

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

Case number: 2024-033404

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

Date **8 August 2025**

Signature

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED
(Registration Number: 1962/000738/06)

Plaintiff

and

SPECIALISED PVC SHEETING PRODUCTS CC
(Registration Number: 2003/02896/23)

First Defendant

SIVIRAM RATTY
(Identity Number: 6[...])

Second Defendant

JUDGMENT – 8 AUGUST 2025

WILLIAMS, AJ

[1] This is an application for summary judgment. In the amended Particulars of Claim the Plaintiff contends (in Claim A) that the Business Overdraft Agreement was concluded with the First Defendant, a close corporation, for

some R1,000,000.00 which was to be used for financing working capital. Interest will be payable at 13.4% per annum above the Plaintiff's prevailing interest rate which, at the time, was 10.5% per annum.

- [2] The monies were duly advanced, it being contended that the First Defendant breached the terms of the Agreement and the Plaintiff terminated the facility after becoming aware of a "*material deterioration in the financial position of the First Defendant*".
- [3] It is alleged that as at 16 March 2023, the balance due was some R553,977.22, plus interest at 24.15%, to be calculated daily and compounded monthly in arrears from 16 March 2023 to date of payment. The Certificate of Balance, as provided for in the Agreement, was attached in confirmation of this averment.
- [4] It is also alleged (in Claim B) that a further "Covid-19 Emergency Term Loan Agreement" was concluded with the First Defendant on 12 June 2020, for R1,005,000.00, repayable in 66 monthly instalments of R20,609.23 per month, to commence six months after the first drawdown. Interest was agreed at 7.25% per annum, to run from date of signature of the Agreement. It is here alleged that the First Defendant failed to pay monthly instalments due, is in default, and that as at 16 March 2023 the amount due is R728,995.06, plus interest thereon calculated at 10.75% per annum, calculated daily and compounded monthly in arrears from 16 March 2023. Here too a Certificate of Balance (as provided for in the Agreement) is attached to confirm same.
- [5] The joint and several liability pleaded as against the Second Defendant, is based on (in respect of Claim A) a Deed of Suretyship concluded on 11 September 2015 (prior to the conclusion of the Business Overdraft Agreement) in which the Second Defendant bound himself jointly and severally, as surety and co-principal debtor *in solidum*, for the First Defendant in favour of the Plaintiff for the limited amount of R500,000.00, renouncing the well-known legal exceptions, and assuming liability for costs on the scale as

between attorney and client in respect of any action that may have to be instituted against him. It was also agreed in the Certificate to be signed by any manager of the Plaintiff, would constitute *prima facie* proof of what he owes under the Suretyship.

- [6] On 13 June 2016 the Second Defendant (also in respect of Claim A) executed a further Deed of Suretyship in respect of the limited amount of R1,200,000.00, with similar renunciation of benefits, assumption for costs on the scale as between attorney and client in respect of any action, and agreement that a Certificate signed by any manager (or accountant in this instance) would establish *prima facie* proof of his indebtedness under the Suretyship.

- [7] The Second Defendant's further indebtedness (under Claim B) is based on a written Guarantee, in terms whereof the Second Defendant undertook as principal, an independent obligation the due, punctual and full payment of the First Defendant monies due under the Covid-19 Emergency Term Loan Agreement (Claim B). The Second Defendant renounced the usual benefits and exceptions, assumed liability for "... *all legal costs in respect of any action instituted by the Plaintiff ...*" for repayment under the Covid-19 Emergency Term Loan Agreement. It also agreed the Certificate signed by any Manager of the Plaintiff which serves as *prima facie* proof of the Second Defendant's indebtedness.

- [8]
 - 8.1. Plaintiff pleaded specifically that the provisions of the National Credit Act, 34 of 2005, do not apply to Claim A, nor to Claim B, because the First Defendant is a juristic person and that the respective Agreements on which Claim A and B are based, are "*large agreements*" as envisaged in section 9(4)(b) of the National Credit Act, The amounts are higher than the thresholds established under section 7(1)(b) of the Act.
 - 8.2. As for the alleged liability of the Second Defendant, it is alleged that since the Act does not apply to the Agreements concluded with the First Defendant (on which Claims A and B are based) – that the Second

Defendant in turn cannot rely on the provisions of the National Credit Act, because section 4(2)(c), read with section 8(5) of the Act, prevail.

- [9] The Defendants' defence is that the agreements are invalid (not having been executed properly). Also, that the National Credit Act was thwarted. Further that the deponent to the affidavit in support of summary judgment does not have the requisite knowledge.
- [10] The Sheriff's Return of Service reveals that upon service of the Combined Summons, he also served on both the first and Second Defendants a Notice in which the Plaintiff stated that it "... *opposes the referral of this matter to mediation ...*" with reason therein that "... *Plaintiff has, prior to this action, afforded the first and Second Defendants an opportunity to pay the amounts due and owing to the Plaintiff. The first and Second Defendants have failed in this respect.*"
- [11] In their Plea the first and Second Defendants plead that the terms of the National Credit Act apply, and that the Plaintiff has failed to comply with its provisions. It is also contended in the Plea that the Plaintiff subjectively dismissed the prospect of mediation, without basis – that consequently the Plaintiff is in "*contravention of the basis of Rule 41A of the Uniform Rules of Court*". Reference was made to **Koetsioe and Others v Minister of Defence and Military Veterans and Others**.¹ In that matter the Applicants admitted that they did not consider mediation, and their counsel persisted therein. The Court was nonetheless bound to deal with the matter, but deprived the Applicant of costs. Defendants contend that it must be implied that the Plaintiff in the instant matter has not considered mediation earnestly, and by implication the Plaintiff has a "*dismissive approach*" to mediation (and thus that judgment should not be granted).

