



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case no: 25696/2024

In the matter between:

NEW LIFE HOLDINGS (PTY) LTD

APPLICANT

And

STEFANUS VAN WYK VAN DER HOVEN

FIRST RESPONDENT

JACOBUS REYNEKE VAN DER HOVEN

SECOND RESPONDENT

NEIL FRANS ROETS

THIRD RESPONDENT

Neutral citation: *New Life Holdings (Pty) Ltd v Van Der Hoven and Others*
(Case no 25696/2024) [2025] ZAWCHC ... (23 October 2025)

Coram: NUKU J

Heard: 28 August 2025

Delivered: 23 October 2025

Summary: Procedure- application to strike out new matter in reply – alternatively to deliver a further affidavit – no matter introduced in reply more than the clarification of the pleaded case – both applications refused with costs.

Contract- interpretation of the terms of a guarantee providing for payment on demand – liability arising on receipt of a written demand stating that any amount is owed independently of the prior agreement that gave rise to the guarantee.

ORDER

1. The respondents are ordered to make the following payment to the applicant, jointly and severally, with the one paying the others to be absolved:
 - (a) The sum of R8 376 045 (Eight Million Three Hundred and Seventy-Six Thousand and Forty-Five Rand);
 - (b) Interest on the amount referred to in (a) above calculated at the rate of 11.75% per annum, from 5 August 2024, until the final date of payment, both days inclusive; and
 - (c) Costs of the application on an attorney-and-client scale.

JUDGMENT

Nuku J

Introduction and factual background

[1] The applicant seeks payment of R8 376 045, along with interest and costs from the respondents arising from a guarantee agreement concluded between the parties (“guarantee”).

[2] The parties concluded the guarantee to secure the performance of the obligations by Climealine (Pty) Ltd (“Climealine”), arising from a sale of shares and loan account agreement (“SPA”) that Climealine had entered into with the applicant for the sale of the applicant’s shares and loan account in Imalisoft (Pty) Ltd (“Imalisoft”).

[3] The applicant pleaded the following terms of the guarantee, which the respondents did not dispute, namely that:

(a) The phrase ‘guaranteed obligations’ was defined as each and every of Climealine’s payment obligations, liabilities and duties towards and/or in respect of the applicant under and in terms of the sale of shares and loan account agreement, including the obligations to timeously settle/pay the entire purchase price, and each part thereof, and any accrued interest owing by

Climealine to the applicant under and in terms of the sale of shares and loan account agreement.

- (b) The word ‘guarantors’ was defined to refer to the respondents collectively, or any of them, as context requires.
- (c) The rights and obligations of the parties under the guarantee were subject to and conditional upon the fulfilment of the condition precedent that the share sale agreement be entered into and signed by and between the relevant parties thereto, and the same having become unconditional on or before 31 March 2023.
- (d) The respondents, jointly and severally, irrevocably and unconditionally:
 - i. Guaranteed and undertook as a principal and independent obligation in favour of the applicant, its successors-in-title and assigns, the due and timeous performance by Climealine of all of the guaranteed obligations;
 - ii. Bound themselves as co-principal debtors *in solidum* with Climealine for the due and timeous payment by Climealine of each and every amount owing by Climealine to the applicant under and in terms of the SPA from time to time; and
 - iii. Indemnified and undertook to hold harmless the applicant and its successors-in-title against any and all loss, liability, damage, cost (including, without limitation, legal costs on a scale as between attorney and own client) and expense which the applicant and/or its successor-in-title and assignee may suffer or incur in connection with a breach of the Guaranteed Obligations; on the terms set out in the guarantee.

