

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

CASE No: 11182/2024

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED: YES/NO

DATE: 26 September 2025

SIGNATURE: VAN WYK ASL (AJ)

In the matter between:

**SOUTH AFRICAN SECURITISATION
PROGRAMME (RF) LIMITED**

FIRST PLAINTIFF

SASFIN BANK LIMITED

SECOND PLAINTIFF

SUNLYN (PTY) LTD

THIRD PLAINTIFF

and

NEW HORIZON PRIVATE SCHOOL

DEFENDANT

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:

“CLAIM A

1. *Payment in the sum of R 103 263-54*
2. *Interest on the sum of R 103 263-54 at 17.75% (prime plus 6%) per annum calculated from date of demand – 23 February 2024- to date of final payment.*
3. *The interim return of the assets listed in the notice of motion, pending payment by the Defendant in terms of prayers 1 and 2:*
4. *Costs of suit on an attorney and client scale.*
5. *Further and/or alternative relief.”*

“CLAIM B

1. *Payment in the sum of R 808 415-26*
2. *Interest on the sum of R 808 415-26 at 17.75% (prime plus 6%) per annum calculated from date of demand – 23 February 2024- to date of final payment.*
3. *The interim return of the assets listed in the notice of motion, pending payment by the Defendant in terms of payers 1 and 2.*
4. *Costs on an attorney and client scale.*

[2] In *South African Securitisation Programme (RF) Ltd and Others v Bula Technologies (Pty) Ltd and Others*¹ Tuchten J described the business model of the plaintiffs as follows:

“1. The plaintiffs are associated companies. I shall refer to the first plaintiff as SAS and the second and third plaintiffs as Sunlyn and Sasfin respectively. Sunlyn and Sasfin operate in the financial industry. Sunlyn acts as the marketing arm of Sasfin. It looks for credit agreements such as rental and installment sale agreements, in the market. When it finds a potential customer (to which I shall refer as a dealer”) which has made its goods available to a

¹ 45327/11 (2014) ZAGPPHC 117 (28 February 2014)

lessee or purchaser under a written credit agreement, it procures an offer from the dealer to cede the agreement to Sunlyn. Sunlyn then simultaneously offers to cede the agreement to Sasfin. If Sasfin approves the transaction, it proceeds to pay the user the agreed price on behalf of Sunlyn. The relevant written cession agreements make provision for the cessions, both to and away from Sunlyn, to take place upon payment of the agreed price.

2. SAS Operates in the derivatives market. Upon a written agreement between SAS, Sasfin and others, Sasfin must from time to time cede such credit agreements as may be agreed between them to SAS for incorporation into its derivative instruments”

[3] Thusano Group (Pty) Ltd (“*Thusano*”) and the defendant on 27 February 2020 and 17 March 2020 respectively, concluded two written rental agreements in relation to the rental of certain office equipment.

[4] As regards the business model of the plaintiffs, on 29 March 2006 in accordance with a written agreement of cession, the third plaintiff (“*Sunlyn*”) and the second plaintiff (“*Sasfin*”) established an ongoing relationship of cession in terms whereof Sunlyn, from time to time, cede transfer and make over all rights, title and interest in and to rental agreements to Sasfin.

[5] In a similar vein, Thusano and Sunlyn, on 16 March 2017, pursuant to and on terms of a written agreement of cession, established a continues relationship of cession. All rights, title and interest in and to the two rental agreements were subsequently ceded from Thusano to Sunlyn and thereafter (simultaneously) from Sunlyn to Sasfin. On 15 October 2020, pursuant to and in terms of a written sale agreement concluded between Sasfin and the first plaintiff (“*SASP*”), the rights were ceded from Sasfin to the first plaintiff.

[6] The plaintiffs alleged and pleaded that in accordance with each rental agreement, the defendant undertook to maintain payment of the monthly agreed rental instalments, R 4 830-00 in respect of the first rental agreement and R 31 865-15 in respect of the second rental agreement.

[7] The plaintiff's submitted that the defendant breached both rental agreements by failing to maintain the monthly agreed to rental instalments.

[8] The defendant opposed the application for summary judgment and raised multiple issues for consideration.

[9] Firstly, the defendant stated that “.. *no documentation is attached in support of the averment that Mr Vorster is indeed duly authorized, no resolution is support of this averment and the allegation is denied*”.

