

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

Case number: 2024-052608

(1) REPORTABLE: No.

(2) OF INTEREST TO OTHER JUDGES: No.

(3) REVISED.

Date 8 August 2025

Signature

In the matter between:

BELCOTECH (PTY) LTD

Applicant

and

PLACEA 80 CC t/a CAFÉ 41

First Defendant

ANGELOS CHRISTOU ANGELIDES

Second Defendant

JACQUELINE LEONIE BENTO SCHUBACK

Third Defendant

VASILOIS AVRAKOTOS

Fourth Defendant

JUDGMENT – 8 AUGUST 2025

WILLIAMS, AJ

- [1] This is an application for summary judgment. Counsel for the Fourth Defendant, a surety, has raised arguments which contest the liability of the First Defendant, and thus of the sureties.
- [2] The Plaintiff owns the Eastwood Village Shopping Centre, where the First Defendant rented Shop 0[...] to conduct a restaurant business. R1,313,815.41 is claimed (Claim A) for arrear rental allegedly due, plus interest and costs. The Second to Fourth Defendants are sureties. The application for summary judgment thus seeks joint and several liability of all four Defendants for the rent. The sureties' liability, arising from the respective Deeds of Suretyship, is not in issue.
- [3] In the Lease Agreement concluded on 30 April 2019, the erstwhile owner of the shopping centre let to the First Defendant the said premises on the basis that a change of ownership in the land will not have any effect on the continued validity of the Lease (clause 36.1.1). The First Respondent agreed that it had fully acquainted itself with the premises and accepted the condition and layout of the premises (clause 28.1). It was agreed that the leased premises are fit for the purposes for which they were let (clause 28.2.1). The Agreement was stated to constitute the entire Agreement and that there were no warranties or representations, express nor implied, which would bind the parties henceforth (clause 29.1). It is in terms of this agreement that the Second to Fourth Respondents committed themselves as sureties and co-principal debtors. The Agreement was incorporated into and attached to the Particulars of Claim.
- [4] The Plaintiff says that on 9 September 2021 it acquired the property from the Government Employees Pension Fund (the erstwhile owner), and pleaded further that on the principle of "*huur gaat voorkoop*" the First Defendant became its tenant. The Title Deed is attached proving that Applicant is the owner. No cession was needed. The cession clause the Defendants say was not complied with, contemplates something else. There is no merit in the Defendants' contention that it did not become the Plaintiff's tenant under the Lease.

- [5] The Lease demanded advance payment on the first day of each month for that month (clause 4.2.1). This is relevant to the issue of reciprocity dealt with hereunder. The First Defendant agreed to pay the rental in advance, “*without deduction ...*”.
- [6] The Plaintiff has attached as annexure “C” to its Particulars of Claim, a document entitled “*Tenant/debtor transaction*” indicating for the financial period March 2019 to February 2024. It shows that the First Defendant was indebted for an amount of R1,313,815.41 (the amount claimed in Claim A in the Particulars of Claim and the amount claimed in the summary judgment). The entries show when payments were and were not made.
- [7] Other than plead why it did not pay rental, the Defendant did not in paragraph 7 of its Plea (in answer to paragraphs 11 to 18 of the Particulars of Claim) deny the document and its content. Defendant has focused on its reasons for not paying much of the rental.
- [8] The First Defendant was a longtime tenant. It contends that on 28 November 2017, some two years before the Defendants concluded this Lease Agreement, the previous landlord had let adjacent premises to the Heritage Restaurant and allowed the Heritage Restaurant to erect a deck in front of the premises which First Defendant was renting.
- [9] In the Plea the First Defendant contends that this deck created a physical obstacle, making it difficult for prospective patrons to enter First Defendant’s premises (it also allegedly confused patrons as to which restaurant was which). The deck also reduced parking space in front of the premises. Moreover, the Heritage Restaurant cooked on open fires and the smoke drove away potential patrons from the First Defendant’s business.
- [10] The First Defendant’s case is that Plaintiff failed to provide undisturbed possession and occupation of these premises, for purposes of conducting a restaurant. Because of this breach, First Defendant had no option other than

to reduce the amount it paid for rent. The First Defendant contends in the Plea that it was paying approximately 50% of the rental due. It is common cause that later the First Defendant has vacated the premises. It is not clear whether this was before or after expiry of the Lease period. Nothing turns on that. The allegation in the Plea that the First Defendant had paid 50% of the rent, shows that this was only for a while.