¹ [2021] ZAGPHC 203.

- [12] In the Heads of Argument filed for the Defendants, it is postulated that one of the questions for determination is whether the Plaintiff can unilaterally dismiss the requirements of Rule 41A and “*assume first and Second Defendants’ response ...*”. The suggestion seems to be that if the Plaintiff’s attitude can be held to be unilaterally dismissive of the requirements of Rule 41A, that, at least, summary judgment cannot be granted.
- [13] Uniform Rule 41A defines mediation as, inter alia, being a “*voluntary process entered into by agreement ...*”. Rule 41A(2)(a) requires that a Plaintiff must serve on each Defendant (a notice indicating whether such Plaintiff “... *agrees to or opposes referral of the dispute to mediation*”.
- [14] The requirement for the filing of a notice under Rule 41A is clearly meant to prod a Plaintiff to at least consider mediation, before proceeding with the Court litigation. I cannot conclude here that the Plaintiff did not consider it.
- [15] A Defendant is also invited by the Rules to respond. Rule 41A(2)(b) requires that before filing a Plea or later, but not after filing a Plea, a Defendant must file a Notice whether the Defendant “... *agrees to or opposes refusal of the dispute to mediation*”. That is in response to the Plaintiff’s election. A Defendant clearly cannot force a Plaintiff to mediate. But a Defendant’s reply whether or not it would agree to mediation, gives the Plaintiff a second opportunity to consider mediation. Here the Defendant never filed a response.
- [16] In its Heads of Argument the Plaintiff makes the telling point that the Defendants’ argument is disingenuous in this regard, since the Defendant has raised in its Plea and its Affidavit Opposing Summary Judgment, contentions that the very agreements on which the alleged indebtedness is based, are invalid and unenforceable. There would be nothing to mediate then.
- [17] Irrespective of this, the Plaintiff’s Notice contends that it does not wish to mediate because, despite affording the Defendants an opportunity to pay, the Defendants have failed in this respect. There is no allegation by the

Defendants that after receipt of the Letter of Demand attached as annexures “R” and “X” to the Particulars of Claim, they attempted to refute, or negotiate, the alleged indebtedness. I hold that there is no impediment, based on Uniform Rule 41A, which precludes the Plaintiff from pursuing this litigation. It also cannot be said that the Plaintiff proceeding, having elected not to mediate, is in this instance an abuse of process (see paragraphs 26 to 32 of the applicant’s heads, which I agree with).

- [18] The Defendants contend that the deponent to the affidavit in support of the application for summary judgment is not authorised, or does not have the requisite knowledge of the facts. Lerato Mathibe, the deponent, states under oath that she is a Manager, Business Support and Recoveries, Business & Commercial Banking Credit, a division of the Plaintiff. She attaches a Letter of Authority and states that she personally dealt with the matter (which is borne out by the fact that she signed two of the Certificates of Balance). She explains that she holds all the files, documents and records, has verified same and has verified the correctness of the records. She also significantly states that much of the knowledge is required by her in the ordinary course of the execution of her duties during which she obtained personal knowledge of the facts.
- [19] The suggestion that documents that she relies on, are not attached to her own affidavit, are not *bona fide*. The deponent, Lerato Mathibe, states that she has read the Summons and annexures thereto and that the averments in the Summons are *mutatis mutandis* incorporated into her affidavit. Her references to the annexures to the Plaintiff’s Particulars of Claim, are thus legitimate and admissible references/incorporation of those annexures as part of her affidavit.
- [20] The contention that the National Credit Act is not applicable, is raised by the Defendants as a purported “*Special Plea*”. That also has no merit. Both agreements (i.e. in respect of Claim A and Claim B) each are “*large agreements*” – since they are concluded for amounts in excess of the then threshold of R250,000.00 determined by the Minister under section 7(1)(b) of

the Act. The First Defendant is a juristic person and the Act does not apply to a large Agreement (refer sections 4(1)(b), read with section 9(4) of the National Credit Act).² The suretyships and guarantee signed by the Second Defendant, albeit “*credit guarantees*” under the Act, do similarly not fall under the provisions of the National Credit Act (refer section 4(1) of the National Credit Act).³

[21] In paragraph 11 of their Plea, the defendants contend that there was a failure by Plaintiff “... *to assess the first and Second Defendants’ ability to afford credit, prior to granting of overdraft facility, it is put forward that Plaintiff has failed in its obligations as a credit-provider, and engage in reckless lending in favour of the First Defendant, to its detriment (sic)*”. It is not stated in the Plea what the First or Second Defendants’ financial position would have been at the time – this paragraph of the Plea merely complains that it was incumbent upon Plaintiff to show that it did not indulge in reckless lending. In my view it is not for Plaintiff to consent same, but would be incumbent upon a Defendant to put up facts from which one could determine that to give monies to the first and/or Second Defendant at the time, could be regarded as reckless lending. The averments pleaded in paragraph 20 of the Plea do not take the matter any further for the Defendants in this regard. The Defendants abided in bald allegations that Plaintiff failed to assess their ability to afford credit.

