



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable/Not Reportable

Case no: 19891/2024

In the matter between:

NEDBANK LIMITED

APPLICANT

and

DUDLEY BERNARD DAVIDS

RESPONDENT

Neutral citation:

Coram: MPHEGO AJ

Heard: 5 August 2025

Delivered: 26 August 2025

Summary:

This is an application for summary judgment initiated by Nedbank Limited against Mr Davids, the respondent. Nedbank claimed payment of certain amounts of monies (plus

interest and costs) from Mr Davids, who bound himself as surety and co-principal debtor for the obligations of DC Trustees (Pty) Ltd to Nedbank.

ORDER

Order

1 Summary judgment is granted in favour of Nedbank as follows:

CLAIM 1:

- a) Payment of the amount of R790,172.40;
- b) Interest on the amount in (a) above at the Plaintiff's prevailing prime rate plus 8.00% per annum, calculated daily and compounded monthly from 13 June 2024 to date of payment, both days inclusive.

CLAIM 2

- c) Payment of the amount of R1,079,465.62;
- d) Interest on the amount in (c) above at the Plaintiff's prevailing prime rate
- e) plus 0.50% per annum, calculated daily and compounded monthly from 13 June 2024 to date of payment, both days inclusive.

CLAIM 3

- f) Payment of the amount of R620,825.67;
- g) Interest on the amount in (f) above at the Plaintiff's prevailing prime rate plus
- h) 0.50% per annum, calculated daily and compounded monthly from 13 June 2024 to date of payment, both days inclusive.

CLAIM 4

- i) Payment of the amount of R1,458,969.92;

- j) Interest on the amount in (i) above at the Plaintiff's prevailing prime rate
- k) minus 0.35% per annum, calculated daily and compounded monthly from 13 June 2024 to date of payment, both days inclusive.

CLAIM 5

- l) Payment of the amount of R351,465.34;
- m) Interest on the amount in (l) above at the Plaintiff's prevailing prime rate
- n) minus 0.30% per annum, calculated daily and compounded monthly from 13 June 2024 to date of payment, both days inclusive;

CLAIM 6

- o) Payment of the amount of R347,772.06;
- p) Interest on the amount in (o) above at the Plaintiff's prevailing prime rate minus 0.30% per annum, calculated daily and compounded monthly from 13 June 2024 to date of payment, both days inclusive;

CLAIM 7

- q) Payment of the amount of R347,625.69;
- r) Interest on the amount in (q) above at the Plaintiff's prevailing prime rate minus 0.30% per annum, calculated daily and compounded monthly from 13 June 2024 to date of payment, both days inclusive.

CLAIM 8

- s) Payment of the amount of R867,687.97;
- t) Interest on the amount in (s) above at the Plaintiff's prevailing prime rate
- u) plus 0.60% per annum, calculated daily and compounded monthly from 13 June 2024 to date of payment, both days inclusive;

2 Mr Davids is hereby ordered to pay costs of suit incurred to date of this judgment (on the scale as between attorney and client).

JUDGMENT

Mphego AJ:

[1] This is an application for summary judgment initiated by Nedbank Limited ("Nedbank"), the plaintiff in the main action. The defendant in the main action is Dudley Bernard Davids ("Mr Davids"). Nedbank is the applicant and Mr Davids is the respondent in the application for summary judgment.

[2] In its particulars of claim, Nedbank claimed payment of certain amounts of monies (plus interest and costs) from Mr Davids, who has bound himself as surety and co-principal debtor for the obligations of DC Trustees (Pty) Ltd ("the company") to Nedbank.

[3] Nedbank's claim arises from a series of eight written loan agreements entered into between Nedbank and the company between August 2018 and August 2019. Each loan agreement required the company to repay the advanced amounts in monthly instalments, with interest accruing at rates linked to Nedbank's prime lending rate.

[4] As security, mortgage bonds were registered over various immovable properties owned by Mr Davids, and he provided a written suretyship in favour of Nedbank. Mr Davids liability arises from the written suretyship, in which he renounced the benefits of exclusion and division, and agreed to be jointly and severally liable with the company for all amounts owing to Nedbank.