[10] The following was stated by the Supreme Court of Appeal in *Ganes and Another v Telecom Namibia Ltd*² :

“There is no merit in the contention that Oosthuizen AJ erred in finding that the proceedings were duly authorised. In the founding affidavit filed on behalf of the respondent Hanke said that he was duly authorised to depose to the affidavit. In his answering affidavit the first appellant stated that he had no knowledge as to whether Hanke was duly authorised to depose to the founding affidavit on behalf of the respondent, that he did not admit that Hanke was so authorised and that he put the respondent to the proof thereof. In my view, it is irrelevant whether Hanke had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised. In the present case the proceedings were instituted and prosecuted by a firm of attorneys purporting to act on behalf of the respondent. In an affidavit filed together with the notice of motion a Mr Kurz stated that he was a director in the firm of attorneys acting on behalf of the respondent and that such firm of attorneys was duly appointed to represent the respondent. That statement has not been challenged by the appellants. It must, therefore, be accepted that the institution of the proceedings was duly authorised. In any event, Rule 7 provides a procedure to be followed by a respondent who

² 2004 (3) SA 615 (SCA) at para 19.

wishes to challenge the authority of an attorney who instituted motion proceedings on behalf of an applicant. The appellants did not avail themselves of the procedure so provided. (See *Eskom v Soweto City Council* 1992 (2) SA 703 (W) at 705C - J.)” (emphasis added)

[11] The deposing to an affidavit need not be authorized. It is the institution of legal proceedings that must be authorized. Rule 7 of the Uniform Rules provides for the procedure to be followed by a party who wishes to challenge the authority of an attorney acting on behalf of another party.³

[12] Gorven J said the following in *ANC Umvoti Council Caucus and Others v Umvoti Municipality*⁴ :

“I am therefore of the view that the position has changed, since Watermeyer J set out the approach in the Merino Ko - operasie Bpk case. The position now is that, absent a specific challenge by way of rule 7(1), ‘the mere signature of the notice of motion by an attorney and the fact that the proceedings purport to be brought in the name of the applicant is sufficient. It is further my view that the application papers are not the correct context in which to determine whether an applicant which is an artificial person has authorised the initiation of application proceedings. Rule 7(1) must be used. This means I disagree with Mr Gajoo’s submission that rule 7(1) provides only one possible procedure and that, if a respondent elects to challenge the matter of authority on the application papers, the applicant is required to prove such authority on the papers.” (emphasis added).

[13] In *Unlawful Occupiers, School Site v City of Johannesburg*⁵ one of the issues raised by the appellant was that the respondent had failed to prove that the deponent to its founding affidavit had the requisite authority to institute the application on its behalf. Brand JA stated the following :

³ *Eskom v Soweto City Council* 1992 (2) SA 703 (W); *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) at para 19; *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA) at para 16

⁴ 2010 (3) SA (KZP) at para 28

⁵ 2005 (4) SA 199 (SCA) at para 16.

“However, as Flemming DJP has said, now that the new Rule 7(1) remedy is available, a party who wishes to raise the issue of authority should not adopt the procedure followed by the appellants in this matter, ie by way of argument based on no more than a textual analysis of the words used by a deponent in an attempt to prove his or her own authority. This method invariably resulted in a costly and wasteful investigation, which normally leads to the conclusion that the application was indeed authorised. After all, there is rarely any motivation for deliberately launching an unauthorised application. In the present case, for example, the respondent's challenge resulted in the filing of pages of resolutions annexed to a supplementary affidavit followed by lengthy technical arguments on both sides. All this culminated in the following question: Is it conceivable that an application of this magnitude could have been launched on behalf of the municipality with the knowledge of but against the advice of its own director of legal services? That question can, in my view, be answered only in the negative.”

[14] On the conspectus of the facts before me, there was no challenge in terms of Rule 7 by the defendant. It follows that the appropriate approach to challenge authority was not invoked, and it is therefore not necessary for the plaintiffs to prove its authority.

[15] Although not specifically raised as a point in limine, I dismiss the defendant's challenge to the plaintiff's authority as aforesaid.

