IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NUMBER: 2024/028230

Reportable: NO

Circulate to Judges: NO

Circulate to Magistrates: NO

Circulate to Regional Magistrates: NO

In the matter between:-

SB GUARANTEE COMPANY (RF) PROPRIETARY LIMITED (Registration Number: 2006/021576/07)	Applicant
and	
60 WATERFORD ESTATE PROPRIETARY LIMITED (Registration Number: 2017/065839/07)	1st Respondent
MARK MORRIS FARBER (Identity Number: 6[...])	2nd Respondent

In re

SB GUARANTEE COMPANY (RF) PROPRIETARY LIMITED	Plaintiff

(Registration Number: 2006/021576/07)

and

60 WATERFORD ESTATE PROPRIETARY LIMITED 1st Defendant

(Registration Number: 2017/065839/07)

MARK MORRIS FARBER 2nd Defendant

(Identity Number: 6[...])

This judgment is handed down electronically to the parties' email address' indicated in the respective practice notes. The date of the hand down of the judgment is deemed to be ***5 November 2025****.*

JUDGMENT

Reid J

Introduction

[1] This is an application for a summary judgment against the defendants, coupled with an application to declare an immovable property[1] specially executable in terms of Uniform Rule 46A of the Uniform Rules of Court. I will refer to the parties as they are referred to in the main action.

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[1] (a) Section Number 19 as shown and more fully described on Sectional Plan Number SS123/2018 in the scheme known as WATERFORD in respect of the land and building or buildings situated at Portion 9 (of 4) of the Farm Luciana 214, District Parys, Province Free State of which section the floor area, according to the said sectional plan, is 585 in extent; and an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan.

[2] The 1st defendant concluded a home loan agreement with The Standard Bank of South Africa Limited ("the Bank"). The 2nd defendant stood as surety for the 1st defendant's obligations, limited to an amount of R3,600,000.00. The 1st defendant further executed an indemnity in favour of the plaintiff and a mortgage bond was registered over the 1st defendant's property in favour of the plaintiff.

[3] The defendants have delivered their plea to the main action, which triggered this application for a summary judgment. The defendants have also delivered an affidavit resisting the summary judgment.

[4] The following are the disputes between the parties:

4.1. The certificate of balance.
4.2. The communication of notices and statements from the plaintiff.
4.3. The defendants' indebtedness as contained in the certificate of balance.
4.4. The defendants' knowledge of their indebtedness as communicated by the plaintiff in the default notices.
4.5. Whether the defendants have raised a triable issue which staves off summary judgment.

[5] This Court essentially has to decide whether there is a triable issue raised as defence by the defendants. See: *Absa Bank Ltd v Meiring* 2022 (3) SA 449 (WCC) at paragraph [8].

Material background facts

[6] On 1 March 2015 the plaintiff and the Bank concluded an agreement (“the CTA”) which regulated the relationship between the Bank ("defined as the Creditor") and the plaintiff (“defined as the Guarantor").

In terms of the CTA the plaintiff would, as the need arose, guarantee the obligations of the individual debtors under individual home loan agreements.

[7] On 28 May 2018 and at Sandton, a duly authorised representative of the Bank and the 1st defendant concluded a written home loan agreement ("the loan agreement"). Also on 28 May 2018, the 1st defendant, (duly represented by the 2nd defendant) executed a written indemnity agreement in favour of the plaintiff and its successors in title or assigns (hereinafter referred to as "the indemnity").

[8] Pursuant to the conclusion of the loan agreement, the 1st defendant caused to be registered over the property in favour of the plaintiff a first covering continuing mortgage bond, registered under bond number B[...] ("the mortgage bond").

[9] The plaintiff pleads that the material terms of the loan agreement are *inter alia*, the following:

9.1. On 28 May 2018 the Bank agreed to advance the sum of R3,600,000.00 to the 1st defendant as a home loan ("the loan amount").

9.2. The principal debt incurred by the 1st defendant to the Bank (in respect of the loan agreement), was recorded as R3,612,900.00 ("the principal debt").

9.3. The principal debt is the amount on which interest is calculated.

9.4. The principal debt incurred by the 1st defendant to the Bank in respect of the loan agreement included the loan amount paid to the 1st defendant or on its behalf and an initiation fee.

9.5. All amounts owing to the Bank in terms of the loan agreement would bear interest (which would be calculated daily) from the date advanced or any other payments being made by the Bank, at the interest rate/s, and calculated in the manner determined in the loan agreement.