- (e) The obligations of the respondents, jointly and severally, under the guarantee are principal and independent obligations and remain enforceable notwithstanding the invalidity or unenforceability, for any reason whatsoever, of the guaranteed obligations.
- (f) The security constituted by the guarantee constitutes a continuing covering security for the guaranteed obligations and remains in force and effect until the whole of the guaranteed obligations have been fully and unconditionally discharged.
- (g) No alteration or variation of the share sale agreement or any other present or future agreement (or any alteration or variation thereof) between the parties thereto shall in any way release the respondents from their liability.
- (h) Upon receipt by the respondents, or any of them, of any written notice from the applicant stating that any amount is payable by the respondents, or any of them, or that the respondents, or any of them, are obliged to perform any obligation to the applicant, in terms of the guarantee, the respondents, jointly and severally, will, notwithstanding that the respondents, or any of them, may dispute their liability to make such payment, immediately:
- i. Perform such obligation; or
 - ii. Pay the amount stipulated in the notice, in cash, without set off, withholding or deduction of any nature whatsoever, into the bank accounts stipulated by the applicant in writing for this purpose; or

- iii. If requested by the applicant, provide security to the satisfaction of the applicant in its sole and absolute discretion for the performance of such obligation or payment of such amount.
- (i) A certificate under the hand of a manager and/or director of the applicant as to the existence or amount of indebtedness of Climealine and/or the respondents, or any of their, indebtedness to the applicant at any time, or as to the fact that such amount is due and payable, the amount of interest accrued thereon, the rate of interest applicable thereto or as to any other fact, matter or thing relating to the indebtedness of Climealine and/or the respondents, or any of them, to the applicant, shall be prima facie proof of the contents and correctness thereof. It shall not be necessary to prove the appointment of the person signing such a certificate.
- (j) As part of the respondents' liability in terms of the guarantee, the respondents, jointly and severally, shall pay the amount of costs, charges and expenses of whatever nature incurred by the applicant in securing or endeavouring to secure fulfilment of the guaranteed obligations as well as the respondents, or any of their, obligations under the guarantee, including, without limitation, collection commission and legal costs on the scale as between an attorney and client, insurance premiums, broking costs, storage charges, costs and expenses of valuation, maintenance, advertising, realisation (including agent's and auctioneer's commissions and other charges and disbursements), taxes and other fiscal charges.
- (k) The respondents each renounced the benefits of the following legal exceptions:

- i. No cause of debt and no value received;
- ii. Revision of accounts and errors of calculations; and
- iii. *Non numeratae pecuniae*.

(l) The respondents waived any right they have of first requiring the applicant (or any director, shareholder or agent on its behalf) to proceed against or enforce any other rights or security, or to claim payment from any person or Climealine before claiming from the respondents under the guarantee. This waiver applies irrespective of any law or provision of any agreement, document or Guaranteed Obligation to the contrary.

[4] The applicant's case is that the conditions precedent contained in the guarantee were fulfilled on or before 31 March 2023, as evidenced by a document signed on behalf of the applicant, Climealine, and Imalisoft titled 'Fulfilment of conditions precedent pertaining to the sale of shares and loan account agreement'.

[5] Acting in accordance with clause 5.10 of the guarantee, the applicant issued a demand to the respondents on 5 August 2024, requesting payment within seven days of R8 376 045, plus interest at a rate of 15,75% per annum from 1 July 2024, until the date of payment. The respondents failed to pay the amount demanded. Additional demands dated 26 September 2024, and 28 October 2024, also addressed to the respondents, did not result in payment.

[6] On 22 August 2024 and 11 November 2024, the applicant issued breach notices to the respondents, which elicited no positive response from them. That resulted in the applicant instituting the present application seeking the enforcement of the obligations arising from the guarantee.

[7] The respondents oppose the application on various grounds. In their answering affidavit, the respondents raised two *lis pendens alibi* points *in limine*. These points *in limine* relate to proceedings that are currently pending in the Limpopo Division of the High Court.

[8] The first of these proceedings is an action by Climealine seeking payment of R1 500 000 (One Million Five Hundred Thousand Rand) from the applicant because the SPA has been cancelled due to the applicant's repudiation, which Climealine has accepted ("cancellation action").

[9] The second is an action instituted by Climealine, Intuitive PDA (Pty) Ltd ("Intuitive"), and Imalisoft, as plaintiffs, against the applicant, DebtSafe (Pty) Ltd ("DebtSafe"), ADCAP (Pty) Ltd ("ADCAP"), and Mr. Hendrik Christoffel Du Plessis ("Mr. Du Plessis"), as defendants. In this action, Climealine seeks, as against the applicant, a declaratory order to the effect that it is excused from making payments under the SPA to the applicant as long as the applicant remains in breach of the agreement documenting the fulfilment of the conditions precedent. For convenience, I refer to this action as the declaratory action.

