



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

CASE NO: 090349/2024

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
	
	
..... SIGNATURE	20/10/2025 DATE

MELROSE ARCH INVESTMENT HOLDINGS (PTY) LTD

First Applicant

LIBERTY PROPCO (PTY) LTD

Second Applicant

2 DEGREE PROPERTIES (PTY) LTD

Third Applicant

And

AVENG CORPORATE (PTY) LTD

Respondent

JUDGMENT

NTHAMBELENI AJ

Introduction

- [1] This is an application for summary judgment brought by the applicants against the respondent for payment of the amount of R536 022.34, together with interest thereon and costs on the attorney-and-client scale. The applicants allege that the amount claimed represents monthly rental and other charges due and payable by the respondent in terms of a written lease agreement concluded between the parties in respect of certain office premises situated at Melrose Arch, Johannesburg.
- [3] The respondent entered an appearance to defend and subsequently filed a plea in the main action. The applicants thereafter launched this application for summary judgment in terms of Rule 32(1) of the Uniform Rules of Court, contending that the respondent has no bona fide defence, and that the plea discloses no triable issue.

The pleadings

- [4] In its plea, the respondent alleges, inter alia, that the parties agreed to an early termination of the lease on 30 June 2024, alternatively that the applicants are *estopped* from denying that the lease terminated on that date.
- [5] The relevant averments appear at pages 030-9 to 030-12 of the plea, paragraphs 18–20, 27–30, and 32, where the respondent specifically denies that any further rental or other charges are due to the applicants following such termination.
- [6] In opposition to the summary judgment application, the respondent filed an affidavit under Rule 32(3)(b), elaborating on these defences and maintaining that the alleged termination agreement was concluded between duly authorised representatives and acted upon by both parties.

The applicable legal principles

- [7] Rule 32(1)(a)–(d) permits a plaintiff to apply for summary judgment where the defendant has delivered a notice of intention to defend in respect of a liquidated amount, a liquidated demand, or for delivery of specified movable property.

- [8] The purpose of the rule is to prevent defendants from delaying the plaintiff's claim by raising sham or bogus defences, while ensuring that a defendant who has a bona fide defence is not shut out from presenting it at trial.¹
- [9] In determining whether summary judgment should be granted, the court must assess whether the defendant has disclosed a defence that is bona fide and *raises a triable issue*. The defence need not be proven at this stage but must be set out with sufficient particularity to satisfy the court that the issue merits ventilation at trial.²

Claims sounding in money per liquid document

- [10] A claim is liquidated if the amount is fixed by agreement or can be ascertained by calculation from the terms of the agreement or some other fixed standard. It is not liquidated if the court must determine the amount based on evidence or estimation.³ To this end, the essence of a liquidated claim is that the court is not required to assess or estimate the quantum. The amount must be objectively determinable.⁴
- [11] Rule 32(1)(a) explicitly provides that summary judgment may be granted where the plaintiff's claim is on a liquid document, or for a liquidated amount in money, or for delivery of specified movable property, or for ejectment. Thus, the rule assumes that the claim must be ascertainable *ex facie* the document and not subject to factual dispute.
- [12] The respondent's obligation to pay rental and other charges are dealt with in various clauses of the Lease. Clause 18.1 provides that the monthly rent payable by the Tenant shall be the rental set out in the Schedule. Clause 19.1 provides that the Tenant shall pay all electricity, water and gas consumed at the Premises. Clause 20 provides that the Tenant shall pay the chilled water charges in clause

¹ See *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 423A–C; *Breitenbach v Fiat SA (Edms) Bpk* 1976 (2) SA 226 (T) at 228B–229C; *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009 (5) SA 1 (SCA) at paras 31–33.

² *Maharaj* Footnote 1 above at 426A–C.

³ Herbstein & Van Winsen, *The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa* (6th ed.), Vol. 1 at 656.

⁴ Cilliers, Loots & Nel, *The Civil Practice of the High Courts of South Africa* (5th ed.) at 593.

8.6 of the Schedule. Clause 21 provides that the Tenant shall pay assessment rates, taxes and POA levies in terms of clause 8.3 and 8.4 of the Schedule and clause 22 provides for the payment by the Tenant of operating costs as set out in clause 8.2 of the schedule.

