

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NUMBER: 118205/2023

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

DATE: 29/9/2025

In the matter between: -

PREVANCE CAPITAL (PTY) LTD
(REGISTRATION NUMBER: 2005/02277/07)

Applicant

and

IVAN ALLAN EDWARD PRETORIUS
(IDENTITY NUMBER: 7[...])

First respondent

ALLEYROADS HOLDINGS (PTY) LTD
(REGISTRATION NUMBER: 2013/106070/07)

Second respondent

J U D G M E N T

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on CaseLines. The date and time for hand-down is deemed to be 10h00 on 29 September 2025.

F. BEZUIDENHOUT AJ:

INTRODUCTION

- [1] The applicant applies for a money judgment against the first and second respondents, jointly and severally, the one paying the other to be absolved, for the sum of R2 839 782.74, founded on suretyships and guarantee agreements allegedly signed by the first respondent in his personal and representative capacity.
- [2] The respondents dispute the signature on the agreements and contend that this raises an irresolvable dispute of fact on motion that was foreseeable by the applicant. The applicants deny that the dispute raised by the respondents is genuine and *bona fide*.
- [3] The applicant, for the first time in its replying affidavit, referenced and attached a report seemingly prepared by an expert document examiner. The respondents objected to the replying affidavit on the basis that it contained impermissible evidence that was new. During argument, the applicant abandoned its reliance on this evidence.

THE APPLICANT'S CASE

- [4] On the 23rd of July 2021 the applicant signed a loan agreement with a company known as Paumat (Pty) Ltd in terms whereof the applicant advanced to this company an amount of R2.3 million.
- [5] On the 16th of August 2022 this Court granted a money judgment against

Paumat (Pty) Ltd and it is common cause that this company is now in final liquidation.

- [6] As security for the loan, Paumat (Pty) Ltd provided the applicant with a deed of suretyship and guarantee agreement provided by Planet Waves 372 (Pty) Ltd.
- [7] On the 17th of April 2023 this Court granted a judgment for the payment of R2 839 782.74 against Planet Waves 372 (Pty) Ltd.
- [8] It is averred by the applicant that the first and second respondents executed written suretyships and guarantee agreements in favour of the applicant for the due and timeous fulfilment of the obligations by Planet Waves 372 (Pty) Ltd towards the applicant.

[9] The applicant relies on the confirmatory affidavit deposed to by Mr Christo Jonker, a manager of the applicant who, accordingly to the applicant, personally witnessed the suretyships and guarantee agreements being signed by the first respondent and also signed as a witness. Mr Jonker in the confirmatory affidavit merely confirmed the correctness of the content of the founding affidavit insofar as it related to him. Accordingly, the applicant argued that the denial by the respondents of the first respondent's signature, was not *bona fide* or genuine.

[10] The applicant did not seek a referral to oral evidence in its papers or during the hearing of this application.

THE RESPONDENTS' CASE

[11] The first respondent denies having signed any of the written suretyships and guarantee agreements and alleges fraud committed in respect of these documents and in respect of a resolution purportedly passed by the board of directors dated the 8th of August 2019 authorising the second respondent to execute a suretyship and guarantee in favour of the applicant.

[12] The respondents contend that the motion court is an inappropriate forum to resolve the dispute raised by them. It is the respondents' case that prior to the commencement of legal proceedings and consequent upon letters of demand by the applicant to the respondents, the respondents specifically and clearly disavowed the entering into of these agreements. More specifically, the signature of the first respondent in his personal

capacity as well as his representative capacity in respect of the second respondent was denied and it is alleged that they are forgeries.

[13] In pursuance of the claim of forgery, the respondents reported the fraud at the Sandton police station under CAS 446/6/2023.

[14] The respondents criticize the applicant's reliance on the affidavit of Mr Jonker and assert that such reliance exacerbates the existence of the dispute of fact. The respondents base their assertion on the following: -

[14.1] No detail is given as to Mr Jonker's knowledge of who the first respondent actually is. The question is asked as to how Mr Jonker knows that the person who signed the agreement was in fact the first respondent;

[14.2] No detail is given as to how it came about that Mr Jonker allegedly witnessed the first respondent signing the agreements;

[14.3] No detail is given as to where Mr Jonker allegedly witnessed the alleged signature of the agreements;

[14.4] No detail is given as to when Mr Jonker witnessed the alleged signature of the agreements. This is particularly relevant according to the respondents as the agreements were all signed on different days by the respective parties.

[15] In their answering affidavit, the respondents informed the Court that the

original suretyships and guarantee agreements were requested from the applicant on the 18th of January 2024, but no response had been received by the time the answering papers were filed. In reply, the applicant brushed off this request as a delaying tactic.

- [16] The respondents aver that once it is denied that the first respondent did not sign the suretyships and guarantee agreements, it should be the end of the matter. It was argued on behalf of the respondents that the applicant's election to pursue relief on motion in the face of its knowledge of the pre-existing dispute relating to the first respondent's signature, constitutes an abuse of process.
- [17] At worst, according to the respondents, the applicant ought to have been aware of the dispute since the delivery of the answering affidavit. The applicant could have sought a referral of the issue of the disputed signatures to oral evidence then. It however elected not to do so and accordingly the applicant disregarded the legal position that it has a duty to request a referral to oral evidence as soon as the dispute of fact arises.
- [18] In the circumstances, the respondents seek a dismissal of the application coupled with a punitive costs order. According to the respondents, the applicant elected to forge ahead with an application which is clearly fraught with factual disputes.