[22] In the affidavit resisting summary judgment, the Defendants did not take the matter further than bald allegations of reckless lending (see paragraph 44.1 of the affidavit). The argument is that it was incumbent upon the Plaintiff to prove that it did not indulge in reckless lending (per paragraph 48.1 of the affidavit resisting summary judgment). As indicated, one would have expected the

² **Firststrand Bank Ltd v Carl Beck Estates (Pty) Ltd and another** 2009 (3) SA 384 (T).
³ **Shaw & Another v Mackintosh & Another** 2019 (1) SA 398 (SCA).

Defendants to assert why monies in the amounts stipulated in the respective agreements, should not have been made available to them.⁴

[23] An analysis of the points raised by the Defendants reveal that none of the Agreements relied upon by the Defendants is admitted. This goes to the issue of *bona fides* or lack thereof. The Agreements of Claims A and B are pleaded in paragraphs 5 and 14 of the Particulars of Claim. The two suretyships and the guarantee on which the Second Defendant's liability is based, are pleaded in paragraphs 23, 25 and 32 of the Particulars of Claim. The Defendants have abided in a bald denial that these Agreements were ever concluded. The best they can do about the document on which Claim A is based, is to contend that it was not concluded at Southdale (as an "alternative"). As for the Covid-19 Agreement, it is pleaded that it was not valid (after the bald denial of its existence) – because it was not properly done electronically and, furthermore (without any reason) it is contended that Plaintiff's representative in this case was not authorised.

[24] In the case of the two suretyships and the guarantee, the Defendants abide in a bald denial. But curiously plead "*in amplification*" a denial "*that a valid ... agreement was concluded electronically*". No further detail is given. These bald denials of the very existence (or in the alternative/amplification that the agreements are not valid – without specifying reasons) are a negative factor since a *bona fide* defendant would acknowledge some or other legal basis upon which monies loaned by a bank, would have been advanced on.

[25] The same goes for the denial that the certificates relied upon constitute *prima facie* proof (and in the absence of contrary proof, become conclusive proof). Bald denials do not suffice. One would expect from a *bona fide* Defendant to at least say too that nothing is owed, or that a lesser amount is owed. The

⁴ SA Taxi Securitisation (Pty) Ltd v Mbatha and Two Similar Cases 2011 (1) SA 310 (GSJ, 26 & 29.

Defendants say nothing in that regard. The bald denials cannot overturn what the deponent in the affidavit in support of summary judgment says expressly, or clearly implies, that the persons who signed the certificates are indeed managers of the Plaintiff at the time that they signed their respective Certificates of Balance.

[26] Finally, I need to deal with the contention that summary judgment should not be granted, so it is argued, because the amounts claimed are not capable of prompt and speedy ascertainment (i.e. are not liquidated amounts). There is no merit in this contention. To uphold that argument would mean that no bank or money lender would ever be able to obtain summary judgment. The amounts here are liquid and established on a balance of probability.

[27] The Plaintiff is entitled to summary judgment in respect of both Claims A and B, together with the interest on each claim as prayed for. The Defendants have not denied that the amounts were advanced and have abided in bald averments that do not sufficiently dispute their proven failure to repay. I hold, for reasons above, that they have not raised a *bona fide* defence to either Claim A, nor to Claim B. Also, the Second Defendant has not raised a defence to his liability, which is joint and several with the liability of the First Defendant. I note that costs are not sought on attorney and client scale per the draft orders submitted.

[28] The defendants are longtime customers of the plaintiff. Due to their circumstances, I exercise the discretion I have under Rule 45A (and the common law). My judgment is not executable for 60 days. Perhaps a solution can be found. But plaintiff must have its judgments.

[29] I thus grant judgment against the First and Second Defendants, jointly and severally, the one paying, the other to be absolved for :

23.1. Payment of the sum of R553,977.22 in respect of Claim A;

- 23.2. Interest on the amount at the rate of 24.150% *per annum*, calculated daily and compounded monthly in arrears, from 16 March 2023 to date of final payment;
- 23.3. Payment in the sum of R728,995.06 in respect of Claim B;
- 23.4. Interest on the amount at the rate of 10.750% per annum, calculated daily and compounded monthly in arrears, from 16 March 2023, to date of final payment;
- 23.5. Costs of suit on scale B, to include the opposed costs of the application for summary judgment;
- 23.6. Under Rule 45A the execution of this judgment is stayed to 31 October 2025.

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 Y Coertzen
Instructed by Newtons Attorneys

Representation for the respondent : Mr A L Buckus
Instructed by Buckus Attorneys,
Johannesburg