[5] The company defaulted on its repayment obligations under all eight loan agreements, resulting in arrears and outstanding balances. As a result of the company's failure to make repayments under the loan agreements, Nedbank claims that Mr Davids,

as surety and co-principal debtor, is liable for the full outstanding amounts, interest, and legal costs (on the scale as between attorney and client).

[6] Nedbank's claim in respect of the 8 loan agreement is structured as follows:

- a) In relation to the first loan agreement, an amount of R790,172.40 plus interest at prime + 8% per annum (19.75%) from 13 June 2024.
- b) In relation to the second loan agreement, an amount R1,079,465.62 plus interest at prime + 0.5% per annum (12.25%) from 13 June 2024.
- c) In relation to the third loan agreement, an amount R620,825.67 plus interest at prime + 0.5% per annum (12.25%) from 13 June 2024.
- d) In relation to the fourth loan agreement, an amount R1,458,969.92 plus interest at prime - 0.35% per annum (11.40%) from 13 June 2024.
- e) In relation to the fifth loan agreement, an amount R351,465.34 plus interest at prime - 0.3% per annum (11.45%) from 13 June 2024.
- f) In relation to the sixth loan agreement, an amount R347,772.06 plus interest at prime - 0.3% per annum (11.45%) from 13 June 2024.
- g) In relation to the seventh loan agreement, an amount R347,625.69 plus interest at prime - 0.3% per annum (11.45%) from 13 June 2024.
- h) In relation to the eighth loan agreement, an amount R867,687.97 plus interest at prime + 0.6% per annum (12.35%) from 13 June 2024.

[7] The company was liquidated in August 2024 and Nedbank launched action proceedings in September 2024, on the basis that the company failed to remedy the breaches, and the full outstanding balances in respect of the loan agreements became due, owing, and payable. As a result of the company's breach and subsequent liquidation, Mr Davids, as surety and co-principal debtor, became liable for the repayment of the outstanding amounts, together with interest and legal costs on an attorney and client scale. Mr Davids is of course the defendant in the action proceedings launched in September 2024.

[8] Mr Davids filed his plea on 8 November 2024 raising the following defences:

- a) He stated in his plea that he had no knowledge as to whether the representative of Nedbank was duly authorised to sign the loan agreements and, on that basis, denied the validity of each loan agreement.
- b) Mr Davids denied that the company breached the loan agreements.
- c) He pleaded that in relation to the first loan agreement, Nedbank wrongfully froze or blocked the loan account in September 2023, preventing payment, and thus breached the agreement itself.
- d) In relation to the second loan agreement, he asserted that the company paid the monthly instalments and the account was not in arrears.
- e) In relation to the third to eighth loan agreements, he stated that the company continued to pay monthly instalments until Nedbank wrongfully froze or blocked the company's cheque account in January 2024, preventing further payments. He denied being indebted to the plaintiff under any of the agreements.
- f) Nedbank's conduct in "freezing" the accounts and refusing to accept performance from the company was prejudicial to him as surety. He claims that this conduct should discharge any liability he might have as surety, wholly or to such extent as the court may find equitable.
- g) He denied the validity of the suretyship agreement, alleging that Nedbank failed to give him the opportunity to obtain independent legal advice before signing, and that he would not have entered into the suretyship had he received such advice.
- h) Nedbank's claim is defective for failing to attach copies of the mortgage bonds relied upon and that this is in contravention of Uniform Rule 18(6), because the mortgage bonds constitute written loan agreements and, in their absence, Nedbank's claim is procedurally defective.

[9] Nedbank applied for summary judgment against Mr Davids on 28 November 2024 on the basis that Mr Davids had not raised any bona fide defence in his plea, and that there were no triable issues. Nedbank relied on certificates of balance, issued in

terms of the loan and suretyship agreements, as prima facie proof of the amounts due and payable by Mr Davids.

