

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE No: 12894/2022

- (1) REPORTABLE: YES/NO
 (2) OF INTEREST TO THE JUDGES: YES/NO
 (3) REVISED: YES/NO

VAN WYK ASL (AJ)

A black rectangular box redacting the signature of the judge.

SIGNATURE

15 September 2025
 DATE

In the matter between:

SIZABANTU PIPING SYSTEMS (PTY) LTD
LIMPOPO

APPLICANT/PLAINTIFF

and

BATELINE INVESTMENTS (PTY) LTD
MASHUPJE PATRICK MADISHA

FIRST DEFENDANT
SECOND RESPONDENT

JUDGMENT

VAN WYK ASL (AJ):INTRODUCTION

[1] This is an application for summary judgment in terms of Rule 32 of the Uniform Rules this Court. The relief claimed by the Plaintiff is as follows:

- “1. Payment of the sum of R 478 070 .86*
- 2. Interest on the sum of R 478 070.86 at the rate of 9.75% per annum as from 13 December 2022 to date of payment*
- 3. Costs of suit to be taxed on the attorney and client scale*
- 4. Further and/or alternative relief”*

[2] On 18 November 2019, the first defendant duly represented by the second defendant applied to the plaintiff for credit and concluded a written credit facility agreement.

[3] The plaintiff would sell and deliver goods to the first defendant and grant credit facilities to the first defendant for goods sold and delivered at plaintiffs agreed prices *alternatively* its prevailing prices at the time.

[4] On 18 November 2019, the second defendant bound himself as surety and co-principal debtor in solidum with the first defendant unto and in favour of the plaintiff for all payments due and payable by the first defendant.

- [5] The plaintiff alleges that following the written agreement as aforesaid, the first and/or second defendants failed and/or refused and/or neglected to make payment for goods sold and delivered to them during the period July 2020 to December 2021.
- [6] As regards the history of this matter, the plaintiff obtained default judgment on 1 June 2023 (as per Naude- Odendaal J). On 5 November 2024 the judgement and order granted on 1 June 2023 were rescinded and set aside. The rescission application was not opposed by the plaintiff.
- [7] In both the founding affidavit in support of the rescission of judgment application and in the answering affidavit resisting summary judgement (including the plea), the first and second respondents in essence raised similar defences to the plaintiff's claim. The plaintiff was clearly aware of these defences at all material times. I will succinctly deal with these defences later in this judgment.
- [8] The respondents complain that the plaintiff failed to meet the requirements of Uniform Rule 32(2)(b) specifically explaining "*briefly why the defence as pleaded by the respondents does not raise issues for trial*". The first and second respondents stated as follows in this regard:

8.1 That the Plaintiff's verifying affidavit deposed to by Mr. Randall Jooste failed to meet the obligation imposed on the plaintiff as regards Uniform Rule 32(2)(b) in that :

8.1.1 The affidavit deposed to by Jooste attempt a cursory dismissal of the respondent's reliance on a deed of cession by submitting it is merely in *securitatem debiti*. It avoids the respondents primary defence that the deed of cession together with the plaintiff's statement of account, addressed to "*Bateline/Koepu Cession-bcm*" does not merely relate to security but are primary facts and evidence indicating that the underlying transactions were conducted between plaintiff and Bateline/Koepu -Joint Venture.

8.1.2 The Plaintiffs affidavit in support of summary judgment provides no cogent explanation why the primary facts or evidence presented by the respondents as regards the identity of the debtor and correct contractual framework does not raise a triable issue.

[9] I considered the plaintiff's affidavit in support of summary judgment holistically and I agree with the issues raised by the respondents in paragraphs 8.1.1 and 8.1.2 *supra*. The plaintiff failed to strictly comply with Uniform Rule 32(2)(b) by meaningfully engaging with- and addressing all the defences pleaded by the respondents.

[9] I am of the view that the purpose of the sub-rule is firstly for a plaintiff to explain and disclose, under oath, whether factually and/or legally all the defences raised by a respondent failed to raise issues for trial. The express wording of subrule 2(b) "any issues for trial" places an obligation on the plaintiff to carefully assess all defences raised by a respondent and to explain under oath as aforesaid why there does not exist any issue which is triable. It follows that in the absence of an explanation by the plaintiff in accordance with what is stated herein there is simply non-compliance with the sub-rule.

[10] Secondly, if a plaintiff complied with what is expected from the sub-rule it empowers a court to effectively, transparently and fairly ascertain whether genuine triable issues or defences exist between the parties¹.

[1] Tumileng Trading CC v National Security and Fire (Pty) Ltd 2020 (6) SA 624 (WCC) – para 22, the following was said: *"what the amended rule does seem to do is to require a plaintiff to consider very carefully its ability to allege a belief that the defendant does not have a bona fide defence. This is because the plaintiff's supporting affidavit now falls to be made in the context of the deponent's knowledge of the content of a delivered plea. That provides a plausible reason for the requirement of something more than a formulaic supporting affidavit from the plaintiff. The plaintiff is now required to*

[11] Within the context that summary judgement applications which are robust and extraordinary in nature which should only be granted by a court in the clearest of cases, it follows that if the application is defective then *cadit quaestio*² which signifies the end of the application.

