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

CASE NUMBER: 12913/2024

(1) REPORTABLE: YES/NO

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

(3) REVISED.

DATE: 19 November 2025

SIGNATURE:

In the matter between:

**THE SMALL ENTERPRISE DEVELOPMENT AND
FINANCE AGENCY SOC LIMITED
REGISTRATION NUMBER: 2024/614733/30**

**APPLICANT/PLAINTIFF
IN MAIN ACTION**

-and-

**LNP BRAND PRINTING SOLUTIONS (PTY) LTD
REGISTRATION NUMBER: 2016/432816/07**

**1ST RESPONDENT/DEFENDANT
IN MAIN ACTION**

**MARTIN NAPHTALE MASHISHI
IDENTITY NUMBER: 7[...]**

**2ND RESPONDENT/DEFENDANT
IN MAIN ACTION**

Delivered : 19 November 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **19 November 2025 at 10:00 am.**

Date heard : 23 October 2025

Coram : Bresler AJ

JUDGMENT

BRESLER AJ:

[1] The Applicant (Plaintiff in the Main Action) applies for Summary Judgment against the 1st and 2nd Respondent (Defendants in the Main Action) for:

1.1 Claim A:

1.1.1 Repossession of:

- a) 1 x MIMAKI JVS-320DS Inkjet Printer (Serial No. J[...]);
- b) 1 x MOT-3242-M Heat Press (Serial No. R[...]);
- c) 1 x Maintenance Agreement for a period of 3 (three) years;
- d) 2 x CT904AS FEIYA Embroidery Machines (4-head. 9-colour change with LCD and Auto Thread Trimmer, Serial Nos. 6[...] and 6[...]2, respectively);
- e) 1 x Digitising Software (Model ART-D60).

1.1.2 Payment of the balance after realisation of the aforesaid goods at sale in execution;

1.1.3 Interest on the aforesaid amount;

1.1.4 Costs on attorney and own client scale including costs to counsel on Scale C.

1.2 Claim B:

1.2.1 Payment in the sum of R1,814,364.40 (One Million Eight Hundred and Fourteen Thousand Three Hundred and Sixty-Four Rand and Forty Cents);

1.2.2 Interest on the aforesaid amount;

1.2.3 Costs of suit on attorney and own client scale including costs to counsel on Scale C.

1.3 Claim C:

1.3.1 Payment in the sum of R578,013.13 (Five Hundred and Seventy-Eight Thousand and Thirteen Rand and Thirteen Cents);

1.3.2 Interest on the aforesaid amount;

1.3.3 Costs of suit on a scale as between attorney and own client including costs to Counsel on Scale C.

[2] The Applicant's claim is premised on three separate agreements concluded between the Applicant and the 1st Respondent, being an Instalment Sale Agreement (Claim A), a Conditional Grant Agreement (Claim B) and a Covid-19 Relief Finance Agreement (Claim C). The Applicant furthermore pleads that the 2nd Respondent bound himself as surety and co-principal debtor in respect of these agreements.

[3] There is no need to expound on the contents of these agreements as their terms and the conclusion thereof are not genuinely in dispute.

[4] The application for Summary Judgment is opposed by the 1st and 2nd Respondent. If one has regard to the Plea, the 1st and 2nd Respondent essentially places the blame for their non-compliance squarely on the shoulders of the Applicant in so far as it is alleged that *inter alia* the Applicant failed to perform their mandate from government to ensure that proper support is made available to the funded SMME and to afford appropriate monitoring thereof. It is also alleged that the Applicant has been selective and inconsistent in handling similar matters and its approach to the Respondents must be seen as a 'witch hunt'.

[5] In their opposing affidavit, delivered at a belated stage, the 1st and 2nd Respondents again reiterated that these amounts should be forfeited as the Applicants failed to assist the SMME. It is furthermore submitted in respect of Claim A that the Plaintiff is not entitled to claim both return of the goods and payment of the outstanding balance as at date. This much was conceded by counsel for the Applicant during the hearing of the matter.

[6] This Court is called upon to determine if Summary judgment should be granted in favour of the Applicant.