[10] On the merits, the respondents' case is that they are not liable for the same reasons that Climealine is not liable to the applicant. This is based on their stated purpose of the guarantee, which they say was to provide for the respondents to be liable for Climealine's debts in terms of the SPA, only if Climealine is liable to the applicant in the first place.

[11] The applicant filed a replying affidavit stating that the outcome of the application depends on whether the guarantee creates independent obligations or if the guaranteed obligations only arise from the SPA. The replying affidavit also described the difference between the parties' approaches, with the deponent suggesting that the respondents seem to treat the guarantee as a suretyship.

[12] The deponent to the replying affidavit went further to clarify the applicant's stance, stating that the guarantee creates principal obligations, and that the guarantors' liability is independent of the principal debtor (Climealine in this case) and entirely separate from the SPA. The deponent went further to point out the incorrectness of a statement made in the answering affidavit that, 'the liability of the respondents in terms of the guarantee depends on the anterior question as to whether Climealine is liable to the applicants in terms of the sale agreement'. It was also pointed out that the respondents overlooked the provisions of clause 5.2 of the guarantee which provide that: 'For avoidance of any doubt, the obligations of the Guarantors, jointly and severally, under this Agreement are principal and independent obligations and are not and will remain enforceable notwithstanding the invalidity or unenforceability, for any reason whatsoever, of the Guaranteed Obligations.'

[13] The respondents applied to strike out the matter referenced above from the applicant's replying affidavit, arguing that the applicant is now attempting to present an entirely different case from the one outlined in the founding affidavit.

[14] It was suggested that the case made out in the applicant's founding affidavit is that the respondents are liable for the same amount that is due to the applicant by Climealine under the SPA. It was further suggested that the applicant's case in the founding affidavit was never based on the respondents' liability being 'wholly independent' from the SPA and from Climealine's liability to the applicant. Based on these two averments, it was contended that paragraphs 3 to 11 of the applicant's replying affidavit should be struck out.

[15] Alternatively, if the strikeout application is refused, the respondents sought the leave of the Court to file a further affidavit to address what they argued was a new matter introduced in the reply.

[16] In the further affidavit sought to be filed by the respondents, they, however, repeated their position as stated in their answering affidavit, namely that their liability under the guarantee is and can only be for the same amount that may be due to the applicant by Climealine in terms of the SPA, and that they are not liable for the same reasons that Climealine is not liable.

[17] The only difference this time was that they cited some of the clauses of the guarantee to support their position. In particular, they referenced clauses 2.2, 3.1.1.6, 4.2, 5.1.1-3, 6-8, 12.2, which are not necessary to list since most of them

had been explicitly pleaded by the applicant as outlined in paragraph 3 above. The affidavit concluded by stating that it will be argued at the hearing that, when properly interpreted, the respondents' liability to the applicant can only be for Climealine's liability to the applicant under the SPA, and if that is not the correct interpretation of the guarantee, then, at best for the applicant, the guarantee contains such fundamentally contradictory and mutually destructive provisions that it must be void for vagueness.

[18] The applicant opposed the application to strike out because the replying affidavit did not present any new evidence. It also opposed the application to file a fourth affidavit because the respondents, (a) have not shown exceptional circumstances, (b) have not demonstrated any prejudice, and (c) intend to cure avoidable defects in their answering affidavit.

Issues for determination

[19] The issues for determination in this application, in light of the above factual background, are the following:

- (a) The merits of the respondents' strike-out application and application for leave to file the fourth affidavit; and
- (b) The interpretation of the terms of the guarantee and the availability of the *lis pendens alibi* defences to the respondents.

The respondents' strike-out application and application for leave to file the fourth affidavit

[20] The respondents argue that the case the applicant sought to make out in the founding affidavit is that their liability under the guarantee relates to the same debt owed by Climealine under the SPA. This is because the applicant, in the founding affidavit, not only referenced the conclusion of the SPA and the alleged breach by Climealine but also included demand letters sent to Climealine for the same amount the applicant is seeking from the respondents in this application.