[16] Turning to the first special plea raised by the defendant, it seeks to find reliance on the application of the Consumer Protection Act, 68 of 2008 and the plaintiff's purported non-compliance with the relevant provisions envisage in the Act. The defendant alleges that:

- 16.1 it is a service provider as contemplated in the Act;
- 16.2 it duly cancelled the agreement in terms of section 14(2)(b)(i) of the Act;
- 16.3 the plaintiff took cession of the rights in and to the rental agreements after the defendants purported cancellation;

16.4 the plaintiff's claim(s) are contrary to section 14 read with regulation 5 of the Act.

16.5 the plaintiffs are not entitled to claim a reasonable penalty fee.

[17] Section 14(1) of the Act provides: "*This section does not apply to transactions between juristic persons regardless of their annual turnover or asset value*". It is common cause that the plaintiff is juristic person. The defendant in its affidavit resisting summary judgment denies that it is a juristic person. The defendant stated that the plaintiff cited it as a non-profit organization, but that it is a sole proprietorship. In support of the allegation that the defendant is a sole proprietor, it attached a copy of its constitution as *annexure C* to the answering affidavit.

[18] I highlight paragraphs 1 and 2 of the constitution which read as follows:

"1. Ownership

The organization is a trust (Nr. 1926/95) and will continue to exist, even if the present trustees are replaced by others. The organization is functioning under the name New Horizon Private School.

2. Body Corporate

The body corporate will:

- *Exist in its own right, separately from its members*
- *Continue to exist irrespective of changes in membership or office bearers.*
- *Be able to own property and other possessions.*
- *Be a legal entity which can sue or be sued."*

[19] The defendant alleges that it is either a sole proprietorship, a trust or a body corporate. If consideration is given to the facts presented, I am not convinced that the defendant is a sole proprietorship. At the very least it seems to be a Trust.

[20] The Act defines "*juristic person*" as including (a) a body corporate, (b) a partnership or association; or (c) a trust as defined in the Trust Property Control Act, 1988. I agree with the plaintiffs that whether the defendant is a body corporate or a trust, on both suggestions, the operation of section 14 of

the Act, including the right to cancel rental agreements in accordance with the Act, is excluded.

[21] The plaintiffs seek specific performance in accordance with the underlying agreements. The plaintiffs argued that that it does not seek to recover a penalty fee. The defendant raised its defence premised on the Conventional Penalties Act, Act 15 of 1962 with reference to the Consumer Protection Act.

[22] It was argued on behalf of the plaintiffs that the defence premised on the Conventional Penalties Act is excipiable on the basis hat the relief claim by the defendant that the penalty be reduced to nil is not supported by the facts alleged in the plea or special plea and constitutes a conclusion in respect of which the underlying facts have not been provided.

[23] The defendant pleaded as follows in paragraph 8 of its first special plea:

“In the alternative to the aforementioned and should it be found that the claimed amounts constitute a penalty, which is denied on the premise that it has not been pleaded, it is pleaded that the supplier is not entitled to impose a reasonable cancellation penalty as prescribed in section 14(3)(b)(i)”- referring to the Consumer Protection Act- my emphasis.

[24] As regards paragraph 9 of defendant’s plea: “

“ In the alternative and in the event of it being found that the plaintiff’s are entitled to charge a penalty, which remains denied, the defendant pleads that the prescripts of the Conventional Penalties Act, 15 of 1962 read with section 14(3) of the CPA, together with regulation 5(2) of the CPA, finds application and the defendant pleads that such penalty may not exceed a reasonable amount, taking the following factors into account:

9.1 The amount which the defendant is still liable for to the supplier to date of cancellation.

9.2 The value of the transaction up to date of cancellation.

- 9.3 *The value of the goods that were returned to the supplier*
- 9.4 *The length of the notice of cancellation*
- 9.5 *The reasonable potential for the service provider to find an alternative consumer.*
- 9.6 *The general practice of the relevant industry*
- 9.7 *The nature of the defendant as a small private school”.*

[25] A defendant has an obligation to (a) admit, (b) deny, or (c) confess and avoid the material facts alleged in the plaintiff's claim, or (d) to state which of them are not admitted and to what extent, and (e) to state clearly and concisely all material facts on which the defendant relies. I agree that there is a duty on a pleader to deal with all the allegations made by the plaintiffs⁶.