[10] Nedbank asserted that the defences raised by Mr Davids in his plea are not bona fide, specifically:

a) In relation to Mr Davids' assertion that he had no knowledge as to whether the representative of Nedbank was duly authorised to sign the loan agreements, Nedbank pointed out that, in the liquidation proceedings, Mr Davids (in his capacity as sole director of the company) had previously admitted under oath that Nedbank was represented by authorised representatives during the conclusion of each of the loan agreements.

b) Mr Davids' allegations regarding the "freezing" of accounts are factually incorrect and do not constitute a valid defence. Nedbank explained that, on 26 September 2023, it placed "legal codes" on the company's loan accounts. This action prevented further amounts from being debited against those accounts (no further advances or debits), but that credits (payments) could still be received into the accounts. Nedbank stated it was always possible for the company or Mr Davids to make payments into the loan accounts, and the accounts were not "frozen" in the sense alleged by Mr Davids.

c) Mr Davids' denial of breach and claims of payment are not supported by evidence, and the transaction histories show arrears. Nedbank stated that the transaction histories for each loan account (annexed to the particulars of claim) clearly show that the company was in arrears on the loan agreements. For example, Nedbank pointed out that the second loan account was in arrears since December 2022, with arrears of R125,662.60 as at 12 June 2024. In relation to the third loan agreement, Nedbank pointed out that at time the action proceedings were instituted, it was also in arrears. Nedbank stated that, in any event, the outstanding balance under the third agreement became due and payable as a result of the company's breach of the other loan agreements, in accordance with the cross-default provisions in the agreements.

- d) Mr Davids' denial of breach is a "bald denial" and not supported by any evidence or engagement with the actual account records.
- e) Nedbank pointed out that Mr Davids' claim that monthly instalments were paid every month is inconsistent with his other defence that the accounts were "frozen" and payment was prevented. Nedbank stated that if the accounts were truly frozen, Mr Davids could not have made the payments he claims to have made.
- f) Nedbank submitted that a defendant who pleads payment as a defence bears the onus of proving that payment took place and that Mr Davids failed to provide any proof of payment or evidence that the accounts were not in arrears.
- g) Nedbank asserted that the challenge to the validity of the suretyship (lack of independent legal advice) is not a legal basis to escape liability, especially given Mr Davids' experience as an attorney and businessman. Nedbank pointed out that there is no legal requirement that a creditor must ensure a surety receives independent legal advice before signing, unless specifically required by statute or contract (which was not the case here).
- h) In relation to Mr Davids' claim that Nedbank's claim is procedurally defective because it failed to attach the mortgage bonds to the particulars of claim, Nedbank pointed out that Mr Davids had admitted signing the loan agreements and suretyship agreement, and had acknowledged the existence of the mortgage bonds in his plea. In heads of argument Nedbank asserted that the mortgage bonds are not central to the relief it seeks because it is not enforcing the mortgage bonds but is instead pursuing a monetary claim based on the loan agreements and suretyship.
- i) Nedbank stated that Mr Davids' denials of breach are not bona fide, are unsupported by facts, and do not raise any genuine issue for trial and maintained that the documentary evidence (transaction histories and certificates of balance) is clear and uncontradicted.

[11] Mr Davids appeared in person at the hearing of the application for summary judgment and Nedbank was represented by Adv Rabie.

Submissions advanced on behalf of the Nedbank

[12] Adv Rabie, appearing on behalf of Nedbank, advanced arguments that Mr Davids' defences are not bona fide, are either bald denials or legally irrelevant, and do not raise any genuine dispute of fact or law. He submitted that Uniform Rule 18(6) does not apply to the mortgage bonds, as Nedbank is not relying on the mortgage bonds for the relief sought but rather on the eight loan agreements. Therefore, Nedbank's exclusion of the mortgage bonds does not constitute a procedural defect. Nedbank clarified that although the mortgage bonds were registered as security, it is not seeking to enforce the bonds.