[7] **Erasmus Superior Court Practice**¹ states the following on page 32-70:

'In this regard the plea should comply with the provisions of rule 18(4) and 22(2) i.e it should clearly and concisely state all the material facts relied upon in order for the plaintiff, in the context of summary judgment proceedings, to consider whether or not the defense as pleaded raises any issues for trial. Otherwise, the purpose of rule 32 in its amended form would be defeated. If the plea is, for example, one of bare denial which does not raise any issue for trial, the defendant should not be allowed, in the absence of a notice to amend the plea in order to properly set out its defence to the action, to rely on the affidavit resisting summary judgment in which the nature and grounds of a bona fide defence and the material facts relied upon therefore, which are unrelated to the bare denial in the plea, are set out. A defendant who intends to disclose a bona fide defence in its affidavit which is not raised in its plea should first, deliver a notice of intention to amend the plea in terms of rule 28(1).'

[8] The critical question is therefore if the opposing affidavit, with reference to the Plea, discloses a *bona fide* defence that must be determined by a trial court. In this matter, the Respondents do not deny the conclusion and terms of the agreement, nor do they deny non-performance with the terms thereof. They are essentially alleging that they should be excused from performance because the Applicant failed to assist them in running a successful business.

[9] Applying the law to the matter at hand, this Court is not convinced that the opposing affidavit, with reference to the plea, discloses a bona tide defence or a triable issue for that matter.

[10] A court has a discretion to either grant or refuse summary judgment. This discretion is not premised on mere conjecture or speculation but must be exercised on the basis of the material before court. Van Niekerk states²:

¹ DE van Loggerenberg, **Erasmus Superior Court Pactice**, Volume 2, Juta.

² SJ van Niekerk et a, **Summary Judgment - A Practical Guide**, Lexis Nexis at page 11-37

'In the absence of allegations on which any defence can be based it would be wrong to exercise a discretion against the plaintiff purely on the basis of speculation or assumption - this may result in an injustice being done to the plaintiff.'

[11] The Application for Summary Judgment must succeed against both Respondents.

[12] As to the way Claim A is presented, this Court agrees with the submissions made by the Respondents that it will constitute a duplication if both return of the goods as well as recovery of the capital outstanding is claimed simultaneously. It is customary in matters like the current one before court, to grant an order for the return of the goods with the remaining prayers to be postponed sine die. It will be ordered accordingly in this matter.

[13] The agreement concluded between the parties contains a consent to costs being paid by the Respondents on a higher scale as between attorney and own client. There is no reason to deviate from the agreement in this respect in so far as the terms of the agreement are not in dispute between the parties.

Order:

[14] In the result the following order is made:

Summary Judgment is granted against the 1st and 2nd Respondent, jointly and severally, the one paying the other to be absolved for:

14.1 Claim A:

14.1.1 Repossession of the following goods ('the Goods') from the 1st Respondent/ Defendant, as described in Annexures 'A' to 'C' to the Particulars of Claim ('POC 1'):

- a. 1 x MIMAKI JVS-320DS Inkjet Printer (Serial No. J2498238);
- b. 1 x MOT-3242-M Heat Press (Serial No. RTR-131);
- c. 1 x Maintenance Agreement for a period of 3 (three) years;

d. 2 x CT904AS FEIYA Embroidery Machines (4-head. 9-colour change with LCD and Auto Thread Trimmer, Serial Nos. 61461 and 61462, respectively);

e. 1 x Digitising Software (Model ART-D60).

14.1.2 Payment of the balance outstanding after realisation of the Goods and interest thereon is postponed *sine die*.

14.1.3 Costs on attorney and own client scale including costs to counsel on Scale C.

14.2 Claim B:

14.2.1 Payment in the sum of R1,814,364.40 (One Million Eight Hundred and Fourteen Thousand Three Hundred and Sixty-Four Rand and Forty Cents);

14.2.2 Interest on the aforesaid amount at the rate of 14% per annum, calculated from 1 October 2024 to date of payment (both days inclusive), as appears more fully from the Certificate of Balance annexed as 'POC 14' and 'POC 15';

14.2.3 Costs of suit on attorney and own client scale including costs to counsel on Scale C.

14.3 Claim C:

14.3.1 Payment in the sum of R578,013.13 (Five Hundred and Seventy-Eight Thousand and Thirteen Rand and Thirteen Cents);

14.3.2 Interest on the aforesaid amount at the rate of 6,5% per annum, calculated from 1 October 2024 to date of payment (both days inclusive), as appears more fully from the Certificates of Balance marked 'POC 18' and 'POC 19';

14.3.3 Costs of suit on a scale as between attorney and own client including costs to Counsel on Scale C.

M BRESLER AJ
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

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