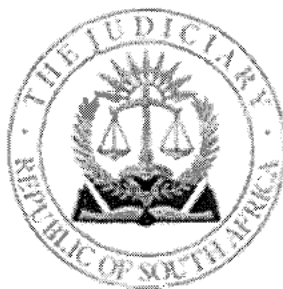


REPUBLIC OF SOUTH AFRICA



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

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
12 November 2025	
DATE	SIGNATURE

Case Number: 2022-045160

In the matter between:

THE STANDARD BANK OF

SOUTH AFRICA LIMITED (Registration Number: 1962/000738/06)

Applicant

and

SELETJE CONSTRUCTION AND MANAGEMENT CC

(Registration Number: 2002/031860/23)

First Respondent

KGOKOWE JAPPIES LEKGWATHI

Second Respondent

MOTHEILANA BRENDA LEKGWATHI

Third Respondent

SELETJANE JACOB LEKGWATHI

Fourth Respondent

This Judgment is handed down electronically by circulation to the applicant's legal representatives and the respondents by email, publication on Case Lines. The date for the handing down is deemed 12 November 2025.

JUDGMENT

Introduction

- [1] The Standard Bank of South Africa Limited ("Standard Bank ") brings this application to obtain judgment in its favour against the respondents in respect of monies lent and advanced to the first respondent by the applicant pursuant to certain written agreements and; the second, third and fourth respondents in respect of suretyship and guarantee agreements executed by them in favour of the applicant for the debts of the first respondent. The applicant seeks relief from the respondents jointly and severally as set out in the notice of motion in this application.
- [2] At the outset, the applicant submits that it has performed under the respective agreements, that the respondents have materially defaulted on their obligations under the agreements, and that no material disputes of fact exist that place the applicant's case in dispute. Significantly, the National Credit Act 34 of 2005 (NCA) does not apply to the suretyship and the action instituted against the second, third, and fourth respondent by virtue of section 4(2)(c) of the NCA.

Background Facts

Fleet management facility

- [3] On 13 October 2006, the second to fourth respondents signed a suretyship agreement with the applicant and undertook to bind themselves as co-principal debtors in respect of all present and future debts of the first respondent of any kind. On 12 December 2008, the applicant and the first respondent entered into a written agreement in respect of a fleet management facility, with an approved limit of R90 000. On 12 December 2008, respectively, the second, third, and fourth respondents concluded a fleet management suretyship agreement (as per annexures "SB16.1 — SB16.3"), binding themselves as sureties and co-principal debtors in respect of the fleet management facility. On the even date, the second, third, and fourth respondents concluded a vehicle and asset finance suretyship

agreement. The applicant performed all its obligations in terms of the fleet facility agreement.

- [4] On 13 July 2022, the first respondent defaulted on its repayment in terms of the fleet card management facility, and the first respondent was indebted to the applicant in the amount of R74 113.78. On the even date, the applicant drew a certificate of balance for the fleet card management facility, wherein it was certified that the amount payable under the facility to the applicant was R74 113.78 per annexure "SB15". The applicant demanded payment from the first respondent of the amounts due, owing and payable to the applicant in terms of the fleet facility in writing, as appears from the letter of demand, together with the sheriff's return of service, is "SB13" to "SB14" respectively ("the letter of demand"). Notwithstanding the demands made, the first respondent has failed, alternatively neglected, alternatively failed to pay the amounts which are due, owing and payable to the applicant.
- [5] Similarly, on or about 21 July 2022, the applicant caused letters of demand to be dispatched to the second, third, and fourth respondents in which the applicant demanded payment of the amounts as pleaded. Notwithstanding this demand, the first, second, and third respondents have failed alternatively neglected to make payment as demanded. Copies of the letters of demand, including the sheriff's returns of service, are attached to the founding affidavit as "SB17.1—SB17.6" respectively.

Overdraft Facility

- [6] On 04 February 2021, the applicant offered an overdraft facility to the first respondent under account number 330 049 070 ("the overdraft account"), with a limit of R1 500 000.00 (one million five hundred thousand rand) ("the overdraft limit"), and the facility ("the overdraft facility") which was accepted by the duly authorised representative of the first respondent in writing, on the even date. He overdraft facility was subject to the variable interest rate that applied to the overdraft facility agreement would be linked to the applicant's published variable interest rate, commonly known as 'the prime rate', which was at the time 9.00%(nine point zero percent), and by a margin of 7.25% (seven point two five

percent) above the prime rate and would therefore be subject to change as per clause 3.2.1.3.1. It was agreed that a certificate signed by any of the applicant's managers, whose appointment need not be proved, will, on its mere production, be proof of any amount due and/or owing by the first respondent in terms of the overdraft facility agreement, unless the contrary is proved as per clause 14.11(general terms and conditions). Pursuant to the overdraft facility agreement, the first respondent availed itself of the overdraft facility and drew thereon.

