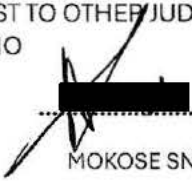


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2023-130215

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
8/9/2025	
DATE	MOKOSE SNI

In the matter between:

FIRST NATIONAL BANK LIMITED

Plaintiff

and

BLACKTEL (PTY) LIMITED

1st Defendant

(Registration No. 2017/318346/07)

JOHANNES VAN WYK

2nd Defendant

JUDGMENT

MOKOSE J

[1] The plaintiff claims payment from the defendant based on a concluded deed of suretyship in which the second defendant bound himself as surety and co-co-principal debtor to the first defendant.

The plaintiff's claim is premised on an overdrawn account which as of 19 September 2023 was overdrawn by the amount of R491 412,34.

[2] The second defendant was cited as surety, the deed of suretyship having been signed by him on 17 September 2019. In his affidavit resisting summary judgment the second defendant premised his defence on an exit agreement wherein he resigned as director and shareholder of the first defendant. He alleges that the directors and shareholders of the first defendant absolved and irrevocably released him from the first respondent and specifically from any and all guarantees and suretyships. He further denies any liability to the plaintiff.

[3] In the pleadings, the defendant does not claim to be released from the suretyship. He claims indemnification from the liability by third parties. In his submissions, counsel for the second defendant contends that his client has caused to serve the third party notice together with annexures on these third parties in terms of Rule 13 of the Uniform Rules of Court claiming indemnification from the relevant third parties. No proof of such service was filed in the papers.

[4] It is trite that in summary judgment applications the defendant must advance his or her defence with a sufficient degree of clarity to enable the court to ascertain whether he has deposed to a defence which, if proved at trial, would constitute a good defence to the action.¹

[5] In his affidavit resisting summary judgment, the defendant is adamant that he is not liable for the plaintiff's claim. He contends that the default event occurred after the conclusion of the exit agreement. At that stage, he had severed all ties with the first defendant and is accordingly absolved from liability. The second defendant contends further that he relies on advice that Rule 13 gives him rights to avoid the multiplicity of actions. As such, the second defendant contends that there is a triable issue.

¹ Breytenbach v Fiat SA (Edms) Bpk 1972 (2) SA 226 at 227G to 228B

[6] The court in the case of *Joob Joob Investments v Stocks Mavundla Zek Joint Venture*² held the following:

"[31] So too in South Africa, the summary judgment procedure was not intended to 'shut (a defendant) out from defending', unless it was very clear indeed that he had no case in the action. It was intended to prevent sham defences from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavouring to enforce their rights.

[32] The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of his or her day in court. After almost a century of successful application in our courts, summary judgment proceedings can hardly continue to be described as extraordinary. Our courts, both first instance and at appellate level, have during that time rightly been trusted to ensure that a defendant with a triable issue is not shut out. In the Maharaj case at 425G – 426E, Corbett JA was keen to ensure, first, an examination of whether there has been sufficient disclosure by a defendant of the nature and grounds of his defence and the facts upon which it is founded. The second consideration is that the defence so disclosed must be both bona fide and good in law. A court which is satisfied that this threshold has been crossed is then bound to refuse summary judgment. Corbett JA also warned against requiring of a defendant the precision apposite to pleadings. However, the learned Judge was equally astute to ensure that recalcitrant debtors pay what is due to a creditor.

[33] Having regard to its purpose and its proper application, summary judgment proceedings only hold terror and are 'drastic' for a defendant who has no defence. Perhaps the time has come to discard these labels and to concentrate rather on the proper application of the rule, as set out with customary clarity and elegance by Corbett JA in the Maharaj case at 425G – 426E"

[7] It is evident from the case law quoted above that a defendant is not required to show that its defence is likely to prevail. The test, even after the amendment to rule 32, is whether the defendant has disclosed a *bona fide* defence that is good in law. If so, the application for summary judgment must be refused.

[8] I have considered the papers and note firstly, that the third-party proceedings in terms of Rule 13 and its service have not been filed in the court file. It was confirmed by counsel for the second

² 2009 (5) SA 1 (SCA) at para 31 - 33

defendant that they had not been filed and therefore cannot be considered by the court. Furthermore, there is no evidence that the affidavit resisting summary judgment was served on the third parties. Accordingly, I am of the view that there exists a triable issue for the second defendant to answer to. The defence raised by the second defendant fails to raise a triable issue and it further fails to disclose the nature and grounds of his defence and the facts upon which it is founded.

[9] Furthermore, a look at the suretyship agreement and in particular Clause 19 thereof, provides that the second defendant is not entitled to be released from the suretyship without the consent of the plaintiff. The plaintiff contends that no such consent was granted. Furthermore, there is no evidence that the plaintiff was notified of the exit agreement nor was it a party to such exit agreement.

[10] Accordingly, I am of the view that the defences raised by the second defendant were raised in an attempt to defeat the rights of the plaintiff by delay. The defences are neither *bona fide* nor good in law.

[11] The following order is granted:

- (i) Payment in the sum of R491 412,34 plus interest at the rate of PRIME plus 10.25% from 19 September 2023 to date of payment.
- (ii) Costs of suit.



Judge
Of South Africa,
Gauteng Division, Pretoria

For the Applicant:

Adv J Minnar

On instructions of:

Hammond Pole Majola Attorneys

For the Second Respondent: Adv D De Kock

On instructions of: Frankim Attorneys

Date of Hearing: 28 August 2025

Date of Judgement: 8 September 2025