[13] There are numerous charges under the Lease which could make up the amount the plaintiff allege to be due. There is however no way to discern ex facie from the particulars of claim exactly which rental, charges and costs the plaintiff's allege remain unpaid, as this detail has simply not been set out in the particulars of claim and it should not be expected from this Court and the defendant to try and discern this from annexure B which this Court was directed to by Counsel of the applicant.

[14] The consequence of this failure to particularise the alleged unpaid rental, costs and charges, and clearly identify the specific month/s to which the claim relates, is that the plaintiff's claim can never constitute a claim that is capable of easy and prompt ascertainment without using evidence aliunde. In an application of this nature, the applicant ought at the very least to have identified the month/s in respect of which they allege the amount due has not been paid, and to break the amount up into its constituent parts, stating separately the rental amount and each charge or cost making up the "other amounts" without this detail, it is not a matter of 'mere calculation' to comprehend how the claimed amounts were put together.

[15] In *Hersman v Shapiro & Co*⁵ the court held:

"A liquidated amount in money is an amount which is either agreed upon or which can be determined by a calculation or in terms of a fixed formula without any further enquiry."

[16] The abovementioned statement has been repeatedly cited for the proposition that the court must be able to determine the amount ex facie the contract or

⁵ 1926 TPD 367 at 379.

document relied upon. In *Harrowsmith v Ceres Flats (Pty) Ltd*⁶ Coetzee J elaborated:

“If evidence is required to establish the amount of the debt — beyond mere calculation — the claim is not liquidated.”

[17] This means that if the court would need to hear witnesses or examine accounts to establish the precise amount, the claim is unliquidated.

Analysis

[18] The respondent’s principal defence is that the lease agreement was *mutually terminated* by agreement on 30 June 2024. In the alternative, it pleads *estoppel*, contending that the applicants, by their conduct and representations, led the respondent to believe that no further rental or ancillary charges would accrue after that date.

[19] The applicants, on the other hand, deny that any such termination agreement was concluded and maintain that rental and other charges remained due for the period claimed.

[20] The existence, validity, and effect of an alleged *agreement to terminate* a lease are matters of fact and law that require oral evidence and full ventilation at trial. Such issues cannot be properly determined in summary judgment proceedings.

[21] In *Tesven CC v South African Bank of Athens Ltd*⁷ the Supreme Court of Appeal held that if the defence raised is based on a factual dispute that cannot be determined on affidavit, the defendant must be given leave to defend. Similarly, in *Arend and Another v Astra Furnishers (Pty) Ltd*⁸ it was held that where a defendant discloses facts which, if proved at trial, would constitute a defence, summary judgment must be refused.

[22] On the papers before me, the respondent has advanced a defence that is not inherently implausible or mala fide. Whether the alleged termination agreement

⁶ 1979 (2) SA 722 (T) at 724G–H.

⁷ 2000 (1) SA 268 (SCA) at 276G–H.

⁸ 1974 (1) SA 298 (C) at 303–304.

was indeed concluded, and whether the applicants are estopped from denying its effect, are matters that require oral testimony, through *viva voce* evidence and documentary proof.

[23] It is also important to note that what is presented as a liquid document before this court by the applicants does not pass the threshold as required by the rules and the case authorities in this matter. An orange and a grapefruit are similar in colour, but their taste is different on the tongue and what is before the court is not a liquid document.

Conclusion

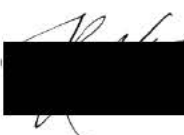
[24] Having considered the pleadings and affidavits, I am satisfied that the respondent has disclosed a *bona fide* defence that raises a triable issue within the meaning of Rule 32.

[25] The applicants have accordingly failed to show that the respondent's defence is unsustainable or that there is no genuine dispute of fact requiring determination at trial.

Order

[26] In the result, the following order is made:

1. The Respondent is granted leave to defend the main action.
2. The application for summary judgment is dismissed.
3. The costs of the summary judgment application are awarded to the Respondent on a party-to-party scale B.
4. Costs shall include costs of two Counsel.




RR NTHAMBELENI, AJ
ACTING JUDGE GAUTENG DIVISION
JOHANNESBURG

APPERANCES

For the applicant: WF Wanneberg

Instructed by: Fourie Van Pletzen Inc Attorneys

For the Respondent: A Subel SC with him H Pretorious

Instructed by: Dingiswayo, Du Plessis, Van Der Merwe

Date of Hearing: 08 October 2025

Date of Judgment: 20 October 2025

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties /their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 20 October 2025