[21] In the replying affidavit, as the argument goes, the applicant now attempts to make a different case, claiming that the respondents' liability is not related to Climealine or the SPA but is entirely independent of both.

[22] The applicant argued that a careful reading of the founding affidavit clearly shows that, from the beginning, the applicant has always aimed to enforce the guarantee without referencing the SPA, as paragraph 9 of the affidavit states: '[t]he applicant seeks to enforce a guarantee agreement concluded between it and the respondents. By seeking payment from the respondents, the applicant is effectively seeking specific performance of the guarantee.'

[23] The argument further suggests that since the outcome of the application depends on the interpretation of the guarantee, as the respondents must accept, no new evidence has been introduced in the replying affidavit. Additionally, the respondents complain of any prejudice because the interpretation of the guarantee is based on legal argument, which the respondents remain entitled to present.

[24] Finally, it was argued that what the replying affidavit did was simply clarify what was already pleaded, namely that the application concerns the enforcement of a guarantee made between the applicant and the respondents.

[25] The arguments presented by the applicant have merit, and paragraph 9 of the founding affidavit mentioned above clearly indicates the applicant's cause of action. The fact that the applicant chose to detail how the guarantee originated does not change the fact that the applicant's cause of action has always been based on enforcing the guarantee. This also applies to the reference made to the demands made to Climealine because the respondents' liability is a matter that must be determined by interpreting the guarantee, and the evidence relating to the demands made to Climealine has no role to play in that interpretative process.

[26] The respondents' misinterpretation of the reference to the origins of the guarantee, along with the alleged breaches by Climealine and the subsequent demands, cannot change the fact that the applicant's claim is solely based on enforcing the guarantee. In other words, the respondents cannot use their own misreading of the pleadings to suggest that the applicant has either altered its cause of action or introduced new evidence in reply.

[27] The affidavit supporting the strike-out application does not mention any prejudice that the respondents would suffer if the application is refused. This is not surprising because, as the respondents state in the same affidavit, their liability depends on the interpretation of the guarantee. Given that, as the applicant argued, the respondents are entitled to present legal arguments on that matter, the issue of prejudice to the respondents does not arise. In fact, the affidavit that the

respondents seek to have admitted merely introduces legal arguments which they are, in any case, entitled to present during oral argument.

[28] The respondents have not established a case for striking out the new matter, which they claimed was introduced in the replying affidavit. This is because no new matter was introduced in the replying affidavit. Since no new matter was introduced in reply, there is no basis for granting the respondents leave to file a fourth set of papers, which simply raises a legal argument that the respondents are, in any event, entitled to present. Both the application for striking out and the application for leave to file a fourth set of papers are refused with costs.

The interpretation of the terms of the guarantee and the availability of the *lis pendens alibi* defences to the respondents.

[29] The applicant argued that the terms of the guarantee clearly show that the respondents' liability under the guarantee is separate from Climealine's liability under the SPA. Specific reference was made to clause 5.1.1, which states that the respondents undertook 'as a principal and independent obligation in favour of the applicant, ... the due and timeous performance by Climealine of all the Guaranteed Obligations.' Further reference was made to clause 5.2, which reinforced the independent nature of the respondents' obligations under the guarantee, and it was submitted that textually, there is only one plausible interpretation, namely that the respondents' liability under the guarantee is separate from that of Climealine.

[30] Turning to purpose, reference was made to clause 2.2 which recorded that the applicant requires a guarantee and security for the due and punctual performance and discharge by Climealine of all the Guaranteed obligations, and it

was submitted that the applicant could have required a suretyship but deliberately chose to require a guarantee.

[31] As to what triggers the respondents' liability under the guarantee, reference was made to clause 5.10 which states that:

‘Upon receipt by the Guarantors[respondents], or any of them, of any written notice from the Seller [applicant] stating that any amount is payable by the Guarantors[respondents], or any of them, or that the Guarantors, or any of them, are obligated to perform any obligation to the Seller, in terms of this Guarantee, the Guarantors, jointly and severally, shall, notwithstanding that the Guarantors, or any of them, may dispute that liability to make such payment immediately perform such obligation or pay the amount stipulated in the notice...’