- [11] The affidavit resisting summary judgment incorporates what is alleged in the Plea. The bare contention is repeated that the First Defendant and the Plaintiff did not enter into a Lease Agreement. The implication is that the Plaintiff is not entitled to sue the First Defendant as its lessee. As indicated, there is no merit in this angle.
- [12] The affidavit contends that the deponent to the affidavit in support of the application for summary judgment *“cannot have any personal knowledge of this matter prior to the purchase of the property on 9 September 2021 ...”*, when the Plaintiff became the owner. It is thus argued that on this account summary judgment cannot be granted.
- [13] Mr Cilliers, a director of the Plaintiff, says that he has dealt with attorneys who have been the attorneys of record for the Plaintiff throughout (i.e. since inception of the dispute with First Defendant). He has had access to all relevant documents (which documents are under his control). He says he is thus able to verify the causes of action and the amounts claimed on the grounds set out in the Particulars of Claim. He attached the Title Deed proving that the Plaintiff became owner of the Centre. He attached the Lease and pointed out that the First Defendant signed this Lease on 30 April 2019, long after the discussions with the previous owner about the deck.
- [14] The Lease schedule referred to above, is also attached and confirmed under oath. As stated, the content of this schedule is not in dispute. In my view Mr Cilliers does have the requisite knowledge of the facts to be able to confirm the amount and cause of action.

- [15] Returning to the defences, Mr Cilliers points out that the deck was erected over only two of the parking bays, as far back as November 2017 (some 17 months prior to the First Defendant concluded this Lease Agreement). The First Defendant was thus fully aware of the layout of the premises and aware of the deck, the adjacent tenants and their modus operandi. Indeed, the First Defendant had occupied the premises for long, before entering into the Lease Agreement wherein the First Defendant expressly recorded its satisfaction of the premises, specifically too that it was fit for a restaurant business.
- [16] The First Defendant's affidavit confirms that the deck was already constructed during November 2017. It entered into negotiations with the erstwhile owner/landlord (the Government Employees Pension Fund), in the hope of resolving its complaint about the deck. A meeting was held during September 2018 (some months before First Defendant entered into the Lease Agreement). The First Defendant says that at such meeting it became confident "*... that the various issues could be resolved and that consideration could be given to entering into a further Lease ... on behalf of the First Defendant*". Emails exchanged between the respective attorneys during November 2018 are attached to the affidavit resisting summary judgment. These were exchanged some months before the First Defendant ultimately entered into the written Lease Agreement, wherein the parties agreed that the written Lease constitutes the entire Agreement.
- [17] No warranties or representations, whether express or implied, which are not recorded on the Lease, were binding on the parties (clause 29.1). One of the warranties was that the landlord did not warrant that the leased premises are fit for the purposes for which they are let, and that the First Defendant, as prospective tenant, had fully acquainted itself with the premises and accepted the condition and layout of the premises (clause 28.1).
- [18] I do not see any basis upon which the Defendants can contend that it is entitled to withhold or reduce the amount of rental to be paid.