9.6. The loan agreement was to endure for 240 months.

9.7. The principal debt was to be repaid by the 1st defendant to the Bank in monthly instalments of initially R35,147.23 per month;

[10] The defendants pleaded that the correspondence of the plaintiff had to be identified as correspondence of importance to not resonate with spam communications received by e-mail, and requires conformity. The 1st defendant pleads that it, at all times, it was under the impression that it was on par with its payments and without a proper accounting or system to communicate the same, there was no reasonable ground to doubt that the payments were up to date.

[11] The defendants plead further that plaintiff has failed to furnish proof thereof that the 1st defendant is in breach of the loan agreement through a statement of account. The defendants further plea that the plaintiff has throughout the duration of the agreement failed to properly communicate with the defendants and provide statements reflecting the debits and credits in terms of the account. Such amounts have not been proven to be prevalent in terms of the claim.

[12] The defendants further plea that the default notice was not delivered to either of the defendants. The tracking system of the notice does not equate to proper service of the letter and the letter did not come to the attention of the defendants.

[13] The defendants also plea that the history and amount outstanding in terms of the loan agreement is in dispute, and the plaintiff has failed to show proof by means of a reconciliation of the account of the amount claimed. The defendants plea that it was not obligated to make immediate payments and has they had to have reasonable time to make payments to the plaintiff as the defendant's was in financial

difficulty and unable to fulfil their obligations as a result of the supervening impossibility caused by the COVID-pandemic and the subsequent lockdown periods.

[14] The plaintiff states that the plea filed on behalf of the defendants does not disclose any valid legal defense and, as such, any issue fit for trial and has been delivered by the defendants solely for the purpose of delay.

[15] The plaintiff claims that the 1st defendant has breached the terms and conditions of the loan agreement, as read with the mortgage bond granted in favour of the plaintiff. Also, the 2nd defendant has not settled the 1st defendant's indebtedness. The plaintiff further claims to be entitled to an order to have the property declared specially executable in terms of Rule 46A.

Legal position

[16] The defendants seek an order that the summary judgment application be postponed *sine die*. This request is made on the basis of the finding of Southwood AJ in *Nedbank Limited v Pitt and Others* (2023- 116827; 2024-067596; 2024-082442; 2024-124432; 2024-130896; 2024-134542; 2024-141685; 2025-028322; 2025-028323; 2025-028874; 2025- 036086; 2025-047757; 2025-047763) [2025] ZAGPJHC 581 (9 July 2025) in which she found the effect of the plaintiff's non-compliance with the requirements of Chapter 10.17. of the Practice Manual of this Division in foreclosure matters.

[17] The court may, should a case be made out to dismiss the application for summary judgment, grant such an order. This Court is not bound to the relief requested by the applicant. This Court must see to justice being done, which includes a speedy resolution to the litigation process.

[18] In *Hennie Ehlers Boerdery CC v APL Cartons (Pty) Ltd* 2024 (1) SA 149 (ECGq) Ronaasen AJ, in the context of Rule 32 stated:

> *"[4] Rule 32, as amended, is intended to be a refinement made in a continued effort to achieve the goal set out in the above-mentioned quotation namely, to* ***establish whether a defendant has disclosed a bona fide defence to a plaintiff's claim in the form of a triable issue****."*
>
> (own emphasis)

[19] It is trite that the defendant need not set out in the opposing affidavit to the summary judgment application, its opposition with the precision that would be required for a plea. See *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 426. The defendant has to file an opposing affidavit that sets out:

19.1. with a sufficient degree of clarity to enable the court to ascertain whether he has deposed to a defence which, if proved at the trial, would constitute a good defence to the action; and

19.2. with reference to the plea that was delivered.
See: *District Bank Ltd v Hoosain* 1984 (4) SA 544 (C)

[20] The defences raised by the defendants are, *inter alia,* that the amount is disputed and certain re-calculations should be made.

[21] Furthermore, the defendants claim that they were not informed, or was not aware of the default notices. They claim that the correspondence was not clearly distinguishable from other correspondence.

[22] Both of these issues are, in my view, issues that are triable issues and not issues raised in an attempt to purely delay the matter.

[23] In the premises, the defendants should be allowed an opportunity to defend the claim and the summary judgment should not be successful.

Costs

[24] The general principle in summary judgment proceedings is that the costs of the application forms cost in the cause. I find no reason to deviate from this principle.

[25] The costs of the summary judgment application should therefore be cost in the action between the parties.

Order

[26] The following order is made:

(i) The application for summary judgment is dismissed.

(ii) The costs is to be cost in the cause.

FMM REID

JUDGE OF THE HIGH COURT

GAUGENG DIVISION PRETORIA

DATE OF ARGUMENT: 5 AUGUST 2025

DATE OF JUDGMENT: 5 NOVEMBER 2025

APPEARANCES:

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