[26] In *Bragan Chemicals (Pty) Ltd v Devland Cash and Carry Pty Ltd*⁷ Basson J stated the following as regards the role of pleadings:

“ The role of pleadings in litigation is well-known and need to be restated in detail. The object of pleadings is to define the issues upon which a court will be called upon to adjudicate and to enable the parties to prepare for trial on the issues as defined. A plea is the answer by a defendant to the claims made against it by the plaintiff and in which his defence is set out. Rule 22(2) of the Uniform Rules provides as follows:

“The defendant shall in his plea either admit or deny or confess and avoid all material facts alleged in the combined summons or declaration or state which of the said facts are not admitted and to what extent and shall clearly and concisely state all material facts upon which he relies.”

[27] It is trite that secondary facts in the absence of pleaded primary facts are nothing more than a deponent's own conclusions and accordingly do not constitute evidential material capable of supporting a cause of action⁸.

⁶ *Sterling Consumer Products (Pty) Ltd v Cohen* 2004 (4) All SA 221 (W).

⁷ 2020 JDR 1742 (GP) at para 15

[28] In *South African Securitisation Programme (RF) Ltd and Others v Manley Communications – Publicity and Public Relations Consultants CC*⁹ the following was said:

“[20] This brings me to the CPA defence. In this regard the deponent to the opposing affidavit stated that the amount claimed is a penalty as defined by the CPA and that it stands to be reduced. She further refers to the decision of this Court in Plumbago whose facts she says are remarkably similar to the present case in that it involved “a nearly identical rental financing agreement for office automation equipment”. The she submits that the reduction of a penalty amount “is a complex matter which depends on the variety of factors”.

[21] The defendants, however, do not set out the facts to be relief upon in support of their contention that the penalty falls to be reduced. Instead, they refer to a letter written by their attorneys requesting certain information for the purpose of determining the plaintiffs’ prejudice. The letter, in response to further states that:

“Without the abovementioned information, which your client would in any event be obliged to discover, it is impossible for our client to determine your client’ prejudice. Failure to provide us with this information will require the parties to go to trial to determine the prejudice suffered by your client, and summary judgement will be refused on this reason alone.

[22] Properly construed, the letter referred to above is a confession by the defendants that they do not have the facts on the basis of which they contend that the penalty is out of proportion to the prejudice suffered by the plaintiff. To rely on the failure by the first plaintiff to provide the requested information as a basis for the refusal of the application for summary judgment misses the point. The defendants are required to disclose facts from which it must appear that they have a defence which is bona fide and good in law. This they have failed to do and therefore the CPA defence must fail”.

⁸ *Radebe v Eastern Transvaal Development Board* 1988 (2) All SA 271 (A), *Die Dros (Pty) Ltd and Another v Telefon Beverages CC and Others* 2003(4) SA 207 (C) at 217 B-E.

⁹ Unreported Judgment of the Western Cape High Court, Case number 15549/2020 (16 August 2021).

[29] In *Asfin North (Pty) Ltd t/a Assetfin (previously known as IAB Financial Services) v Digital Direct CC and Another*¹⁰, Makhoba J held as follows:

“18. In Smit v Bester 1977(4) SA 937 (A) the court held that where section 3 of the Conventional Penalties Act, 15 of 1962 is applicable the onus is on the debtor to show prejudice which the creditor suffered and accordingly that it should be reduced and to what extent. ...In National Sorghum Breweries v International Liquor Distributors 2000 ZASCA: 2001 (2) SA 232 (SCA), the Supreme Court of Appeal upheld that earlier Appellate Division decision in Smit v Bester supra, the court held that the actual prejudice suffered by a creditor must be proved by the debtor and this was reaffirmed in Steinburg v Lazant 2006(5) SA 52 (SCA)

23 Mr Bester testified that the equipment was such that it could not be re-rented and was of a specialized nature.

24 Having heard the evidence of the second defendant it is clear that the 1st and 2nd defendants did not do anything to mitigate the Plaintiff's loss or renegotiate the terms of the contract. 1st and 2nd Defendant's mero motu cancelled the contract without any reasonable ground. The defendants caused inconvenience and loss to the Plaintiff by simply moving away from the contract. Therefore, I am of the view that the penalty is not out of proportion to the prejudice suffered by the plaintiff. There was nothing the plaintiff could do to mitigate its damages to an amount lower than the penalty.

25 Consequently, the Plaintiff should be entitled to succeed in the claim. The Plaintiff is entitled to its costs on an attorney and own client's basis since there is no reason justifying any departure from the contractual term.”

