

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	<u>NOT</u> REPORTABLE
(2)	<u>NOT</u> OF INTEREST TO OTHER JUDGES

CASE NO: 2024-100304

DATE: 21 NOVEMBER 2025

In the matter between:

FIRSTRAND BANK LIMITED

Applicant

and

MARK FRAME

First Respondent

JULIAN FRAME

Second Respondent

Coram: Adams J

Heard: 18 November 2025

Delivered: 21 November 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 12:30 on 21 November 2025.

Summary: Monetary judgment – application for – the respondents bound themselves as sureties for and co-principal debtors with their company in favour

of the applicant – company defaulted on a facility agreement concluded between it and the applicant –

The respondents contend that ‘the contents of the suretyships’ were never explained to them – they ‘were under the impression that such documents formed part of the general facility agreement’ – they did not believe that they can be held jointly and/or severally liable as personal debtors’ – had they been aware of the contents of the suretyships, they would not have signed the sureties and bound themselves personally. –

Respondents’ defences rejected – the court held that the respondents’ factual assertions should and could be rejected out of hand as unsustainable – *caveat subscriptor* – a person, who signs a contract, is taken to be bound by the ordinary meaning and effect of the words which appear over or under his signature –

Defence raised by respondents amounts to one of mistake or *iustus error* – to prevail only when she or he can show that he or she was misled as to the nature of the document or as to the terms which it contains – no such case made out on the evidence before court *in casu* –

Judgment granted in favour of the applicant against the respondents,

ORDER

Judgment is granted in favour of the applicant against the first and the second respondents, jointly and severally, the one paying the other to be absolved, as follows: -

- (1) The first respondent shall pay to the applicant the sum of R11 575 059.17, with the second respondent's joint and several liability for such sum limited to R2 500 000.
- (2) The respondents shall pay interest on the aforesaid amounts at the prime rate (currently 11.75%) plus 2% per annum, calculated daily, compounded monthly in arrears from 24 August 2024 to date of payment, both days inclusive.
- (3) The respondents shall pay the applicant's costs of the application on the attorney and own client scale, including Counsel's charges as contemplated in Uniform Rule of Court 67A(3), read with rule 69, on scale 'C' as against the first respondent and on scale 'B' as against the second respondent.

JUDGMENT

Adams J:

[1]. This is an opposed application by the applicant for a monetary judgment against the first and the second respondents, jointly and severally, for payment of the sum of R11 575 059.17, plus interest thereon and costs of suit. The applicant's cause of action is based on suretyships executed by the first and the second respondents in favour of the applicant for the debts of Frame Leisure Trading (Pty) Limited ('FLT'). FLT's indebtedness to the applicant is for an amount of R11 575 059.17 and arises from a written Facility Agreement concluded between it and the applicant on 3 October 2023 parties.

[2]. The first respondent concluded a written limited suretyship agreement with the applicant on 17 June 2021 in terms of which he bound himself as surety in solidum for and as co-principal debtor, jointly and severally as an ongoing obligation with FLT, for the payment by FLT of all monies owing by it to the applicant. The suretyship is limited to R15 million plus interest and costs.

[3]. Similarly, the second respondent concluded multiple written limited suretyship agreements with the applicant (on 23 June 2009, 21 December 2009, 20 April 2010 and 29 September 2010) in terms of which he bound himself as surety in solidum for and as co-principal debtor, jointly and severally as an ongoing obligation with FLT, for the payment by FLT of all monies owing by it to the applicant. The suretyships were limited to a total of R2.5 million plus interest and costs and related charges.

[4]. FLT has breached the Facility Agreement by, *inter alia*, failing to settle the outstanding balance that is due thereunder and by entering into business rescue. About that there is no dispute. The applicant accordingly claims the outstanding amount from the respondents under the suretyships, who oppose the application on the following bases: (a) First, the respondents contend that the deponent to the applicant's founding affidavit did not have authority to act on its behalf. (b) Secondly, the respondents contend that personal knowledge of the facts by the deponent to the applicant's founding affidavit 'has yet to be established'. (c) Thirdly, the respondents contend that 'the contents of the suretyships' were never explained to them. They 'were under the impression that such documents formed part of the general facility agreement', so the contention goes, therefore, '[they] do not believe that [they] can be held jointly and/or severally liable as personal debtors'. Had they been aware of the contents of the suretyships, so the argument is concluded, they would not have signed the sureties and bound themselves personally. And (d) Fourthly, the respondents baldly deny the extent of the indebtedness due to the applicant.

