated that there was an interruption in the completion or running of prescription in favour of the principal debtor, which came into effect during the liquidation proceedings. The second defence by the defendants is that the plaintiff has failed to illustrate how the outstanding amount, together with interest and penalty interest, was calculated, since the liquidated company had already paid R3 054 201.00 towards the loan.

[12] Based on the above, the only issues for determination by this court are the prescription and liquidity of the document

Special plea of prescription

[13] The special plea of prescription in a summary judgment was addressed by the Supreme Court of Appeal in *Jans v Nedcor Bank Limited*.[1] The Supreme Court of Appeal considered circumstances that constitute a delay or interruption in the running or completion of prescription. The court further had to determine whether an interruption or delay in the running of prescription in favour of the principal debtor also constituted an interruption or delay in the running of prescription in favour of a surety.

---

[1] *Jans v Nedcor Bank Limited* 2003 (6) SA 646 (SCA).

[14] The Supreme Court of Appeal also considered the provisions of section 13(1) of the Prescription Act 68 of 1969, which reads as follows:

> "If –
>
> (a) ……
>
> (b) the debtor is outside the Republic; or
>
> (c) the creditor and debtor are married to each other; or
>
> (d) the creditor and the debtor are partners and the debt is a debt which arose out of the partnership relationship; or
>
> (e) the creditor is a juristic person and the debtor is a member of the governing body of such juristic person; or
>
> (f) the debt is the object of a dispute subjected to arbitration; or
>
> (g) the debt is the object of a claim filed against the estate of a debtor who is deceased or against the insolvent state of the debtor or against a company in liquidation or against an applicant under the Agricultural Credit Act, 1966 (Act No. 28 of 1966); or
>
> (h) the creditor or the debtor is deceased and an executor of the estate in question has not yet been appointed; and
>
> (i) the relevant period of prescription would, but for the provisions of this subsection, be completed before or on, or within one year after, the day on which the relevant impediment referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h) has ceased to exist, the period of prescription shall not be completed before a year has elapsed after the day referred to in paragraph (i)."

[15] In the *Jans* case (*supra*), the appellant, who had signed a deed of suretyship, contended that prescription began to run in her favour when the final order of liquidation was granted against the principal debtor. The respondent opposed the application. In the court *a quo*, Goldstein J in the Witwatersrand Local Division considered himself bound by the full bench decision of *Cronin v Meerholz*[2] and found that the delay in the running of prescription in favour of the principal debtor served to delay the running of prescription in favour of the surety and that the appellant had failed to disclose a defence. On appeal

---

[2] *Cronin v Meerholz* 1920 TPD 403.

before a full bench, the court found that the impediment contemplated in section 13(1)(g) commences when the creditor's claim for provisional liquidation is filed. It ceases to exist once the Master confirms the final liquidation and distribution accounts. The appeal was therefore dismissed with costs.

[16] The special plea raised by the defendants in the matter before me is based on similar facts. On page 2, paragraph 5 of their amended plea, the defendants state the special plea as quoted in paragraph 10 above.

[17] The last payment of R500 000.00 by the principal debtor was on 11 November 2023. A provisional liquidation order was granted against the liquidated company. On 23 July 2024, a final winding-up order was granted against the liquidated company. According to prevailing case law, the liquidation application became an impediment to the running of prescription in terms of section 13(1)(g) of the Prescription Act of 1969, up to one year after its final liquidation order. Consequently, the interruption and delay in prescription in favour of the principal debtor also interrupted and delayed the running of prescription in favour of the surety. Accordingly, the defendant's special plea stands to be dismissed.

Liquid document

[18] For the plaintiff to succeed in its application, it must satisfy the requirements set out in Rule 32(1) of the Uniform Rules of Court, which provides as follows:

> "The plaintiff may, after the defendant has delivered a plea, apply to court for summary judgment on each of such claims in the summons as is only –
> (a) on a liquid document;
> (b) for a liquidated amount in money;
> (c) for delivery of specified movable property; or
> (d) for ejectment,
> together with any claim for interest and costs."

[19] In *Botha v W Swanson and Co (Pty) Ltd*,[3] Corbett J, as he then was, held that a claim would not be regarded as one for a liquidated amount in money unless it is based on an obligation to pay an agreed sum of money, or is so expressed that the ascertainment of the money claimed is a matter of a mere calculation.