[32] Clause 5.10, it was argued, clearly shows that the respondents' obligation to pay comes from the written notice by the applicant demanding payment, and that the respondents cannot withhold payment due to their dispute over liability. Once they receive a written notice from the applicant demanding payment, all the respondents can do is pay.

[33] Based on the argument that the guarantee creates independent obligations, it was argued that the *lis pendens alibi* defences relied upon by the respondents are not available to them. It was further asserted that the cause of action in the cancellation and declaratory actions is different because they are based on the SPA, whereas the cause of action in the current application is solely based on the guarantee. It was also argued that there is no commonality of parties involved

between this application and the cancellation and declaratory actions, as the respondents are not parties to the latter proceedings.

[34] Finally, based on all the above, it was argued that the respondents' liability has been established based on their failure to pay despite receipt of a notice contemplated in clause 5.10 of the guarantee.

[35] The respondents started their argument by referencing the disputes between Climealine and the applicant concerning the SPA and the fact that Climealine has cancelled the SPA. The argument then continued that the cancellation of the SPA by Climealine has extinguished the Guaranteed Obligations as defined in the guarantee, which means the respondents' liability does not arise.

[36] The follow-up argument was that it would be plainly absurd for the applicant to be entitled to recover the amount claimed in this application on one side, while simultaneously possessing the shares and the loan account on the other. If this were the case, the respondents argued that such an interpretation would imply that the applicant has the right to demand the fulfilment of guaranteed obligations that no longer exist.

[37] The respondents criticised the interpretation advanced by the applicant as one that is limited to the text of selected passages without considering the purpose of the guarantee as stated in the answering affidavit, which is that, 'The purpose of the guarantee is obviously to provide for the respondents to be liable for

Climealine's debts in terms of the share sale agreement, only if, of course, Climealine is liable in the first place.'

[38] It was further argued that the interpretation advanced by the applicant fails to take into account the interconnected nature of the SPA and the guarantee, which is so fundamental that the conclusion of the one is a condition precedent to the enforceability of the other, and the fact that Climealine is also a party to the guarantee.

[39] Reference was also made to the recital in clause 2 of the guarantee (particularly subclauses 2.1, 2.2, and 2.3), as well as clauses 5.1.2 and 5.1.3, to support the argument that; (a) the purpose and reason for the existence of the guarantee are outlined in clause 2, (b) the respondents committed themselves as co-principal debtors *in solidum* with Climealine for the timely and full payment of any amount Climealine owes to the applicant under the SPA (5.1.2), and (c) the fact that the respondents are liable for any loss or expense that the applicant 'may suffer or incur with a breach of the Guaranteed Obligations (5.1.2).'

[40] The respondents' response to the applicant's interpretation of clause 5.2 was that there is a difference between the invalidity or unenforceability of the Guaranteed Obligations and the fact that the guaranteed obligations have ceased to exist. In this case, it was contended that the guaranteed obligations have ceased to exist, and therefore, the respondents' liability cannot arise.

[41] Regarding the applicant's interpretation of clauses 5.1.1 and 5.1.2 that these clauses create independent obligations, it was submitted that these clauses are not reconcilable with instances where the respondents' obligation in the guarantee is described as that of co-principal debtors.

[42] Reliance was also placed in clause 5.4 of the guarantee in support of the argument that the guarantee has become unenforceable upon the unconditional discharge of the guaranteed obligations.

[43] As an alternative argument, it was claimed that the guarantee is invalid for being vague because co-principal debtors are responsible for the same debt. In this case, this means the respondents would be responsible for Climealine's debts. The argument is that the guarantee, on one hand, refers to independent obligations, and on the other hand, mentions co-principal debtors, and that these two are incompatible.

[44] The principles for interpreting documents are well-known and need not be restated. 'It is the process of attributing meaning to words used in a ... contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole ... giving consideration to the language used ... the context in which the provision appears and the apparent purpose to which it is directed.'¹

¹ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at para 18.

[45] Since this application concerns the respondents' liability under the guarantee, I find it useful to start with the analysis of clause 5.10, which was identified as the trigger for the respondents' liability. This clause requires the respondents to pay 'upon receipt of any written notice from the applicant stating that any amount is payable.' It also states that the respondents' liability to pay shall be joint and several, and that the obligation to pay shall be 'notwithstanding that the respondents ... may dispute their liability to make such payment immediately.'