[5]. During the hearing of the application before me on 18 November 2025, Ms Darby, Counsel for the respondents, did not pursue with any vigour the

defences raised by them, except for the ground of opposition relating to the averment that they were blissfully unaware of the fact that they were binding themselves personally as sureties and co-principle debtors for the FLT's indebtedness to the bank. And that, in my view, was for good reason. The simple point is that the other three defences have little to no merit and were all stillborn.

[6]. Briefly, as regards the respondents' contention that the deponent to the applicant's founding affidavit did not have authority to act on its behalf, that defence is, as submitted by Mr Costa, who appeared on behalf of the applicant, misplaced. In that regard, one needs look no further than *Eskom v Soweto Council*¹, which is authority for the proposition that if an attorney is authorised to bring an application on behalf of the applicant, the application necessarily is that of the applicant. If such authority is questioned or challenged, the procedure to be followed is that provided for in uniform rule of court 7(1). The deponent to an affidavit need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof that must be authorised.

[7]. Thus, the respondents' contention that the proceedings are not authorised falls to be dismissed.

[8]. As for the submission that the deponent to the applicant's founding affidavit (Ms Whiteley) does not have the personal knowledge to depose to the said affidavit, same is equally without merit. She is employed by the applicant as a recoveries manager and she states in the founding affidavit that '[b]y virtue of my position within the applicant [i.e. as recoveries manager], I have acquired personal knowledge of the applicant's claim against the respondents, and the respondents' financial standing with the applicant. I was personally involved in attempts to recover the indebtedness of the respondents and [FLT]. For purposes

¹ *Eskom v Soweto Council* 1992 (2) SA 703 (W) at 705D-H.

of this application, I have also perused and considered the annexures to this affidavit’.

[9]. These allegations are, in my view, more than sufficient to prove that Ms Whiteley has personal knowledge of the facts in the matter. I am bolstered in this conclusion by the authorities in case such as *Rees & Another v Investec Bank Limited*² and *Shackleton Credit Management (Pty) Limited v Microzone Trading 88 CC & Another*³.

[10]. In *Rees*, the SCA held as follows: -

[14] Ms Ackermann relied on the information at her disposal which she obtained in the course of her duties as the bank's recoveries officer, to swear positively to the contents of her affidavit. It is not in dispute that in the discharge of her duties as such she would have had access to the documents in question and upon a perusal of those documents she would acquire the necessary knowledge of the facts to which she deposed in her affidavit on behalf of Investec

[15] ... As stated in *Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A)*, “undue formalism in procedural matters is always to be eschewed” and must give way to commercial pragmatism. At the end of the day, whether or not to grant summary judgment is a fact-based enquiry. Many summary judgment applications are brought by financial institutions and large corporations. First-hand knowledge of every fact cannot and should not be required of the official who deposes to the affidavit on behalf of such financial institution or large corporation.’

[11]. The respondents’ defence that Ms Whiteley does not have personal knowledge of the facts deposed to, therefore, also falls to be dismissed.

[12]. Lastly, I make short thrift of the defence relating to the quantum of the applicant’s claim. As envisaged by the Facility Agreement, the applicant provided a certificate signed by a manager of the Bank (whose appointment, qualification or authority need not be proved) stating the amount of the client’s indebtedness

² *Rees & Another v Investec Bank Limited* 2014 (4) SA 220 (SCA).

³ *Shackleton Credit Management (Pty) Limited v Microzone Trading 88 CC & Another* 2010 (5) SA 112 (KZP).

to the bank. This, as per the agreement, is *prima facie* proof of the amount which FLT owes to the Bank under the Facility Agreement. The suretyship agreements contain similar provisions.