[12] Accordingly the *point in limine* raised by the respondents is upheld.

[13] In determining whether to grant leave to defend the action or dismiss the application for summary judgment, I deem it necessary to deal with the respondents' main defence(s) to the plaintiff's pleaded claim. The reason for this approach is because the plaintiff was aware of the respondents' defence(s) before they filed their plea and thereafter and consciously elected to institute these proceedings.

[14] On 12 November 2019 a deed of cession was concluded between Bateline/Koepthu -Joint Venture as the contractor and the plaintiff and Polokwane Municipality for payment relating to project materials. The

engage with the content of the plea in order to substantiate its averments that the defence is not bona fide and has been raised merely for purposes of delay."

[2] Shackleton Credit Management (Pty) Ltd v Microzone Trading 88 CC 2010 (5) SA 112 (KZP) at para 25.

relevant extract of Annexure “SP1” attached to the respondent’s plea reads as follows:

“I/We the undersigned (“the contractor” KOEPHU/BATELINE JV
Do hereby cede, assign and make over to and in favour of (“the
Creditor”) SIZABANTU PIPING SYSTEMS (PTY) LTD all my/our
rights, title and interest in and to all and any process payments
money due to me/us in terms of contract no PM01/2019 for inter
alia the supply of materials, services supplied or retention in terms
of the aforesaid contract by the Polokwane Municipality. I/We do
hereby irrevocably request Polokwane Municipality to pay “the
creditor” per payment certificate monies due to me/us as calculated
by the project engineer, and set out in Annex B3 attached to the
certificate in respect of the following project” This “deed of cession
and authority” shall be final and binding and remain in force and
effect for as long as any amounts are owing by me/us from time to
time to “the creditor” unless cancelled by mutual agreement of both
“the contractor” and “the creditor”

- [15] The respondents deny that the goods were sold or supplied to the first respondent pursuant to the credit application attached to plaintiffs’ particulars of claim as “Annexure A”. In support thereof the respondents pleaded and

argued that the goods were sold and supplied to the Joint Venture Bateline/Koepu -Joint Venture. Further, this is supported by the plaintiff's statement of account, "*Annexure C*" to its particulars of claim which indicates that the statement is addressed to "*Bateline/Koepu Cession -bcm*".

[16] In essence it is the respondent's case that the joint venture established between the first defendant and Koepu Business Enterprise CC are liable to the plaintiff for payment and accordingly Koepu Business Enterprise CC ought to have been joined to these proceedings.

[17] In evaluating the facts before me holistically and specifically on this point, I am of the view that the dispute/defence as regards the identity of the debtor constitutes an issue which ought to be determined at trial. The respondents filed a special plea of non-joinder in this regard. It follows that if the respondents are successful with the aforesaid triable issue, it would constitute a complete defence to the plaintiff's claim.

[18] A Joint Venture is a specific category of partnership³. In *Mahomed v Karp Bros*⁴ the court said the following:

[3] Bester v van Niekerk 1960 (2) SA 779 (A) at 783D to 785A.

[4] 1938 TPD 112 at 113.

“While a partnership is in existence no judgment on a partnership obligation can be taken against the individual partners personally. It is only after the dissolution of a partnership that a creditor of the partnership can sue the members of the firm as individuals jointly and severally for the debt, and, if execution be necessary, proceed forthwith to execute on the assets of each member”.

[19] It is trite that a party must be joined if they have a direct and substantial interest which may be affected prejudicially by the judgment of the court⁵. A defendant may of right demand joinder in the case of partners⁶.

[20] The principles governing summary judgment are trite and need not be restated. Suffice to refer to the well-known judgment in *Maharaj v Barclays National Bank Limited* 1976 (1) SA 418 A at 426A-C where the court held as follows regarding the discretion of the court:

“Accordingly, one of the ways in which a defendant may successfully oppose a claim for summary judgment is by satisfying the court by affidavit that he has a bona fide defence to the claim. Where the defence

[5] *Morudi and Others v NC Housing Services and Development Co Limited and Others* 2018 ZACC 32 at para 29 with citation of *Judicial Services Commission v Cape Bar Council* 2013(1) SA 170 (SCA) at para 12.

[6] *Morgan and Another v Salisbury Municipality* 1935 AD 167 at 171.

is based upon facts, in the sense that material facts alleged by the Plaintiff in his summons, or combined summons, are dispute or new facts are alleged constituting a defence, the court does not attempt to decide these issues or to determine whether or not there is a balance of probabilities in favour of the one party or the other. All the court enquires into is: (a) whether the defendant has 'fully' disclosed the nature and grounds of his defence and the material facts upon which it is founded, and (b) whether on the facts so disclosed the defendant appears to have, as to either the whole or part of the claim, a defence which is bona fide and good in law. If satisfied on these matters the Court must refuse summary judgment, either wholly or in part, as the case may be."

