



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

JUDGMENT

**Not Reportable
Case No: 22439/2024**

In the matter between:

V & A WATERFRONT HOLDINGS (PTY) LTD

Plaintiff

And

**KAT VAN DUINEN DESIGN (PTY) LTD t/a
KAT VAN DUINEN**

1st Respondent

KATARSYNA VAN DUINEN

2nd Respondent

**Coram: DA SILVA SALIE, J
Heard on: 27 November 2025
Delivered on: 27 November 2025**

Summary:

Summary judgment — Rule 32 — Lease arrears — Plaintiff limiting relief to undisputed portion — Addendum and termination date in dispute — CPA-based defences and counterclaim raising triable issues — No defence raised to reconciled core rental debt — Partial summary judgment appropriate.

ORDER

1. Summary judgment is granted in favour of the plaintiff in the amount of R425 042.81.
2. Summary judgment is refused in respect of the balance of the plaintiff's claim, and the respondents are granted leave to defend the remainder.
3. The costs of this application shall be costs in the cause of the main action.

JUDGMENT

DA SILVA SALIE J:**Introduction:**

[1] This is an application for summary judgment in terms of Rule 32. The plaintiff seeks payment of arrear rental and related charges (that being the operating costs)

arising from a written lease agreement and addendum. While the summons reflects a higher amount, the plaintiff now limits its claim for purposes of this application to **R425 042.81**, contending that this represents the undisputed and correctly reconciled portion of the debt. The plaintiff accepts that the remainder of the claim should proceed to trial.

[2] The respondents oppose the application and contend that they have raised *bona fide* defences which cannot be summarily dismissed. These relate to the correct termination date, the legal effect of the addendum, alleged non-compliance with the Consumer Protection Act 68 of 2008 (“the CPA”), and a counterclaim for damages.

[3] This matter was argued before me today and the issues were fully ventilated during submissions. This judgment is delivered *ex tempore* and is of necessity brief.

Rule 32 and the applicable test

[4] The purpose of summary judgment is not to shut out genuine defences. As held in ***Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A)***, the plaintiff must meet the procedural requirements, and the defendant must satisfy the Court that the defence is *bona fide*.

[5] In ***Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T)***, the Court stressed that the defendant must disclose facts which, if proven at trial, would constitute a defence in law. The Court is not concerned with probabilities but only whether a *bona fide* triable issue is raised.

[6] Recent decisions reaffirm that summary judgment is appropriate only where the defence is palpably implausible or a sham, and not where the dispute merits ventilation at trial. Against this legal framework, I turn to the parties’ competing positions.

The plaintiff's claim and the reduced relief

[7] The plaintiff's original claim included several components. In argument the plaintiff expressly confines the relief sought to R425 042.81, representing rental arrears and operating costs, reconciled as being due for a specific undisputed period.

[8] The plaintiff concedes that the balance of the claim relating to damages, and other charges as well as amounts flowing from the disputed termination date should be determined at trial.

Respondents' defences

(a) *Quantification and termination date*

[9] The respondents dispute the termination date applied by the plaintiff, alleging that the addendum altered the period of liability and that the plaintiff's calculation is consequently flawed. These contentions raise factual disputes that cannot be resolved on affidavit and relate primarily to the balance of the claim, not to the reconciled sum now sought.

(b) *Addendum — new lease or renewal*

[10] The respondents contend that the addendum constituted a new lease requiring fresh signatures and that its legal effect must be determined with reference to evidence beyond the written documents. The plaintiff disputes this and relies on the non-variation clause. The proper characterisation of the addendum is a triable issue reserved for trial.

(c) *CPA defence*

[11] The respondents allege non-compliance with the CPA and unfair trading practices by the plaintiff. The plaintiff denies that the CPA applies. These allegations are intertwined with disputed facts and cannot be determined now, being the summary-judgment stage.

(d) *Counterclaim*

[12] The respondents have instituted a counterclaim premised on the CPA allegations and alleged financial losses. Its viability is likewise a matter for trial. However, clause 4.6.3 of the lease agreement states that rental is payable without set off. A claim for damages must proceed by way of adjudication to trial.

Assessment

[13] The decisive question is whether the respondents have disclosed a *bona fide* defence to the reduced amount of R425 042.81, being the portion the plaintiff now seeks. During argument the respondents' counsel handed up a schedule of the calculation of the claims of unpaid rental and other amounts as alleged by the plaintiff and argued that a simple arithmetic calculation of a reduced claim amount does not permit the granting of summary judgment in terms of Rule 18(4) and on the facts of this case.

[14] The respondents' opposing affidavit, when examined closely, does not articulate any factual or legal basis that challenges the rental charges comprising the reduced sum of R425 042.81. They do not contend that the rental for that period was wrongly levied, incorrectly computed, charged at an incorrect rate, or unrelated to their

occupation. The correction of the certificate of balance by the plaintiff to adjust the period to when the respondents vacated earlier is a simple arithmetic calculation. It is not a triable issue and no evidence need to be led at trial to correct the certificate of balance. The concerns the respondents advanced including the dispute about the correct termination date, the contention that the addendum constituted a new lease requiring fresh signatures, challenges to charges allegedly arising after they say liability ceased, their CPA-based complaints, and their counterclaim for damages all relate to events or charges occurring after the period from which the reconciled arrears are drawn. Even if those defences ultimately succeed at trial, it would not negate or diminish the reconciled arrears which accrued during the undisputed period. Stated differently, even if the respondents succeed at trial in establishing those contentions, it will not extinguish the rental that accrued during the period reflected in the reduced amount. Consequently, the respondents have not disclosed a *bona fide* defence to the reduced amount. The respondents have blown hot and cold between defences set out in its plea and its answering affidavit. In the absence of an explanation for the inconsistency, I further cannot find that the defences are *bona fide*.

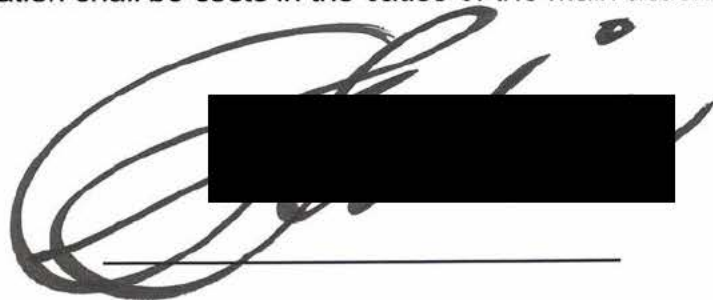
[15] It follows that the plaintiff has established a clear basis for partial summary judgment, while the balance raises triable issues that must be ventilated in the ordinary course. In other words, the balance of the plaintiff's claim raises genuine dispute that cannot be determined on affidavit and must be tried in the ordinary course.

[16] Rule 32 permits the granting of summary judgment in part on a lesser amount given the nature of the defences raised and given the aforesaid findings, this is an appropriate case for doing so.

Order

[17] In the result, the following order is made:

1. Summary judgment is granted in favour of the plaintiff in the amount of R425 042.81.
2. Summary judgment is refused in respect of the balance of the plaintiff's claim, and the respondents are granted leave to defend the remainder.
3. The costs of this application shall be costs in the cause of the main action.

A handwritten signature in dark ink, appearing to be 'G. Da Silva Salie', is written over a black rectangular redaction box. Below the signature and box is a horizontal line.

G. DA SILVA SALIE

JUDGE OF THE HIGH COURT

WESTERN CAPE

Appearances

For Applicant: Adv. W Jonker

Instructed by: GVS Law

For Respondent: Adv. H Beviss-Challinor

Instructed by: Scherman & Associates