IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case number: 2023-118765

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

Date **8 August 2025**

Signature

In the matter between:

SB GUARANTEE COMPANY (RF) PROPRIETARY LIMITED Plaintiff/Applicant
(Registration No 2006/021576/07)

and

JACQUES FRANCOIS MARE Defendant/Respondent
(**IDENTITY NO 8[...]**)

JUDGMENT – 8 AUGUST 2025

WILLIAMS, AJ

[1] This is an application for summary judgment. On 18 March 2020 and later on 29 March 2021 the Defendant concluded Agreements of Loan with the Standard Bank of South Africa Ltd ("Standard Bank"). The Defendant was

also called on to indemnify the Plaintiff, should Plaintiff become liable to Standard Bank. Two continuing covering mortgage bonds were registered in favour of Plaintiff over the immovable property (Erf 3[...], M[...] Extension 4).[1] These mortgage bonds were registered for R1,000,000.00 (with an additional sum of R250,000.00) and for R200,000.00 (with an additional sum of R50,000.00) respectively.

[2] It was agreed in the respective Loan Agreements that if the Defendant defaults (i.e. falls into arrears) with his payments, all amounts secured by the mortgage bonds would become immediately due and payable, subject to Plaintiff following the steps demanded by the National Credit Act, 34 of 2005. Thereafter the Plaintiff would be at liberty to institute proceedings for the recovery of the amounts due and ask for a declarator that the property be executable.[2] The Defendant further agreed that if judgment be granted, he would be bound to vacate the property at the Plaintiff's request.[3]

[3] It is not really in dispute that the Defendant fell into arrears.[4] Standard Bank, through the auspices of its attorneys, initiated debt review proceedings, made the necessary statutory demands and is now before Court, having followed the procedures set out in paragraphs 33 to 40 of its Particulars of Claim. Neither this process, nor the amounts that Defendant allegedly owes, is disputed. The claim is made for R1,318,615.79, plus interest at 12.097% calculated from 22 September 2023. Reliance is made in the Certificate of Balance.[5]

[4] In the Defendant's Plea (as amplified in the affidavit resisting summary judgment) the Plaintiff alleges that Defendant recklessly gave him a second loan account, in contravention of section 80 of the National Credit Act 34 of 2005. The Plaintiff contends that Standard Bank, as a credit provider under

---

1 Annexures "POC5" and "POC6" to the Particulars of Claim.
2 Para 9.1 of the two mortgage bonds.
3 Clause 9.1.
4 Annexures "POC01" and "POC04" to the Particulars of Claim.
5 Annexure "POC13" to the Particulars of Claim.

the Act, failed to conduct a proper means assessment under section 81(2)(iii) of the Act. It is also contended, in the alternative, that even if such assessment was properly done, the Plaintiff did not bring the Defendant to understand and appreciate the risks attendant upon accepting the further (second) loan.[6]

[5] In the affidavit opposing summary judgment, the Defendant gives further detail. The alleged harm was created, he says, when the bank granted the second home loan "*… as I was clearly over-indebted at the time, and could not possibly make the payments if one has regard to my basic salary which I was earning, and not simply taking payslips of only certain months where I was paid overtime and bonus payments identified below"*. There is a word omitted, but what is meant is clear: The bank (only) took into account three lucrative months, whereas in other months (it is now alleged) the benefits stated in the three months relied on by the Defendant, do not accrue.

[6] The Defendant also states further in his affidavit that Standard Bank asked him to furnish, inter alia, his latest payslip, or latest bank statement (showing the latest deposits) and his latest document proof of income:

> "*7. I duly complied with the above, completed the form and supplied three months' bank statements – December 2021 – Jan. to Feb 2021. Unfortunately the salary slips referred to other income and not normally part of my salary (i.e. salary/standby income, etc.)*

[7] The complaint that Standard Bank only had regard to three lucrative months, is opportunistic. It was the Defendant who chose to send those three statements, obviously to qualify for the loan. No allegation is made by Defendant that he advised the bank that he does not earn what is described as "*bonus payments, overtime and standby amounts"*. He does not allege that he told the bank officials involved that his income fluctuated. Nor does he assert, although he alludes to this, that he told the officials that he had recently "*been*

---

6 Defendant's Special Plea.

given a payment holiday, Standard Bank Credit Card, overdraft, interest, etc.". Paragraph 10 of his affidavit reveals that it was only in his mind (assuming that these underlying "*facts"* are true) that he had asked the bank for a three month payment holiday and had approached other credit providers for "*credit payment holidays*" and for an increase on his overdraft. He makes no allegation that he told the officials of these facts. The Defendant's case is that it was incumbent on the officials to know this or delve it up themselves.