DELIBERATION

[19] It was held by the Supreme Court of Appeal ("SCA") in *Namasthethu Electrical (Pty) Ltd v City of Cape Town*¹, that it is trite law that fraud is conduct which vitiates every transaction known to the law. In affirming this principle, the SCA, in *Esorfranki Pipelines (Pty) Ltd and Another v Mopani District Municipality and Others*², referred with approval to Lord Denning's dicta in *Lazarus Estates Ltd v Beasley*³, when he said:

"No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever . . ."

[20] Fraud unravels everything – that is our law.⁴ If fraud is proven in this dispute between the applicant and the respondents, it will unravel the applicant's claim.

[21] The SCA said the following when fraud is raised during motion proceedings:⁵

¹ 2020 JDR 1279 (SCA).

² [2014] ZASCA 2; [2014] 2 All SA 493 (SCA) para 11.

³ *Lazarus Estates Ltd v Beasley* [1956] 1 QB (CA) at 712.

⁴ *Moropa and Others v Chemical Industries National Provident Fund and Others* 2022 JDR 1875 (GJ); par. [53].

⁵ *Loomcraft Fabrics CC v Nedbank Ltd and Another* 1996 (1) SA 812 (A); p. 822 G.

"...fraud will not lightly be inferred, particularly when, I should add, it is sought to be established in motion proceedings. As far as the various disputes of fact are concerned, it must not be overlooked that the appellant sought a final order. To succeed it accordingly had to show that it was entitled to an order on the basis of the facts alleged by Perfel, together with the admitted facts in the affidavits filed on its own behalf, subject only to any denial by Perfel being insufficient to raise 'a real, genuine or bona fide dispute of fact' (see Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd J 1984 (3) SA 623 (A) at 634E-635C)."

- [22] Ordinarily it would be expected of a litigant to clearly and unambiguously deal with each and every fact it wishes to place in dispute. However, depending on the matter even as little as a bare denial will meet the requirement of raising a *bona fide* dispute of fact:-⁶

"[13] A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party

⁶ *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) at paragraph [13].

must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision."

[23] The first respondent stated repeatedly under oath in the answering papers that it is not his signature appearing on the suretyships and guarantee agreement and that Mr Jonker on behalf of the applicant could not have witnessed him signing these documents. The respondents requested the originals to view them. This request fell on deaf ears. Charges of fraud were laid with the SAPS and are being investigated. In my view, this is an instance where a bare denial meets the requirement because there is no other way open to the respondents and nothing more can therefore be expected of them.

[24] It is apparent that there are disputes of fact. I am not persuaded that the applicant had made out a case on the papers that it is entitled to a final order.

[25] In light of the authorities which I have referred to above, it is not possible for me to make any determination on the papers as to the relief sought by the applicant.

[26] Rule 6(5)(g) of the Uniform Rules of Court provides:-

*'Where an application cannot properly be decided on affidavit the court may dismiss the application **or make such order as it deems fit with a view to ensuring a just and expeditious decision.** In particular, but without affecting the generality of the foregoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.'* (emphasis added)

[27] When counsel for the applicant was confronted by the respondents with the possibility that its claim could be dismissed in light of disputes on the papers, it remained steadfast in its stance that the dispute was not *bona fide* or genuine.

[28] It is well established that while the Court has a discretion in deciding whether to allow a referral to oral evidence, the court will dismiss an application if the applicant should have realised when launching his application that a serious dispute of fact, incapable of resolution on the papers, was bound to develop. While a dismissal of the application, which would be tantamount to an order for absolution from the instance, is certainly a possibility, in my view, it would not ensure a just and expeditious decision and would cause a delay in the finality of the dispute

between the parties.

[29] Having considered the dispute of facts, the potential witnesses to be called and the possible leading of expert evidence, I am of the view that it would be in the interests of justice that the matter is referred to trial rather than oral evidence so that the evidence led can be considered by the trial court in totality and the necessary credibility finding can be made.

COSTS

[30] It is a trite principle of our law that a court considering an order of costs exercises a discretion which must be exercised judicially.⁷ The scale of attorney and client sought by the respondents against the applicant is an extraordinary one which should be reserved for cases where it can be found that a litigant conducted itself in a clear and indubitably vexatious and reprehensible manner.⁸

[31] Although the applicant ought to have foreseen the dispute of fact from the outset and issued summons in the matter, I do not find the circumstances extraordinary to justify a punitive costs order as sought by the respondents.

ORDER

I accordingly grant an order in the following terms: -

⁷ *Ferreira v Levin NO and Others; Vreyenhoek and Others v Powell NO and Others* [1996] ZACC 27; 1996 (2) SA 621 (CC); *Motaung v Makubela and Another, NNO; Motaung v Mothiba NO* 1975 (1) SA 618 (O) at 631A.

⁸ *Plastic Converters Association of South Africa on behalf of members v National Union of Metalworkers of SA* [2016] 37 2815 (LAC) at para [46].

1. The matter is referred to trial.
2. The notice of motion and founding affidavit will stand as simple summons.
3. The answering affidavit will stand as the notice of intention to defend.
4. The applicant will deliver its declaration within 20 days of this order.
5. The applicant is to pay the costs of this application.

F BEZUIDENHOUT

**ACTING JUDGE OF
THE HIGH COURT**

DATE OF HEARING: 5 March 2025

DATE OF JUDGMENT: 29 September 2025

APPEARANCES:

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