[13] He pointed out that the breaches of each loan agreement are expressly pleaded and supported by transaction histories and certificates of balance, which constitute prima facie proof of indebtedness. He submitted that according to the terms of the loan agreements, cancellation is not a prerequisite for the full outstanding balances to become due and that the company's liquidation itself is a breach, triggering the surety's (Mr Davids') liability. Adv Davies pointed out specific clauses in the loan agreements which indicate liquidation as a breach and that the clauses establish that the liquidation of the company triggered the immediate repayment obligations under the loan agreements.

[14] In addition, he pointed out that in terms of the loan agreements, when the company defaulted on one of the eight loans, the default infects all of the eight loans. He explained that the loan agreements contain cross-default provisions, meaning that a default under one loan agreement constitutes a default under all the loan agreements and this is a common feature in multi-loan facilities to protect the lender's interests. He explained the reference to the breach clause in each of the agreements (for instance, clause 11 in the first agreement and clause 17 in the others), which allows Nedbank to claim immediate repayment of all outstanding amounts if there is non-compliance by the company in respect of any of the loan agreements.

[15] Adv Rabie argued that the placement of legal codes did not prevent the company from making the required instalment payments. The company could still pay into the accounts, and the legal codes only stopped further debits, not credits. Adv Rabie referred the court to account statements annexed to the particulars of claim which showed that (1) the company continued to transact on the accounts after the alleged “freezing” dates, (2) payments and other transactions were still being processed, and (3) the arrears increased due to returned debit orders and non-payment, not because of any block on the ability to pay. He also highlighted pages in the record which indicated activity in relation to the company’s cheque accounts until July 2024.

[16] In relation to the second loan agreement Adv Rabie took the court to a bank statement which indicated that the second loan was in arrears. In relation to the third loan account, he took the court to a bank statement which indicated that the third loan account was in arrears when the action proceedings were instituted.

[17] Finally, Adv Rabie requested this court to make an order for costs on an attorney and client scale as provided for in the loan agreements.

Submissions advanced by Mr Davids

[18] Mr Davids appeared in person, unrepresented.

[19] He contended that Nedbank had the election either to cancel the loan agreements or to claim specific performance. He stated that Nedbank did not cancel the loan agreement but rather elected specific performance then blocked the accounts and prevented payment. He stated that Nedbank acted contrary to the election it made and repudiated the agreements.

[20] He submitted that by blocking the bond and cheque accounts after “electing” specific performance, the applicant wrongfully prevented the company from fulfilling its

obligations, and thus prejudicing him. He characterises this as a repudiation of the agreements and invokes the “prejudice principle”, arguing that such conduct is unfair and prejudicial, to him as surety. He contended that this conduct should either wholly or partially discharge his liability and that the matter should proceed to a full trial to determine the extent of the prejudice and its legal consequences.

[21] Mr Davids also submitted that the first loan account fell into arrears at the fault of the bank. He stated that he signed a debit order authorization form and thereafter Nedbank did not perform its obligations in relation to such form, by not debiting his account. He highlighted that in relation to the second loan agreement the months in which Nedbank failed to debit are – October 2023, November 2023, February 2024.

[22] He submitted that Nedbank was obliged to debit certain amounts but it did not do so and this failure by the bank amounts to a repudiation of the loan agreement in terms of which the failure occurred. He took the court through the months on which he alleges Nedbank was obliged to debit but did not, namely, the “problem”, or “repudiation” months. He indicated that:

- a) In relation to the third loan agreement – March to June 2021.
- b) In relation to the to the fifth loan agreement – August 2023 and February 2024.
- c) In relation to the sixth loan agreement – September to December 2023, January and February 2024.
- d) In relation to the seventh loan agreement – September to December 2023, January and February 2024.
- e) In relation to the eighth loan agreement – September to November 2023, January and February 2024.

[23] He argued that the company was willing and able to pay the required amounts during the above months, however, it was prevented from doing so by Nedbank. He asserts that any arrears in relation to the above loan agreement were a direct result of

Nedbank's conduct, not the company's default. He concluded that the above - repudiation, prejudice, procedural defects, and the factual disputes about payment and breach - are all triable and require proper ventilation at trial.