[20] In determining the nature of the document as envisaged in Rule 32, the Constitutional Court in *Twee Jonge Gezellen (Pty) Ltd v Land and Agricultural Development Bank of South Africa*[4] held that:

> "In principle, however, a document is liquid if it demonstrates, by its terms, an unconditional acknowledgement of indebtedness in a fixed or ascertainable amount of money due to the plaintiff. Many different sorts of documents have been found to qualify as 'liquid' in terms of this definition and therefore sufficient to found provisional sentence. They include acknowledgments of debt, mortgage bonds, covering bonds, negotiable instruments, foreign court orders and architects' progress certificates."

[21] It is common cause that the plaintiff and the liquidated company entered into a loan agreement for a liquid amount, on 12 November 2019. The plaintiff fulfilled its part of the agreement by making a fixed payment to the liquidated company. The liquidated company failed to honour its monthly obligations of R158 067.00. According to the plaintiff's letter of demand dated 17 February 2023, the liquidated company was in default in the amount of R5 645 925.45. The last payment made by the liquidated company was on 11 November 2023. At the time of issue of the summons, the liquidated company was in arrears of R10 036 783.88. The plaintiff also attached a loan schedule, which is self-explanatory, reflecting the monthly status of the account up to 19 July 2024. Also attached is a certificate of balance that was issued by the plaintiff.

[22] The defendants' defence in this regard is a bare denial with no figures or calculations of their own to challenge those of the plaintiff. The fact that the defendants

---

[3] *Botha v W Swanson and Co (Pty) Ltd* 1968 (2) PH F85 (CPD).
[4] *Twee Jonge Gezellen (Pty) Ltd v Land and Agricultural Development Bank of South Africa* 2011 (5) BCLR 505 (CC); 2011 (3) SA 1 (CC) para 15.

do not understand how the plaintiff reached the balance claimed does not mean that the balance due should cease to be a liquid amount. The required explanation and figures are easily ascertainable by speedy calculations to the advantage and understanding of the defendants.

[23] The question which arises from these facts is whether the defendants have raised a triable defence. Secondly, whether the disputes raised by the defendants are real and *bona fide,* and whether they are not subjecting this court to speculation. In *Maharaj v Barclays National Bank Ltd*[5] Corbett stated as follows: "The grant of the remedy is based upon the supposition that the plaintiff's claim is unimpeachable and that the defendant's defence is bogus and bad in law." However, even if a defendant's defence appears weak or insubstantial, the court retains a residual discretion to refuse summary judgment. See *Tesven CC v SA Bank of Athens*.[6]

Costs

[24] During the hearing of this application, Counsel argued for costs as provided in the deed of suretyship, which reads as follows:

> "For the purpose of any legal action against us:-
>
> (a) ...
>
> (b) A Certificate. Purported to be signed by the creditor shall be prima facie proof of our indebtedness at the time of the institution of legal proceedings and we agree that such certificate shall be prima facie proof of our indebtedness to the creditor for purposes of Summary Judgment against us, unless it is proved that such certificate was issued fraudulently.
>
> (c) The cost of such action shall be borne by ourselves on a scale as between Attorney and Client, inclusive of collection charges, and all other charges incidental to the action, including tracing costs."

---

[5] *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 423F-G.
[6] *Tesven CC and Another v SA Bank of Athens* [1999] 4 All SA 396 (A); 2000 (1) SA 268 (SCA) para 26.

[25] The ordinary rule is that costs should follow the results. Rule 32(9) creates an avenue for the award of the costs on a punitive attorney and client scale as a mark of displeasure against a litigant's objectionable conduct. The plaintiff has made a case for a punitive costs award.

Conclusion

[26] In light of the foregoing, the plaintiff has made a case for summary judgment. The application does comply with the peremptory requirements of Rule 32(1)(a) to (d).

Order

[27] In the circumstances, I make the following order:

1 The application for summary judgment is granted.

2 The defendants are ordered to pay the costs of this application on an attorney and client scale.

[redacted]

S MSIBI

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MBOMBELA

Appearances

For The Plaintiff:	Adv J Matthee
Instructed by:	Serfontein Viljoen & Swart Attorneys Nelspruit
For the defendants:	Adv K W Van Heerden
Instructed by:	JJR AND Associates Incorporated Attorneys Nelspruit
Application heard on:	25 July 2025
Judgment delivered on:	27 August 2025