[30] It follows that a party claiming a reduction must allege and prove that the penalty is disproportionate to the prejudice suffered by the creditor. This entails that the defendant must prove actual prejudice. In addition, the debtor must prove the extent to which the penalty should be reduced¹¹.

¹⁰

¹¹ *Chrysafis v Katsapas* 1988 (4) SA 818 (A).

[31] In *Gail Francis Buechel v South African Securitisation Programme (RF) Ltd and Others*¹² the court held:

“Notably, the appellant did not set out any factual averments to substantiate the Conventional Penalties defence as she had done with the fraud defence. All she stated was “I repeat the contents of paragraphs 14.1 to 14.7 above and pray that same may be incorporated herein mutatis mutandis”

[32] Considering the defendants’ plea and special plea holistically, I agree with the plaintiffs that the defendants’ reliance on the Conventional Penalties Act is misplaced. The plea and/or the affidavit resisting summary judgment contain no allegation and/or primary evidence in support of the claim for such reduction. The purported defence is *excipiable* on the basis that the defendant failed to plead the factual and/or legal basis justifying that the purported penalty ought to be reduced to nil or reduced in any way whatsoever. I agree that the averments pleaded by the defendant constitute legal conclusion as opposed to a plea supporting peremptory primary facts or evidence to sustain a cause of action (or defence if applicable) based on the Conventional Penalties Act. I am not convinced that the purported defence is *bona fide* and/or constitute issues which are triable.

[33] The attempted reliance on the National Credit Act, Act 34 of 2005, must equally fail because the Act does not apply to the rental agreements and/or the parties thereto¹³.

[34] The defendant denies that the original cedent of the rental agreements, Thusano, duly complied with all its obligations in accordance with the respective rental agreements. Upon perusal of the defendant’s plea and affidavit resisting summary judgment, I could not find or identify the basis upon which Thusano failed to comply with its obligations as aforesaid.

¹² A Judgment of the Full Bench Appeal, Western Cape High Court Division, Case No: A 107/2024 – (26 February 2025) at para 10. Leave to was granted to the Appellant to the Supreme Court of Appeal, which remains pending.

¹³ *ABSA Technologies v Michael's Bid House* 2013(3) SA 426 (SCA). At para 29 ...“*The argument that the rental agreement was a credit agreement in terms of s 8(4)(f) must thus also fail*” and para 32 “*The rental agreement is thus not governed by the Act and Absa Technology is not required to give notice, or comply with, the provisions of ss 129 and 130 of the Act before instituting action*”

[35] Firstly, Thusano, over and above the obligation to pay the purchase price to the supplier of the equipment, did not attract obligations to the defendant. The rental agreements did not establish reciprocal obligations as such¹⁴. Secondly, it is for the defendant to allege non-performance and to provide sufficient detail to enable a plaintiff to disprove the purported noncompliance¹⁵. Thirdly, the probabilities militate against the suggestion that Thusano failed in one way or the other as regards its obligations. It is common cause that the rental agreements were concluded in February and March 2020 respectively and that purported breaches occurred some time thereafter. It follows that if Thusano failed to perform its obligations, which the defendant failed to identify, on what basis did the defendant then continue with its payment obligations until the purported breaches. Further, the defendant did not place Thusano on terms for its purported breaches and/or did not follow through to cancel the rental agreements.

[36] I am of the view that the defendant failed to establish any defence relating to Thusano's non-performance. This attempt is not bona fide and doesn't warrant the attention of a trial court.

[37] This court perused both rental agreements, identical in terms and conditions, and established that clause 9 thereof provides for cession of all rights in and to the respective agreements without notice to the defendant. The relevant clauses read as follows:

37.1 "9.1 Hirer is entitled to cede and/or delegate without notice to User all or any of Hirer's rights and/or obligations under this agreement including its rights of ownership in the goods or any of them, either absolutely or as collateral security, to any other person or persons and whether such cession is made to the cessionary/ies alone or to the cessionary/ies jointly and severally with Hirer or any other person or persons, and if such cession occurs, User shall if so required by any such cessionary/ies make all payments direct to such cessionary/ies. Any reference in this agreement to

¹⁴ Wynns Car Care Products (Pty) Ltd v First National Bank Ltd 1991(2) SA 754 (A)

¹⁵ HA Millard & Son (Pty) Ltd v Enzenhofer 1968 (1) SA 330 T.