[24] The court noted that Mr Davids abandoned some of the defences he initially raised in his plea and/or his affidavit opposing the application for summary judgment.

Replying submissions advanced on behalf of Nedbank

[25] In reply, Adv Rabie briefly addressed three issues:

- a) He countered Mr Davids' claims that the accounts were "blocked" or "frozen", providing account statements showing continued activity and clarifying that "legal codes" did not prevent payment. He pointed out that these issues were raised and dismissed in the liquidation proceedings.
- b) He rebutted the argument that Nedbank failed to "pay itself" or debit the loan agreements in which there was alleged "repudiation". He advanced an interpretation which is acceptable to this court relating to the relevant bank statements, indicating that there was not enough money in the cheque account to service each of the accounts tied to the loan agreements. He argued that Mr Davids interpretation of the bank statement is incorrect and that where there are identical amounts which are debited and credit it is an indication that the bank attempted to debit the account but failed due to there not being enough funds to service each loan.
- c) Adv Rabie further indicated that the argument about the "repudiation" months was raised for the first time at the time of oral submissions being made by Mr Davids and that such submissions are not in the affidavit opposing summary judgment.

When will a court grant summary judgment?

Liquidated amount

[26] Nedbank was required to show that its claim is clear, based on a liquidated amount of money, or that the claim is based on a liquid document. The claim must be set out with sufficient particularity in the particulars of claim.

[27] In *Lester Investments (Pty) Ltd v Narshi 1951 (2) SA 464 (C)* it was clarified that a liquidated amount in money is, briefly stated, an amount which is either agreed upon or which is capable of prompt ascertainment or a matter of calculation. The amount must be either expressly agreed upon by the parties (for example, a fixed sum in a contract), or it must be capable of being ascertained by a simple calculation, without the need for further investigation, evidence, or the exercise of discretion by the court¹.

[28] Nedbank has shown this court that the company entered into 8 different loan agreements as pleaded and that Mr Davids entered into a deed of suretyship in terms of which he bound himself as surety and co-principal debtor for the company's obligations towards Nedbank. Nedbank indicated that it is not enforcing the security provided by mortgage bonds and is only seeking judgment for the monetary amounts due to it in respect of the loan agreements pursuant to the deed of suretyship signed by Mr Davids. The statements of account and certificates of balance annexed to Nedbank's particulars of claim reflect the amounts that are due and constitute prima facie proof of the amounts due in respect of each of the accounts.

[29] Mr Davids did not raise a substantial rebuttal to the above, save to challenge the clarity and completeness of Nedbank's claim raising that Nedbank's particulars of claim does not reveal a cause of action in relation to the third loan agreement since no breach is pleaded. Nedbank rebutted this by stating that the loan was in arrears at the time the summons was issued, with reference to pages in the record.

¹ Also see: *Fatti's Engineering Co (Pty) Ltd v Vendick Spares (Pty) Ltd 1962 (1) SA 736 (T)* at 739F; *Leymac Distributors Ltd v Hoosen and Another 1974 (4) SA 524 (D)* at 527A - E; *Commercial Bank of Namibia Ltd v Trans Continental Trading (Namibia) and Others 1992 (2) SA 66 (Nm)*

Is there a bona fide defence and a triable issue?

[30] The court in *First National Bank of SA Ltd v Myburgh and Another 2002 (4) SA 176 (C)* set out that a bona fide defence in the context of a summary judgment application is a defence that is both genuine (advanced honestly and not as a delaying tactic) and good in law (if proven at trial, it would constitute a valid answer to the plaintiff's claim).

[31] Mr Davids was required to satisfy this court, that he has a bona fide defence to the action and must fully disclose the nature and grounds of the defence and the material facts relied upon. His defence must be plausible and, if proven at trial, it should constitute a valid defence in law.

[32] In the *PH Finance (Pty) Ltd v Masilela 2023 JDR 2108 (WCC)* case, this division refused to grant summary judgment because the defendant raised a bona fide defence in the form of material misrepresentation which presented a triable issue. The court stated that: "The defendant in its defence made serious allegations as to the legitimacy and / or the status of the loan agreement. This Court cannot close its eyes and shut out a defendant who can demonstrate that there is a triable issue."

