REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,

(GAUTENG DIVISION, PRETORIA)

Case No: 070951/24

Reportable: No
Of interest to other Judges: No
Revised: No
Date: 15 September 2025

[redacted]

SIGNATURE

In the matter between:

INTERSHU DISTRIBUTORS (PTY) LTD	Applicant
and	
PETRUS JOHANNES BOTHA N.O (In his capacity as the executor of Estate Late Johannes Jacobus Strydom)	Respondent

IN RE:

INTERSHU DISTRIBUTORS (PTY) LTD	Plaintiff
and	
PETRUS JOHANNES BOTHA N.O (In his capacity as the executor of Estate Late Johannes Jacobus Strydom)	1st Defendant
THE MASTER OF THE HIGH COURT	2nd Defendant

JUDGEMENT

MOOKI J

1 The plaintiff seeks summary judgement. The claim arises from the plaintiff and Strydom en Pretorius CC, trading as Pharmavalu Queenswood (corporation) having concluded an agreement pursuant to which the plaintiff were to supply the corporation with goods as specified.

2 Johannes Jacobus Strydom bound himself as a surety and co-principal debtor with the corporation, having renounced the usual benefits. Mr Strydom has since died. Mr Petrus Johannes Botha was appointed the executor of Mr Strydom's estate.

3 The plaintiff alleges that the corporation breached its obligations by failing to pay for goods supplied to the corporation. The plaintiff claims the amount of R253, 237.59 plus interest. The corporation has since been liquidated.

The plaintiff seeks payment based on Mr Strydom having bound himself as a surety and co-principal debtor to the corporation. Mr Botha is cited as the nominal defendant by virtue of being the executor of Mr Strydom's estate.

4 The defendant, in the plea, denied that the plaintiff and the corporation concluded an agreement. It is also denied that Mr Strydom signed any agreement with the plaintiff.

5 The plaintiff, in the affidavit in support of summary judgement, set out the respects in which the plea did not raise a triable issue. The plaintiff pointed out that the capital accrued from 31 January to 1 May 2023; that Mr Strydom died on 19 November 2023, and that the executor was appointed on 8 December 2023. The plaintiff pointed out that the principal debtor provided a payment plan on 10 January 2023, and that this was a clear acknowledgement of debt by the principal debtor.

6 The plaintiff addressed the various defences put up by the executor. Those included that ownership of goods would pass to the company only on payment of the purchase price, that the plaintiff has no obligation to notify creditors; that each delivery of goods was a distinct agreement, in answer to the contention that the plaintiff supplied goods in excess of R25,000.00, contrary to the limit in the agreement; that it was irrelevant that orders by the plaintiff were not made by a person specified in the agreement. More fundamentally, the plaintiff contended that the executor made a bald denial in saying Mr Strydom did not sign the agreement and the suretyship.

7 The executor, in resisting summary judgement, detailed how he had no personal knowledge in relation to certain averments and that he was unable to admit or deny the averments. The executor denied that the plaintiff had complied with its obligations. He also denied that the plaintiff delivered goods to the company.

8 The executor denied that Mr Strydom signed any agreement. The executor also contended that "It is further denied that the respondent as the appointed executor of the deceased's estate cannot confidently attest that the deceased did not sign the credit agreement and suretyship. The respondent will be able to prove this at trial should leave to defend be granted."

Analysis

9 The plaintiff has established its claim clearly, with the executor having failed to set up a bona fide defence.[1] The executor has not disclosed material facts which, if proved at trial, will constitute a defence to the plaintiff's claim.[2]

10 The plaintiff established its claim that the plaintiff and the corporation concluded an agreement for the supply of goods, on the terms pleaded by the plaintiff. The plaintiff had been supplying the corporation with goods at least since July 2019. It was only in 2023 that the corporation became unable to pay for the supplied goods. The corporation was aware of being in default with payments, as shown by the corporation suggesting a payment plan.

[1] See Meek v Kruger 1958 (3) SA 154 (T) at 158 F-G, 160 C – D
[2] Breytenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T) at 227G

There would have been no need for a payment plan absent the corporation being indebted to the plaintiff.

11 The plaintiff also established the existence of the suretyship. The plea in relation to the suretyship is essentially a bare denial, namely that Mr Strydom did not sign the suretyship. The executor did not aver any facts to support the averment that Mr Strydom did not sign any agreement.

12 Mr Strydom was the guiding mind of the corporation. He was alive when the plaintiff was sending various correspondence calling on the corporation to pay-up. The plaintiff, in one such correspondence, pointed out that Mr Strydom had signed as a surety in relation to corporation's obligations to the plaintiff. Mr Strydom did not take issue with this correspondence.

13 The executor makes a bald denial in the plea that Mr Strydom did not sign the credit agreement or suretyship. The executor says, in the affidavit resisting summary judgement, that he will demonstrate at trial that Mr Strydom did not sign the suretyship. The executor has not referenced a single fact as support that Mr Strydom did not sign the agreements. The executor does not say what facts will be placed before court at trial to demonstrate that Mr Strydom did not sign the agreements.

14 The contentions by the executor are untenable. The company proposed a payment plan. This was done long before Mr Strydom died. There is no single document, in the exchanges between the parties about the outstanding payments before Mr Strydom's death, in which the company denied the existence of an agreement for the plaintiff to supply the company with goods.

More fundamentally, the plaintiff wrote to the corporation, stating that Mr Strydom was a surety. Mr Strydom was alive at that time. Mr Strydom, who was the controlling mind of the company, did not respond to deny the existence of an agreement between the plaintiff and the company and, more importantly, deny that he signed a suretyship in relation to the company's indebtedness to the plaintiff.

15 Summary judgement proceedings are intended to preserve judicial economy and to grant relief where a defendant has failed to show that there is a triable issue. In this instance, the executor says that the issue of whether Mr Strydom signed the agreements ought to be determined at trial. The executor does not say why that should be so. The executor does not provide facts that will be established at trial on this point. It would be perverse to oblige the plaintiff to submit to a full trial on the issues pleaded by the executor and on issues contended for by the executor in the affidavit opposing summary judgement.

16 The plaintiff established its claim clearly. The executor has not disclosed material facts which, if proved at trial, will constitute a defence to the plaintiff's claim. The executor did not set up a bona fide defence. [3]

17 I make the following order:

(1) Summary judgement is granted for the plaintiff.

(2) The first defendant is ordered:

[3] See Meek v Kruger and Breytenbach v Fiat SA (Edms) Bpk as cited above.

a. To pay the plaintiff the sum of R253, 237.59.

b. To pay interest on the sum of R253, 237.59 at the rate of 11.75% per annum from 27 June 2024 to the date of payment.

c. To pay costs on the attorney and client scale.

[redacted]

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JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the applicant:	A Myers (Heads drawn by R Smith)
Instructed by:	NVDB Attorneys
Counsel for the defendant:	T Carstens
Instructed by:	Swanepoel van Zyl Attorneys
Date heard:	26 August 2025
Date of judgement:	15 September 2025