Hirer shall, unless the context indicates otherwise, be construed as referring to the cessionary/ies. User hereby undertakes to accept the cession and/or delegation and to acknowledge the rights of the cessionary/ies in terms of this clause and to hold the goods on behalf of the cessionary/ies subject to the conditions of this agreement.

37.2 9.2 The User agrees that in the event of such cession, to the extent that any such cession or delegation results in the splitting of claims the User hereby consents in advance to such splitting of claims.

[38] In *Hillock and Another v Hillsage Investments (Pty) Ltd*¹⁶ Muller JA said the following:

“What is clear, however is that those provisions, and indeed also the provisions of clause 31, were intended to operate only as between the parties to the agreement, namely the lessor and lessee. A third party, such as National Exposition in the present case, cannot seek to rely on the provision in question, unless it has become a party to the agreement, for example by assignment and it is the validity of the alleged agreement of assignment that the applicants seek to attack. In any event, the facts of the instant case, in my judgment, clearly preclude the applicants from seeking to avoid liability by relying on alleged non-compliance with clause 8 of the lease.”

[39] In *Letseng Diamonds Ltd v JCI Ltd and Others*¹⁷ Jafta JA said the following:

“The general rule is that if two parties enter into an agreement and there has been non-compliance with its terms, it is only the contracting parties who can challenge the validity of the agreement.”

[40] In *Aussenkehr Farms (Pty) Ltd v Trio CC*¹⁸ Lewis AJA said the following:

¹⁶ 1975 (1) SA 508 (A) at para 515A-C.

¹⁷ 2009 (4) SA 58 (SCA) at para [23]

¹⁸ 2002(4) SA 483 (SCA) at para 493D.

“Similarly, as to the second argument, is it open to a third person to insist on variation of a contract by the parties be in writing when the parties themselves are not relying on the provision in the contract requiring written variations? In answering these questions, one must consider the purpose of the provisions at issue. Clearly, all contractual terms are designed to govern the relationship between the parties themselves. Similarly, where the parties have agreed that the cession will be extinguished when the overdraft ceases to exist, it should not be open for the defendant to argue that the re-cession must be in writing in order for it to take effect. Thus, even if the re-cession by the bank to the plaintiff in June 1997 that constitute a variation of the contract (a dubious proposition in itself, since the re-cession constitutes a termination of the relationship and not a change to contractual terms), if the parties were not containing that a written termination was needed, it was not open to the defendant to argue invalidity of the act.”

[41] It is not open to a defendant, a non-party to the cession agreements, to challenge or attack the validity or enforceability thereof. There exists no *vinculum juris* between the defendant and the parties involved in the cession agreement(s) with Thusano. Further, the principle of privity of contract finds application which means that only parties to a contract can sue or be sued on it or challenge the validity thereof.

[42] Consequently, I am of the view that the plaintiff's produced regular and valid proof of the cessions concluded which are not susceptible to challenge or attack by the defendant. It follows that the defence is not *bona fide* or an issue that justifies the attention of a trial court.

[43] The defendant denies that it is in breach of the rental agreements and that it is indebted to the first plaintiff. The defendant failed to plead any primary or material facts supporting the aforesaid denials as regards the indebtedness or breach of the rental agreements. The defendants' bare denials are not *bona fide*, raised in an attempt to cause delays, and fail to raise triable issues on these aspects.

[44] The legal position as regards certificates of balances remains and it stands as *prima facie* proof of the substance of its contents in any litigation to exact payment.

[45] In *Senekal v Trust Bank of Africa Ltd*¹⁹ the court said the following:

45.1 *“The main purpose of the certificate clause was clearly to facilitate proof of the amount of the principal debtor’s indebtedness to the bank at any given time. A similar purpose underlies provisions, frequently found in reducible mortgage bonds and in bonds to cover future advances, that a prescribed certificate shall be sufficient or prima facie proof of the amount due thereunder*²⁰.