[13]. That, in my view, spells the end of that defence raised on behalf of the defendant and same accordingly falls to be dismissed.

[14]. That brings me back to the main ground of opposition raised by the respondents, that being the respondents' contention that they 'were under the impression that [the suretyships] formed part of the general facility agreement' and that they did not realise that they were binding themselves personally as sureties. In the context of this matter and in the bigger scheme of things, this factual assertion, simply by being stated, can and should be rejected. I explain why in the paragraphs which follow.

[15]. As submitted on behalf of the applicant, the respondents' suggestion that they did not know that they were required to bind themselves as sureties for FLT's indebtedness to the applicant is untenable. Schedule 2 of the Facility Letter states, in clear and unequivocal terms, that FLT will procure a suretyship from the first respondent for an amount of R15 million and four suretyships from the second respondent totalling R2,5 million (i.e. for R500,000, R1 million, R500,000 and R500,000). That is exactly what occurred and are the exact suretyships which the applicant relies upon in the present application for its claims against the respondents.

[16]. Moreover, it is trite and a sound principle of our law that a person, who signs a contract, is taken to be bound by the ordinary meaning and effect of the words which appear over or under his signature. That principle is the *caveat subscriptor* rule. In that regard, in *George v Fairmead (Pty) Limited* 1958 (2) SA 465 (A), it was held as follows: -

'When a man is asked to put his signature to a document, he cannot fail to realise that he is called upon to signify, by doing so, his assent to whatever words appear above his signature. In cases of the type of which the three I have mentioned are examples, the

party who seeks relief must convince the Court that he was misled as to the purport of the words to which he was thus signifying his assent. *That must, in each case, be a question of fact, to be decided on all the evidence led in that particular case.* I see no difference in principle between the case where the allegation is a misdescription of the document and one where it is a misrepresentation of its contents; the misdescription of the document – as when a man is told he is merely signing a receipt for a cheque when the document contains a guarantee – is material only in so far as it gives a misleading indication of what the document contains.’ (Emphasis added).

[17]. The respondents’ defence is that, notwithstanding their signatures on the suretyships, they lacked the intention to be bound, and therefore that no agreements of suretyship were concluded.

[18]. The defence raised by the respondents (a mistake or *iustus error*) would prevail in circumstances as those prescribed in *Tesoriero v Bhyjo Investments Share Block (Pty) Limited*⁴, in which it was held as follows: -

‘The general principle, where a person who has signed a contract and wishes to escape liability on the ground of justified error as to the nature or contents of the document, is that he or she must show that he or she was misled as to the nature of the document or as to the terms which it contains by some act or omission (where there is a duty to inform) of the other contracting party. The misrepresentation need not have been fraudulent or negligent. The duty to inform would or could arise where the document departs from what was represented, said or agreed beforehand or where the other party realises or should realise that the signatory is under a misapprehension or where the existence of the provision or contract is hidden or not apparent by reason of the way in which it is incorporated in a document or where the provision, not clearly presented, is unusual or would not normally be found in the contract presented for signature.’

[19]. The facts in the matter before me could not be further from the circumstances described in *Tesoriero*. The suretyships *in casu* were not part of a bundle of documents forming part of the Facility Agreement. They were concluded years before and are self-standing documents. It therefore cannot possibly be that, as alleged by them, the respondents were under the impression

⁴ *Tesoriero v Bhyjo Investments Share Block (Pty) Limited* 2000 (1) SA 167 (W).

that the suretyships formed part of the Facility Agreement. Moreover, the respondents have not provided any evidence regarding the circumstances surrounding their signing of the suretyships (all of which were done on different dates prior to the conclusion of the Facility Agreement).

[20]. What is more is that each suretyship agreement is headed 'Suretyship' in **bold** and in a larger font than the rest of the text so as to make it more prominent. The most cursory of glances at these documents would and should have alerted the signatory to exactly what the nature of the document was. Furthermore, the first page of the suretyship signed by the first respondent contains the following inscription in bold directly above the first respondent's name and identity number: **'SURETYSHIP**

This document contains IMPORTANT LEGAL INFORMATION – read this carefully. The obligations on you may be very burdensome. DO NOT sign this document if you have any doubts about the exact meaning and effect of these obligations or of any other wording herein or if you do not understand the risk and scope of this document. We strongly recommend that you obtain independent legal advice before you sign this document.'