[46] The text clearly indicates that the respondents' obligation to pay is triggered when the applicant provides written notice demanding payment of any amount the applicant claims is owed. The fact that the respondents are now disputing their liability is also addressed by clause 5.10, which states that the respondents' obligation to pay remains despite any dispute over their liability to do so.

[47] The respondents, however, have avoided addressing this provision, which is crucial to resolving this matter. What is more, clause 5.10 aligns with clause 5.2 which makes it clear that the respondents' obligations under the guarantee are principal and independent obligations. The process of interpretation requires meaning to be given to all the words used in a document and to interpret the guarantee as not imposing independent obligations would offend against that principle.

[48] The purpose of the guarantee, as stated by the respondents, is not supported by the text and, if anything, it contradicts the plain meaning of the words used in the guarantee. The guarantee nowhere makes the respondents' obligation conditional on Climealine's obligations, except for one instance—fulfilment of

conditions precedent. Once the conditions precedent are fulfilled, and it is undisputed between the parties that they were fulfilled, all that is needed to establish the respondents' liability is a written notice stating that any amount is owed.

[49] To the extent that the respondents argued that their obligations have been unconditionally discharged as contemplated in 5.4 of the guarantee, that is merely disputing their liability, which they cannot use to avoid liability under clause 5.10.

[50] To the extent that the respondents argued that the use of the term co-principal debtor in one or some of the clauses indicates an intention to make the respondents' liability subject to Climealine's liability, it was submitted on behalf of the applicant that the use of the phrase co-principal debtors and liability *in solidum* adds nothing and does not in itself, in the context of suretyships, make them co-principal debtors.

[51] Reference was made to an extract from Caney's *The Law of Surety*², where the author states that 'the undertaking of the obligation expressly in those terms adds nothing and does not in itself make the sureties co-principal debtors; if this is intended, appropriate additional wording must be used. The argument then was that, given the absence of the additional words used, it does not follow that the intention was to make the respondents liable for the same obligations as Climealine.

² Forsyth CF and Pretorius JT *Caney's The Law of Surety* 6 ed (2010) at 57.

[52] There is merit in this argument. The reference to the respondents as paras 5.1.2 as binding themselves as co-principal debtors *in solidum* with Climealine, cannot without more, result in the respondents' obligations being the same as those of Climealine.

[53] The respondent's defences regarding the dispute over Climealine's liability are unhelpful. This also includes the *lis pendens alibi* defences. In the absence of fraud, the respondents cannot avoid payment once the applicant serves them with a written demand stating that any amount is owed. This, the applicant has done, and it follows that the applicant is entitled to judgment.

[54] The applicant has been successful and is entitled to costs. The guarantee provides for costs to be payable on the scale between attorney and client, and that scale shall be applied accordingly.

Conclusion

[55] The application to strike out is baseless because no new matter was introduced in reply. The same applies to the request for an additional set of papers. Both are accordingly refused.

[56] The guarantee creates independent obligations based on the respondents' liability, which arises from a written demand by the applicant stating that the respondents owe an amount. The dispute related to the SPA cannot serve as a defence to the applicant's claim based on the written demand. This includes the pending cancellation and declaratory actions. The application therefore succeeds with costs.

Order

[57] As a result, the following order shall issue:

(a) The respondents are ordered to make the following payment to the applicant, jointly and severally, with the one paying the others to be absolved:

- i. The sum of R8 376 045 (Eight Million Three Hundred and Seventy-Six Thousand and Forty-Five Rand);
- ii. Interest on the amount referred to in 1 above calculated at the rate of 11.75% per annum, from 5 August 2024, until the final date of payment, both days inclusive; and
- iii. Costs of the application on an attorney-and-client scale, including costs of two counsel where so employed.

LG NUKU
JUDGE OF THE HIGH COURT

Appearances

For applicant: J Vorster SC with WJ Botha

Instructed by: Herman Vermaak Attorneys, Pretoria

C/O: Hayes Inc, Cape Town

For respondents: HA Van Der Merwe

Instructed by: Senekal, Simmonds Inc, Bedfordview

C/O: State Attorney, Cape Town.