45.2 *Whenever a bank claims payment of money said to be owing to it by a customer who enjoys overdraft facilities on a current account which fluctuates, possibly from day to day, it must rely on its books of account and other records of transactions in order to establish the amount due to it. To prove every one of the many entries in the books, which may have been made from time to time by a large number of different employees, might for obvious reasons sometimes be extremely difficult. (Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A) at 424; see also S v Volschenk 1970(3) SA 502 (T) at 504E) The main purpose of the certificate clause was clearly to facilitate proof of the amount of the principal debtor’s indebtedness to the bank at any given time.*

[46] The evidentiary burden rests on the defendant to disturb the evidentiary weight of the certificate of balance. It follows that in the absence of some evidence to the contrary, the fact in issue must be taken to have been proven²¹.

[47] 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:

¹⁹ 1978(3) SA 375 (A)

²⁰ *Id* at para 382A

²¹ *Scagell and Others v Attorney-General of the Western Cape and Others* 1997(2) SA 368 (CC) at para 11; *S v Veldhuizen* 1982 (3) SA 413 (A) at 416.

“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 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.”

[48] 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”.

[49] In *Raumix Aggregates (Pty) Ltd v Richter Sand CC*²² the full court explained what is required of a defendant in summary judgment proceedings:

²² 2020 (1) SA 532 (GJ).

“[15] Under the amended rule the applicant is required, 15 days after the date of delivery of a plea or an exception, to deliver a notice of application for summary judgment, together with an affidavit identifying any point of law relied upon and the facts underpinning the claim, briefly explaining why the defence as pleaded does not raise any triable issue. Under the old rule the plaintiff was required to file a brief affidavit ‘verifying a cause of action’ and opining that the defendant has no bona fide defence. These requirements are no longer applicable under the new procedure. The question is whether this change in procedure would, if applied retrospectively, adversely affect substantive rights.

[16] The purpose of a summary judgment application is to allow the court to summarily dispense with actions that ought not to proceed to trial because they do not raise a genuine triable issue, thereby conserving scarce judicial resources and improving access to justice. Once an application for summary judgment is brought, the applicant obtains a substantive right for that application to be heard, and, bearing in mind the purpose of summary judgment, that hearing should be as soon as possible. That right is protected under s 34 of the constitution”

[50] Considering the trite principles governing summary judgment proceedings and *all* defences raised by the defendant, I am not convinced these attempts constitute *bona fide* and triable issues. As a result, the summary judgment must succeed.

[51] The plaintiff claims costs on an attorney and client scale in accordance with the provisions of the rental agreements. It is trite that costs are within this court’s discretion, but I am simultaneously alive to the parties’ right’ in their’ “freedom of contract’. I therefore deem it necessary to reaffirm the principles highlighted in *Beadica 231 CC and Others v Trustees for the Time Being of the Oregon Trust and Others 2020 (9) BCLR 1098 (CC)*

[83] *“The first is the principle that public policy demands that contracts freely and consciously entered into must be honoured. This Court has emphasised that the principle of pacta sunt servanda gives effect to the central constitutional values of freedom and dignity. It has further recognised*

that in general public policy requires that contracting parties honour obligations that have been freely and voluntarily undertaken. Pacta sunt servanda is thus not a relic of our pre-constitutional common law. It continues to play a crucial role in the judicial control of contracts through the instrument of public policy, as it gives expression to central constitutional values.

[84] Moreover, contractual relations are the bedrock of economic activity, and our economic development is dependent, to a large extent, on the willingness of parties to enter into contractual relationships. If parties are confident that contracts that they enter into will be upheld, then they will be incentivised to contract with other parties for their mutual gain. Without this confidence, the very motivation for social coordination is diminished. It is indeed crucial to economic development that individuals should be able to trust that all contracting parties will be bound by obligations willingly assumed.

[85] The fulfilment of many rights promises made by our Constitution depends on sound and economic development of our country. Certainty in contractual relations fosters a fertile environment for the advancement of constitutional rights. The protection of sanctity of contracts is thus essential to the achievement of the constitutional vision of our society. Indeed, our constitutional project will be imperiled if courts denude the principle of pacta sunt servanda.”

[52] There is no cogent reasons advanced by the defendant justifying a deviation from the agreed terms in relation to costs. As a result I am inclined to award costs on an attorney and client scale.

ORDER

[53] Accordingly I make the following Order;

CLAIM A

[53.1] Summary judgment is granted against the defendant.