- [7] Standard banks avers that the first respondent is indebted to the applicant pursuant to the overdraft facility agreement in the amount of R1 514 751.97(one million five hundred and fourteen thousand seven hundred and fifty one rand and ninety seven cents) together with interest thereon at the rate of 17.50% per annum on R1 500 000.00, thereafter 20.00% which interest is calculated daily and compounded monthly, arrears, from 25 June 2022 both days inclusive. A certificate of balance dated 13 July 2022, as contemplated in terms of the overdraft facility agreement, is attached to the founding affidavit.
- [8] Pursuant to the overdraft facility agreement, the first respondent availed itself of the overdraft facility and drew thereon. Subsequently, on 21 July 2022, the applicant addressed letters of demand to the first respondent and to the second to fourth respondents as sureties, respectively. On the applicant's version, despite due and lawful demand, to date the respondents have collectively failed to satisfy the debt under the fleet management facility and are thus indebted to the applicant for the aforesaid amount plus interest. The first respondent was indebted to the applicant pursuant to the overdraft facility, as at 25 June 2022 and for the amount of R1 514 751.97.

COVID-19 emergency loan

- [9] On 01 July 2020, the applicant offered a Covid-19 Emergency Term (COVID loan) to the first respondent under account number 030 773 87 27. The COVID loan was made available to the first respondent on the written terms and conditions attached as "SB7", accepted by the duly authorised representative of the first respondent in writing, on 01 July 2020. Following this agreement, the

applicant agreed to lend and advance the amount of R3 851 508.00 (three million eight hundred and fifty-one thousand five hundred and eight rand) ("the loan amount") to the first respondent. The first respondent was required to make minimum monthly capital repayments to the applicant in the initial amount of R78 960.91 (the "repayment amount") over the term of the Covid Loan Agreement, which was 66 (sixty-six) months (the "Agreed Term") as per clause 6 as read with clause 7.1.

- [10] The first respondent agreed that a default in terms of the Covid Loan Agreement would occur if the first respondent failed to pay any amount payable to the applicant under the Covid Loan Agreement on the due date thereof (as per clause 4.1.1— PART B). The first respondent agreed that if a default occurred the applicant at its election and without affecting any of its rights may recover from the first respondent payment of all amounts owing to it under the Covid Loan Agreement, subject thereto that the applicant may give a written notice requesting the first respondent to rectify its default before doing so (as per clause 4.2 as read with clause 4.4 — Part B). The first respondent agreed to pay costs on the attorneys' and own client scale (as per clause 10.2 — PART B).
- [11] In terms of and pursuant to the Covid Guarantee the second, third and fourth respondents agreed that the amount that the applicant would be entitled to recover under the guarantees would be limited to an amount of R3 851 508.00 (three million eight hundred and fifty one thousand five hundred and eight rand) together with such further amounts in respect of interest and costs (including any legally permissible interest, costs, charges that may be levied) as have already accrued or which will accrue until date of payment of the amount in respect of the Covid Loan Agreement concluded between applicant and the first respondent as per clause 1.2 of the Covid Guarantee agreement.
- [12] According to Standard Bank, the applicant performed all its obligations in terms of the Covid Loan Agreement and made the Covid Loan Amount available to the first respondent. Pursuant to the Covid Loan Agreement, the first respondent availed itself of the Covid Loan Amount and drew thereon with the first drawdown on 01 June 2020. The Moratorium Period that was in place lapsed six months after the first draw down on 01 June 2020, and the first of the monthly instalments

was accordingly due for payment on 7 January 2021. A default in terms of the Covid Loan Agreement occurred in that, according to the applicant, the first respondent failed to make payment of one or more of the Monthly Instalments due in terms of the Covid Loan Agreement, and the first respondent was accordingly in arrears in the amount of R239 788.31 as of 14 July 2022.

[13] Consequently, the applicant caused a letter of demand to be sent to the first respondent. Additionally, the Covid Letters of Demand were sent to the members of the first respondent by email, annexure "SB10". Notwithstanding the demand, the first respondent has failed to pay the applicant the amounts demanded from it, and it remains in arrears as of 25 June 2022 in the amount of R2 999 519.67. The full amount owed to applicant is accordingly immediately due and payable. A certificate of balance, as contemplated in terms of the Covid Loan Agreement, is annexure "SB11".