- [19] The First Respondent's obligation to pay rental and the Defendant's obligation to give full occupation (without the smoke nuisance and fewer parking bays), are not reciprocal. The Lease furthermore demands that rent is payable "*without deduction*". The owner/landlord is also indemnified for damages caused by adjacent tenants.
- [20] Clause 11.4 of the Lease precludes a claim against the landlord for compensation for losses arising from the temporary interference with tenancy or beneficial occupation. The First Defendant argues that this means that such a claim is thus still possible if there is a permanent interference with the tenancy or beneficial occupation of the premises. This interpretation, so it is argued, would override the clause in the Lease that the landlord is indemnified and overrides the clause that rent is payable "*without deduction*". The argument is also that the non-reciprocity difficulty is also overcome. I disagree. Clause 11.4 is a subclause of a clause dealing with the landlord's rights to do repairs and alterations (correctly accepted by the Defendants to preclude claims for temporary interference or diminution). But clause 11.4 has to yield to the clauses that the First Respondent, having inspected the premises and found them suitable for a restaurant business. It has to yield too the reciprocity principle and the clause that demands payment without deduction.
- [21] That brings me to the conditional counterclaim. The First Respondent argues in its papers that it suffered damages, which can be set-off against the arrear rent. Indeed, a cogent illiquid counterclaim can serve as a defence to an application for summary judgment. The counterclaim has a difficult legal premise, as indicated above. But even if I am wrong, the counterclaim is too tenuous to stave off summary judgment.
- [22] It is alleged that the Plaintiff has breached its obligations under the Lease, as contended for in paragraphs 7.2 to 7.7 of the Plea. Paragraph 7.7 alleges that the difficulties caused by the deck, and the other tenant, was brought to the attention of the Plaintiff on numerous (unspecified) occasions. The most we however have, is the correspondence about the deck, before the Lease was

entered into. The First Defendant had other options (aliter what is pleaded in paragraph 7.8 of its Plea) than to unilaterally reduce the rental payable. It could and should have cancelled and claimed damages. It could also have sat it out and claimed damages after expiry of the Lease. It did neither. In fact, there is no evidence, other than say-so, that it complained.

[23] Also, the damages as presently formulated in the conditional counterclaim, are vague. For the first time the First Defendant now claims that it experienced a loss during the currency of the Lease. It says that was at least R180,000.00 per month. The *bona fides* of this defence would have been enhanced if First Defendant did not keep this to itself for so long. Also, if it did not put up a vague version of “at least” so much loss. No detail or formulation is ventured of how and when these losses were suffered. One would expect more detail of the losses suffered in each individual month.

[24] My scepticism of the damages claim as presently alleged, does not mean that First Defendant will not succeed with its conditional counterclaim in due course (the counterclaim would then no longer be “conditional”) – see **Soil Fumigation Services v Chemfit Technical Products**.¹ Fourth Defendant’s counsel has certainly raised a spirited defence, but alas, I cannot find that it is *bona fide*.

[25] The First Defendant has not put up cogent facts from which I can discern a *bona fide* defence. I have had regard to the authorities attached to the Fourth Defendant’s Heads of Argument (which indirectly serve as Heads of Argument for the other Defendants). Neither the **Baynes Fashion (Pty) Ltd t/a Jurani**, nor the **Tudor Hotel Basseri and Bar (Pty) Ltd**-judgments preclude the findings that I have come to.

[26] The argument that payment of rental could be withheld because of so-called anticipatory breach, encounters the same logic, and is refuted thereby. I have

¹ 2004 (6) SA 29 (SCA) at para [11].

read **Datacolor Industrial (Pty) Ltd v Intamarket (Pty) Ltd**² quoted by the Fourth Defendant's counsel. In my view it does not assist the Defendants here.

[27] I thus grant summary judgment on Claim A, against the First to Fourth Defendants, jointly and severally, the one paying the other to be absolved, for:

27.1. Payment of R1,313,815.41;

27.2. Interest on the amount in paragraph 1 at the prescribed rate of interest from time to time, calculated from date of service of summons to date of payment;

27.3. Costs of suit insofar as it relates to claim A, on the scale as between attorney and client, including the costs of the application for summary judgment.

[28] It is noted that Claim B, as formulated in the Particulars of Claim, and the First Defendant's conditional counterclaim, as formulated after the Defendant's Plea, remain to be determined by this Honourable Court in due course.

J O WILLIAMS AJ

**ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

Date heard : 4 August 2025

Date of judgment : 8 August 2025

Representation for the Applicant: Adv W J Scholtz
Instructed by Fourie van Pletzen Inc.

Representation for the Defendants: Adv S Mulligan
Nixon & Collins Attorneys

² (2/1999) [2000] ZASCA 81 (30 November 2000).