[53.2] The defendant is ordered to pay the sum of **R 103 263-54** (One Hundred and Three Thousand Two Hundred and Sixty-Three Rands and Fifty-Four Cents) to the first plaintiff

[53.3] The defendant is ordered to pay the first plaintiff's interest on the sum of **R 103 263-54** (One Hundred and Three Thousand Two Hundred and Sixty-Three Rands and Fifty-Four Cents) at a rate of 17.75% (prime plus 6%) per annum from 23 February 2024 to date of final payment.

[53.4] Pending payment of the amounts reflected in paragraphs 53.2 and 53.3 *supra*, the defendant is ordered to return the following assets to the first plaintiff within 10 days from date of this order:

53.4.1 1 x SL51 80 Series School Intercom (Serial Number :S[...])

53.4.2 1 x Base Station

53.4.3 2 x Expansion Cards

53.4.4 1 x Surge Protection

53.4.5 4 x Inline Lightning Protection Circuits

53.4.6 25 x Substation PVC

53.4.7 1 x Amp/CPU Board

53.4.8 5 x Outdoor Horns

[53.5] The defendant is ordered to pay the first plaintiffs' costs on an attorney and client scale.

CLAIM B

[53.6] Summary judgment is granted against the defendant.

[53.7] The defendant is ordered to pay the sum of **R 808 415-26** (Eight Hundred and Eight Thousand Four Hundred and Fifteen Rands and Twenty-Six Cents) to the first plaintiff

[53.8] The defendant is ordered to pay the first plaintiff's interest on the sum of **R 808 415-26** (Eight Hundred and Eight Thousand Four Hundred and Fifteen Rands and Twenty-Six Cents) at a rate of 17.75% (prime plus 6%) per annum from 23 February 2024 to date of final payment.

[53.9] Pending payment of the amounts reflected in paragraphs 53.7 and 53.8 *supra*, the defendant is ordered to return the following assets to the first plaintiff within 10 days from date of this order:

53.9.1 1 x Toshiba E Studio 8518A & Stitch Finisher (Serial Number: C[...])

53.9.2 1 x Toshiba E Studio 3015 AC (Serial Number C[...]); 1 x Dahua NVR 64 Channel System (Serial Number 5[...]), 4 x 6TB Hard Drive, 26 x Danhua 30m Fixed Lens Dome Camera

53.9.3 24 x Dahua 30m Bullet Camera, 2 x Dahua 60m Vari Focal Bullet Camera, 2 x Data Switch 24 Port POE, 1 x Data Switch 16 Port Gigabit, 2 x Data Switches 8 Port POE 2 Gigabit UP Links, 2 x 5Ghz Nanobeam, 1 x Hisense 55" UHD Monitor, 1 x Mecer 3 KVA UPS.

53.9.4 1 x Cloud Key, 1 x 4 Port Security Gateway, 3 x AP Long Range, 2 x Uniquity Nano station, 2 x Rackmount UPS (Serial Number 7[...]), 2 x 6 U Wall Mount Cabinet, 2 x Power Rail 6 Way RSA Socket, 2 x 8 Port Gigabit POE Switch.

53.9.5 3 x Mecer 75" Interactive LED Panels, 3 x Microsoft Windows Pro, 3 x H/D Wall Brackets, 3 x 10m Power Cable, 3 x Remotes and Accessories (Serial Number U[...])

53.9.6 1 x Nec SV 9100 PABX Mini, 1 x 24 Key Display Terminal, 3 x 12 Key Display Terminal, 4 x IP Dect Base Station, 2 x IP Dect Cordless Phones, 1 x 2nd Line Card, 2 x GCD LTA Card, 1 x VoIP Card, 1 x Lightning Protection, 1 x UPS (Serial Number A[...])

53.9.7 2 x Satellite Pro i3 (Serial Number 9[...])

[53.10] The defendant is ordered to pay the first plaintiff's costs on an attorney and client scale.

ASL VAN WYK
Acting Judge of the High Court
Limpopo Division, Polokwane

APPEARANCES:

HEARD ON : 17 JUNE 2025
JUDGMENT DELIVERED ON : **26 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 : **S AUCAMP**
INSTRUCTED BY : Kern Armstrong & Associates
C/O Le Roux Inc
POLOKWANE

FOR THE RESPONDENT : **P A VENTER**
INSTRUCTED BY : M Wentzel
C/O Espag Magwai Attorneys
POLOKWANE