[14] The second respondent deposed to the opposing affidavit, allegedly in his capacity as a member of the first respondent and on the authority of the first, third, and fourth respondents. The opposing affidavit was filed out of time, accompanied by a condonation application. The respondent filed a replying affidavit. no prejudice is caused to any party and it is in the interests of justice that the answering affidavit be taken into account, as would, for example, be the case where the applicant does not object to the answering affidavit in terms of rule 30 and delivers a replying affidavit as in this instance, the court should under the circumstances allow the affidavit to decide the case unfettered by technicalities.¹

[15] The second respondent, however, failed to attach any letter of authority confirming that he has the necessary authority to depose to the affidavit on behalf of the first, third, or fourth respondents. The third and fourth respondents did not provide confirmatory affidavits to the first respondent's answering affidavit. According to the second respondent, the respondents oppose the application on the basis that the respondents' indebtedness to the applicant has not arisen as

¹ See *Ardnamurchan Estates (Pty) Limited v Renewables Cookhouse Wind Farms 1 (RF) (Pty) Ltd* [2021] 1 All SA 829 (ECG) at paras 50-59.

the applicant has not placed the respondents in *Mora* as required in terms of each of the agreements.

[16] In closing submissions and in heads of argument, counsel for the applicant contended that the respondents have collectively not raised a defence to the applicant's case as made out in its founding papers. Counsel submitted that the applicant has an unanswerable case, and in the premises that the relief ought to be granted in its favour.

[17] It is trite that Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities.²

No Foreseeable Material Disputes of Fact

[18] The trite Plascon-Evans rule allows this court to make determinations on disputes of fact in application proceedings without hearing oral evidence. The rule states that in motion proceedings, a final order may be granted if the facts stated by the respondent, together with the admitted facts in the applicant's affidavits, justify the order. In *Wightman t/a JW construction v Headfour (Pty) Ltd and Another*³, Heher JA held that:

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

² See *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) at 290D–E, approved of and followed in *African Congress for Transformation v Electoral Commission of South Africa*; *Labour Party of South Africa v Electoral Commission of South Africa*; *Afrikan Alliance of Social Democrats v Electoral Commission of South Africa* 2024 (8) BCLR 987 (CC) at para 95.

³ (2008) (3) SA 371 (A) at para 13.

- [19] When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied.
- [20] This seems to me to be a situation in which a robust approach to the alleged disputes of fact must be adopted. The frugality of the second respondent's treatment of the applicant's allegations leads me to conclude that no genuine dispute of fact exists that precludes the applicant from relying on the alleged agreements. The second respondent provided a bald answer to the applicant's case in his answering affidavit and in his condonation application for the late filing of his answering affidavit.
- [21] The second respondent did not deal with the applicant's case as set out in the founding affidavit at all, the second respondent did not respond to nor answer the allegations of the first respondents indebtedness nor his or the third and fourth respondent's indebtedness and surety and guarantors to the applicant, the applicant's case is thus undisputed by the respondents and the respondents do not deny their indebtedness to the applicant nor the validity of the agreements.
- [22] Moreover, the second respondent does not deny that a lawful demand was made by the issuing of the various letters of demand and summons to all the respondents. The second respondent additionally proffered no explanation for the first respondent's or the other respondent's defaults and does not aver that the first respondent or other respondents have complied with their payment obligations under the various agreements. The second respondent raised a technical issue in response to this application that the applicant failed to issue certificates of balance in accordance with the terms of the various agreements and that the applicant did not place the first and other respondents in mora. The contentions by the second respondent do not place the applicant's case in dispute, as it is refutable by a plain, cursory reading of the applicant's founding papers and the annexures thereto referred to above.