[21]. The suretyships signed by the second respondent contain similar provisions in a style similar to that in the suretyship by the first respondent. All of the suretyships by the second respondent contain the following inscription immediately above the second respondent's signature: -

'BY THE SURETY (WHERE THE SURETY IS A NATURAL PERSON)

IMPORTANT: The obligations imposed upon the Surety pursuant to this suretyship may be very burdensome. Should the surety harbour any doubts regarding the exact meaning and effect of these obligations, we advise that independent legal advice should be taken prior to signature hereof.'

[22]. It would, therefore, have been abundantly clear to any reasonable signatory exactly what the nature of the documents were, and that independent legal advice should be sought before signing if there were any doubts regarding the exact meaning and effect of the obligations which the signatory was agreeing to. The respondents do not present any evidence in their answering affidavit

about anything that prevented them from reading the suretyships – they do not even allege that they did not read them – or from discussing them with their legal representatives.

[23]. Moreover, insofar as the respondents contend that the contents of the suretyships were never explained to them, this is of no assistance to them. There was no obligation on the applicant to explain the contents of the suretyships to the respondents. ‘To hold otherwise would be to introduce a degree of paternalism in our law of contract at odds with the caveat subscriptor rule’.⁵ A contracting party is generally not bound to inform the other party of the terms of the proposed agreement⁶. He must only do so if there are terms that could not reasonably have been expected in the contract⁷.

[24]. This is not the case in the present matter. The documents are titled ‘Suretyship’ and there are no terms contained therein which could not reasonably have been expected to have been included in a deed of suretyship. What did the respondents think they were signing? They do not say. It is obvious that they must have known they were signing suretyships.

[25]. For these reasons, I am of the view that the grounds of opposition as raised by the respondents are devoid of merit.

[26]. Judgment should therefore be granted in favour of the applicant against the respondents. As regards costs, same should follow suit. And, in that regard, the agreements between the parties provided for the award of costs on the scale as between attorney and client in favour of the applicant.

⁵ *Hartley v Pyramid Freight (Pty) Ltd t/a Sun Couriers* 2007 (2) SA 599 (SCA) at para 9.

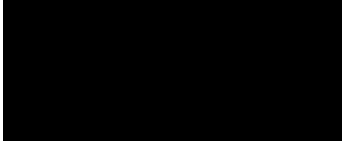
⁶ *Slip Knot Investments 777 (Pty) Ltd v Du Toit* 2011 (4) SA 72 (SCA) at para 12.

⁷ *Afrox Healthcare Bpk v Strydom* 2002 (6) SA 21 (SCA).

Order

[27]. In the result, Judgment is granted in favour of the applicant against the first and the second respondents, jointly and severally, the one paying the other to be absolved, as follows: -

- (1) The first respondent shall pay to the applicant the sum of R11 575 059.17, with the second respondent's joint and several liability for such sum limited to R2 500 000.
- (2) The respondents shall pay interest on the aforesaid amounts at the prime rate (currently 11.75%) plus 2% per annum, calculated daily, compounded monthly in arrears from 24 August 2024 to date of payment, both days inclusive.
- (3) The respondents shall pay the applicant's costs of the application on the attorney and own client scale, including Counsel's charges as contemplated in Uniform Rule of Court 67A(3), read with rule 69, on scale 'C' as against the first respondent and on scale 'B' as against the second respondent.



L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	18 November 2025
JUDGMENT DATE:	21 November 2025
FOR THE APPLICANT:	M T A Costa
INSTRUCTED BY:	Cox Yeats Attorneys, Umhlanga
FOR THE FIRST AND THE SECOND RESPONDENTS:	F A Darby
INSTRUCTED BY:	Snaid & Morris Attorneys Inc, Morningside, Sandton