[33] As set out in paragraphs [19] and [20] above, Mr Davids submitted that Nedbank had the election to either cancel the loan agreements or claim specific performance, and elected specific performance. He argued that despite this election, Nedbank blocked the loan accounts and this conduct by Nedbank acting inconsistently and prejudicially is a recognised defence for a surety. He submitted that this conduct is unfair, unreasonable, and prejudicial to both the company and himself as surety. Mr Davids argued that due to Nedbank's repudiation and prejudicial conduct, any liability he might have had in relation to the suretyship is discharged, either wholly or to an extent the court finds equitable.

[34] Nedbank on the other hand, argued that Mr Davids' has not raised any valid or bona fide defence to the claims. Nedbank acknowledged that "legal codes" were placed on the accounts after they were handed over which prevented further debits (i.e., withdrawals or new transactions) on the accounts, but that the legal codes did not prevent credits (i.e. payments into the accounts). To this end, Nedbank submitted that payments could still be made towards the arrears or outstanding balances, and therefore Mr Davids was not prevented from performing obligations under the loan agreements. Nedbank took this court through documentation showing that the company continued to transact on the accounts after the alleged "blocking," undermining Mr Davids' claim that performance was rendered impossible. Nedbank further clarified that the placement of "legal codes" was a standard legal recovery step and did not amount to a repudiation or prevent payments towards the loan accounts.

[35] Nedbank rejected Mr Davids' argument that it acted inconsistently by electing specific performance and then "blocking" the accounts. Nedbank's position is that the loan agreements expressly provide that, upon breach, all outstanding amounts become immediately due and payable, without the need for cancellation. This court was taken through the specific documents supporting Nedbank's position. It also was submitted that Mr Davids' argument conflates the right to claim the full outstanding amount (as provided for in the agreements) with an obligation to keep the accounts open for all transactions, which is not supported by the contract.

[36] In *Tumileng Trading CC v National Security and Fire (Pty) Ltd* 2020 (6) SA 624 (WCC) this division granted summary judgment on the basis that there was nothing in the papers to justify withholding summary judgment. The court confirmed that the defendant is not required to show that the defence will probably succeed, but must set out facts which, if proved at trial, would constitute a defence. The papers in this application, unfortunately do not indicate that a triable issue exists.

[37] Having regard to the totality of Mr Davids' submissions and arguments, this court is not persuaded that Nedbank has a repudiation case to potentially answer to in trial or

that it has prejudiced the surety (Mr Davids). The documentation presented by Nedbank before this court overwhelmingly indicates the contractual parameters within which the amounts claimed by Nedbank became due and that the “legal codes” that were placed on the accounts after they were handed over did not prevent repayments to be made in terms of the loan agreements (or credits into the accounts). This court is not satisfied that a defence (which is bona fide and good in law²) arises, which when proven at trial, could constitute a valid answer to the Nedbank’s claim.

Order

[38] **The following order is made:**

Summary judgment is granted in favour of Nedbank as follows:

CLAIM 1:

- a) Payment of the amount of R790,172.40;
- b) Interest on the amount in (a) above at the Plaintiff's prevailing prime rate plus 8.00% per annum, calculated daily and compounded monthly from 13 June 2024 to date of payment, both days inclusive.

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² First National Bank of SA Ltd v Myburgh and Another 2002 (4) SA 176 (C)

- h) 0.50% per annum, calculated daily and compounded monthly from 13 June 2024 to date of payment, both days inclusive.

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u) plus 0.60% per annum, calculated daily and compounded monthly from 13 June 2024 to date of payment, both days inclusive;

[39] Mr Davids is hereby ordered to pay costs of suit incurred to date of this judgment (on the scale as between attorney and client).

TR MPHEGO
ACTING JUDGE OF THE HIGH COURT

Appearances:

For the applicant : Adv D.J. Rabie

Instructed by : STBB

N Grundlingh

For the respondent : Mr. D.B. Davids (in person)