- [23] A bare denial of the applicant's allegations in his affidavits will not, in general, be sufficient to generate a genuine dispute of fact.⁴ The contention is far-fetched and untenable as it does not constitute grounds of opposition to the applicant's case, because it has been illustrated above and in the applicant's founding affidavit that the applicant drew certificates of balance under all the agreements under which the respondents defaulted, and such certificates were signed by the applicant's manager. The certificates were further attached as annexures to the applicant's founding affidavit and were thus brought to the attention of the respondents.
- [24] Moreover, it is not required when delivering a letter of demand to produce a signed certificate of balance. The latter was also an express term of the respective agreements entered into between the applicant and the first respondent. Clause 14.11 of the overdraft facility agreement, for example, expressly states "a certificate signed by any of our managers, whose appointment need not be proved, will on its mere production be sufficient proof of any amount due and/or owing by you in terms of the overdraft agreement, unless the contrary is proven". The clause is contained verbatim in the various other agreements.
- [25] It is settled and uniform practice that a defendant is regarded as being in mora upon failure to discharge his obligation after receipt of the letter of demand, as in this instance.⁵
- [26] As for the mora contention, the applicant in this matter delivered an overabundance of letters of demand to all of the respective respondents, informing them of the first respondent's failure to meet its obligations under the respective agreements and calling upon them to remedy the first respondent's breach, despite such due and lawful demand, the respondents have failed to pay the judgement debt, resulting in the initiating of these proceedings. The respondents have also received service of the notice of motion and founding affidavit in this application, that is clear from the second respondent's answering

⁴ See *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1163 and 1165.

⁵ See *Commissioner for Inland Revenue V First National Industrial Bank Ltd* 1990 (3) SA 641 (A) at 659.

affidavit, in the premise, the second respondent cannot dispute the trite principles regarding mora in our law that, the respondents have been placed in mora by the delivery of the letters of demand and their failure to extinguish their obligations under the agreements despite being apprised of due and lawful demand. Accordingly, the version of the second respondent, and allegedly on behalf of the third and fourth respondents, consists of bald or uncreditworthy denials, raises fictitious disputes of fact.

[27] Consequently, the second to fourth respondents are liable as co-principal debtors for all the first respondent's outstanding debts to the applicant.⁶ The debts and the first respondent's defaults have timeously been brought to the attention of the second to fourth respondents by the delivery of the letters of demand on 21 July 2022 and 26 September 2022, respectively. The respondents have further not disputed service of the letters of demand nor indebtedness in their purported answering affidavit drafted by the second respondents. The liability of the second to fourth respondents is thus undisputed, and they are bound as co-principal debtors of the first respondent to extinguish the judgment debt.

[28] As was stated by the Supreme Court of Appeal in *Liberty Group Ltd v Illman*⁷, the sole consequence of a surety binding himself as a co-principal debtor is that, as regards the creditor, he renounces the benefits such as excursion and division available to him, and he becomes liable with the principal debtor jointly and severally. The respondents have not disputed their joinders as surety and guarantors (co-principal debtors) and possess no defence to their liability in such capacity; accordingly, the respondents are jointly and severally liable to the applicant for the judgment debt.

Order

[29] Judgment is granted against the first, second, third, and fourth respondents,

⁶ See *Kilroe-Daley v Barclays National Bank* 1984 (4) SA 609 (A).

⁷ 2020 (5) SA 397 (SCA) at paras 12-16.

jointly and severally, the one paying the other to be absolved as follows:

1. Payment of the amount R1, 514 751. 97 (one million five hundred and fourteen thousand seven hundred and fifty-one rand and ninety-seven cents) in respect of an overdraft facility;
2. Payment of interest on the amount of R1, 514 751. 97 (one million five hundred and fourteen thousand seven hundred and fifty-one rand and ninety-seven cents) at the rate of 17.50% per annum (seventeen-point five zero percent) per annum on R1, 500 000.00 thereafter 20.00%, from 25 June 2022 to date of payment;
3. Payment of the amount R2, 999 519.67 (two million nine hundred and ninety-nine thousand five hundred and nineteen rand and sixty-seven cents) in respect of the COVID-19 loan agreement;
4. Payment of interest on the amount of R2, 999 519.67 (two million nine hundred and ninety-nine thousand five hundred and nineteen rand and sixty- seven cents) at the rate of 8.25% per annum from 25 June 2022 to date of payment;
5. Payment of the amount of R74 113.78 (seventy-four thousand one hundred and thirteen rand and seventy-eight cents) in respect of a fleet management facility;
6. Payment of interest on the amount of R74 113.78 (seventy-four thousand one hundred and thirteen rand and seventy-eight cents) at the rate of 8.25% per annum from 13 July 2022 to date of payment; and
7. Costs of the application on an attorney and client scale.



TP MUDAU
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances

For the Applicant: Adv A Saldulker

Instructed by: Ramsay Webber Attorneys

For the Respondents: No appearance

Instructed by: PWJ Mashela Inc

Date of hearing: 4 November 2025

Date of judgment: 12 November 2025