[21] As regards what is meant by the words 'fully' disclose, the Court in *Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T)* at 228D-E explained as follows:

"I respectfully agree, subject to one addition, with the suggestion by Miller J., in Shepstone v Shepstone, 1974 (2) SA 462 (N) at page 466- 467, that the word fully should not be given its literal meaning in Rule 32(3), and that no more is called for than this: that the statement of material facts be sufficiently full to persuade the Court that what the Defendant has alleged, if it is proved at the trial, will constitute a defence to the

plaintiff's claim. What I would add, however, is that if the defence is averred in a manner which appears in all the circumstances to be needlessly bald, vague, or sketchy, that will constitute material for the Court to consider in relation to the requirement of bona fides".

- [22] The respondents pleaded and argued that on a proper construction of "Annexure A" to the particulars of claim– the concluded credit application –, does not constitute a contract of sale but rather a *pactum de contrahendo*⁷. Mr Nel, appearing on behalf of the respondents, submitted during argument that the credit application sets forth the general terms upon which the plaintiff might from time to time agree to sell goods to the first respondent. The argument suggested further that the plaintiff ought to have pleaded the *essentialia* of the specific agreement(s) of sale concluded with the first defendant/respondent (as opposed to the Joint Venture) for the specific goods sold amounting to R 478 070 -86. I agree that there is a disconnect between the terms of the credit application pleaded and the specific goods purportedly sold and delivered.

- [23] In *Gulf Steel (Pty) Ltd v Rack-Rite Bop (Pty) Ltd and Another* 1998 (1) SA 679 (O)⁸ it was reiterated that a plaintiff seeking summary judgment must

[7] *Hirschowitz v Moolman and Others* 1985(3) SA 739 A at para 765H – "A *pactum de contrahendo* is simply an agreement to make a contract in future"

[8] para 683H to 684B.

have a clear claim with pleadings which are technically correct. In the absence of these peremptory requirements, summary judgement must fail.

[24] In *Caltex Oil (SA) Ltd v Crescent Express (Pty) Ltd and Others* 1967(1) SA 466 (D)⁹ it was stated that for a valid verification of the plaintiff's cause of action under Uniform Rule 32(2), a complete cause of action must appear from the particulars of claim. In the event of an incomplete cause of action it cannot be said to be verified.

[25] The respondents raised issues and disputes as regards the quantum of the plaintiff's claim, overpayment of materials to the plaintiff and set off which ought to be applied under the circumstances pleaded. I do not intend to deal with this aspect in much detail save to say that according to the respondents, materials for which plaintiff received payment in the amount of R 241 735-75 was collected by the plaintiff from the Joint Venture, the plaintiff overcharged the Joint Venture by an amount of R 535 227-69 for uPVC piping materials and R 264 879-65 in respect of pipe fitting materials if compared to the agreed prices with plaintiff. I am of the view that within the whole context of the defences raised by the respondents this aspect constitutes further triable issues.

[9] para 469C.

[26] The plaintiff was at all material times before and after the filing of the respondent's plea acutely aware of their multiple triable defences and if reasonably and carefully assessed, summary judgment proceedings should not have been pursued at all.

[27] As a result of the aforesaid coupled with the procedural irregularities the application for summary judgment must fail.

[28] I am of the view that the plaintiff was at all material times aware that the respondents relied on contentions and triable defences, as stated, which would entitle the respondents to leave to defend. I am further of the view that the persistence with this application was clearly unreasonable under the prevailing circumstances. I intend to make an appropriate order in this regard.

ORDER

[29] Accordingly I make the following Order;

[1] The application for summary judgement is dismissed.

[2] The First and Second Respondents are granted leave to defend the main action.

- [3] The Plaintiff/Applicant is ordered to pay the First and Second Respondents costs of this application for summary judgement on an scale as between attorney and client.
- [4] The main action is stayed until such time as the Plaintiff/Applicant has paid the First and Second Respondents taxed or agreed costs of this application as envisaged in Uniform Rule 32(9)(a).



ASL VAN WYK

Acting Judge of the High Court
Limpopo Division, Polokwane

APPEARANCES:

HEARD ON : 5 JUNE 2025

JUDGMENT DELIVERED ON : **15 SEPTEMBER 2025** . This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be at **10:00**

FOR THE APPLICANT

:

D CHUENE

INSTRUCTED BY

:

NIXON & COLLINS ATTORNEYS

C/O DU TOIT, SWANEPOEL, STEYN &
SPRUYT

POLOKWANE

FOR THE RESPONDENTS

:

E.J.J NEL

INSTRUCTED BY

:

PERCY P.P MOSEHLA INCORPORATED

POLOKWANE

POLOKWANE HIGH COURT