[8] The Defendant's contention is that he was not schooled by the bank official/s as to the risks. This wears thin when one considers that the alleged non-compliance by the bank relates to a small (20%) increase of what had already been borrowed. The authorities are clear that reckless lending relates to what prevailed at the time of the loan. It was obvious to someone to add R200,000.00 to an existing R1 million loan. He complains in vague terms that the attorneys attending to this "loan grant" procedure, more pertinently the bond documents – should have ensured that he understand the cost of credit by conducting "NC Customer Education". Even if this was never done, he himself concedes that he hurriedly signed the documents in an empty office.

[9] The Defendant's gripe that the extension of credit to him of some R200,000.00 should never have happened because had the officials of the bank/Plaintiff schooled him better (or if they had delved deeper), he would not have taken the loan, is not credible. I find this version tenuous, where the very documents on which the bank relied were those furnished by the Defendant. The case of **Sparrenburg v First Rand Bank Ltd** (1732/2021), reported as [2023] ZANWHC 37 (6 April 2023), finds application. A Defendant who makes bald allegations pertaining to his financial status at the time, but does not take this Court into his confidence by providing what the true position was at the time. His case is typical of the cases referred to in **SA Taxi Securitisation (Pty) Ltd v Mbatha** (quoted in paragraph 28 of the Plaintiff's Heads of Argument) which decries Defendants making bald allegations that they were "over-indebted" and that *ipso facto* the lending must be regarded as reckless.

[10] Both Loan Agreements allow for the amount of the arrears to be certified by a manager. This is not in issue. These formalities/requirements are not really put in issue. I am alive to the Plea made by the Defendant, with specific regard to paragraphs 43 to 58 of such affidavit, read with paragraphs 65 and 67 thereof. It confirms that the amount of the debt is not in dispute.

[11] I will thus grant summary judgment in favour of the Plaintiff, against the Defendant, per the amount sought in the Particulars of Claim. The Defendant needs time, but the predicament he finds himself in, is not because of the bank/Plaintiff's failure to investigate his finances, or a failure to advise him when the second loan was extended. The bank is entitled to summary judgment. The best I can do for the Defendant (who says he has been a customer of Standard Bank for some 20 years), is to suspend the judgment for three months. This is a matter where I should exercise my discretion under Uniform Rule 45A. Perhaps the Defendant can remedy the situation and he and those who occupy the house through him, will not have to vacate.

[12] The issue of executability of the immovable property concerned also arises. The Defendant's version is that the property will not sell for more than R800,000.00. The reserve price mooted by the Plaintiff exceeds that estimate. Having regard to the annexures to the supplementary affidavit filed by the Plaintiff, it seems fair that I set a reserve price of R850,000.00.

[13] I thus grant an order in favour of the Plaintiff, against the Defendant, as follows:

13.1. Payment of the amount of R1,318,615.79;

13.2. Payment of interest on the amount in prayer 1, calculated at the rate of 12.097% per annum from 22 September 2023 to date of payment;

13.3. Costs of suit on the attorney and own client scale;

13.4. An Order declaring the following Mortgaged property specially executable for the amounts in prayers 1 and 2:

ERF 3[...] M[...] EXTENSION 4 TOWNSHIP
REGISTRATION DIVISION I.R. THE PROVINCE OF GAUTENG
MEASURING 991 (NINE HUNDRED AND NINETY ONE) SQUARE METRES
HELD BY DEED OF TRANSFER T11021/2020

SUBJECT TO THE CONDITIONS THEREIN CONTAINED

(Situated in the Magisterial District of Ekurhuleni Central and according to the Local Authority better known as 9[...] P[...] Avenue, Marlands Extension 4, Germiston, 1[...] and herein referred to as "the Property).

13.5. An order authorizing the issuing of a writ of execution in terms of Rule 46 as read with 46A for the attachment of the Property;

13.6. That a reserve price be set for the sale of the Property, at a sale in execution, at R850,000.00;

13.7. Under Uniform Rule 45A, the operation of this order is suspended to 7 December 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 M Rakgoale
	Instructed by LGR Inc.
Representation for the Respondent :	Nance-Kivell Attorneys