

REPUBLIC OF SOUTH AFRICA



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

CASE NUMBER: 2024-076235

- (1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: ~~YES~~/NO

4 December 2025

DATE

SIGNATURE

In the matter between:

SOUTH AFRICAN SECURITISATION PROGRAMME (RF) LTD

PLAINTIFF

and

T. C. ESTERHUYSEN PRIMARY SCHOOL

FIRST DEFENDANT

DEPARTMENT OF EDUCATION: GAUTENG

SECOND DEFENDANT

MEC: DEPARTMENT OF EDUCATION GAUTENG

THIRD DEFENDANT

Heard: 20 October 2025

Delivered: 4 December 2025

JUDGMENT

WINDELL J:

Introduction

[1] The plaintiff, South African Securitisation Programme (RF) Ltd,¹ applies for summary judgment against all three defendants, jointly and severally, the one paying the others to be absolved. The first defendant is T.C. Esterhuysen Primary School (“the school”), a public school established in terms of the South African Schools Act 84 of 1996 (“the Schools Act”). The second defendant is the Department of Education: Gauteng, cited as the responsible organ of state for the administration of public schools within the province. The third defendant is the Member of the Executive Council for Education, Gauteng, who bears statutory responsibility for the governance and oversight of public schooling in the province.

[2] The plaintiff seeks confirmation of the cancellation of two master rental agreements; payment of arrear and accelerated rentals; return of the equipment supplied under the agreements; interest at the contractual rate; and costs on the agreed scale. The plaintiff contends that the school’s breach of the agreements gives rise to contractual

¹ The plaintiff was incorporated in 1991 as Sasfin Asset Securitisation (Pty) Ltd (registration no. 1991/002706/07). Its name was changed in 2002 to Equipment Rentals Securitisation No. 1 (Pty) Ltd, and in 2007 to South African Securitisation Programme (Pty) Ltd. On 14 October 2011 it was converted to a public company, resulting in the amendment of the last two digits of its registration number from 07 to 06, in accordance with s 11(3)(b)–(c) of the Companies Act 71 of 2008. Its current registered name is South African Securitisation Programme (RF) Ltd (registration no. 1991/002706/06).

damages, and that in terms of section 60(1)(a) of the Schools Act the second and third defendants (the State) are jointly and severally liable with the school for such contractual loss.

[3] The defendants delivered a plea, an affidavit resisting summary judgment, and thereafter an amended plea. The plaintiff supplemented its application for summary judgment with the delivery of a supplementary affidavit on 11 March 2025. The defendants did not file a supplementary resisting affidavit. The matter now serves before me for determination in the opposed summary judgment court.

The plaintiff's claim

[4] It is common cause that the school concluded two written master rental agreements: the first with Sunlyn (Pty) Ltd ("Sunlyn") (formerly Sunlyn Rentals (Pty) Ltd) on 2 December 2022 for printing and related equipment, and the second with CRS Corporate Rental Solutions (Pty) Ltd ("CRS") (formerly Neofin (Pty) Ltd) on 20 December 2022 for telecommunications equipment. True copies of both agreements were annexed to the particulars of claim.

[5] The plaintiff emphasised that each agreement followed a standard vendor-introduced finance structure. Under this model: the vendor or supplier introduces the customer (here, the school) to a credit provider; the credit provider (Sunlyn or CRS) purchases the equipment at the customer's special instance and request; the equipment is then made available to the customer under a written rental agreement; and the customer acknowledges receipt of the equipment by signing the "certificate of acceptance" or "authority to commence" forms.

[6] It is common cause and expressly admitted in the plea and in the resisting affidavit that the equipment under both agreements was delivered to the school. Copies of the acceptance certificates were annexed to the particulars of claim and confirmed under oath. The agreements required the school to make monthly rental payments by way of authorised debit orders. It is further admitted that the school stopped these debit orders, which constituted a breach of both agreements. According to the plaintiff, by 15 May 2024 the school was in arrears in the amounts of R23 252.15 under the first agreement and R44 469.96 under the second agreement. The defendants' main issue is with (i) the terms of the rental agreements; and (ii) the amount of the monthly rentals.

The cessions

[7] The plaintiff sets out the chain of cession through which it acquired the rights it seeks to enforce. Sunlyn and CRS each ceded their respective rights, title and interest in the two rental agreements to Sasfin. Sasfin, in turn, concluded a written sale and transfer agreement dated 16 January 2023 in terms of which all its rights under both agreements were ceded and transferred to the plaintiff. The effect of these transactions is that the plaintiff now stands in the position of the original finance houses and holds all rights arising from the agreements.

[8] The defendants do not dispute the existence or validity of these cessions. Their sole objection is that they were unaware of the cessions at the time. That objection cannot assist them. A cession is a bilateral juristic act between cedent and cessionary, and its validity does not depend on notice to the debtor.² Once rights are transferred, the

² *National Sorghum Breweries Ltd v Corpcapital Bank Ltd* 2006 (6) SA 208 (SCA) para [1].

cessionary acquires full enforceability against the debtor irrespective of the debtor's knowledge of the transfer.³ On the papers, the chain of cession is undisputed and properly documented, and the plaintiff's standing to enforce the agreements is established.

Misrepresentation and Agency

[9] The defendants' principal defence is that although the written agreements record a five-year rental period, the governing body believed the term to be three years. They allege that this understanding arose from representations made by Mr Olifant, whom they describe as acting on behalf of Sunlyn and CRS and, ultimately, the plaintiff as cessionary. They say that Olifant assured the governing body that the rental term would correspond with its three-year tenure and that they did not appreciate, when signing, that the agreements reflected a 60-month period.

[10] The defendants further allege that Olifant had previously been associated with "Oneserv", a supplier that had earlier provided printing equipment to the school, and that he later started his own business, "Intsha". They claim that he approached the school indicating that Intsha wished to take over the existing printing lease and, as an incentive, offered to donate either internet services or a vehicle. The teaching staff opted instead for 31 laptops, forming what the defendants describe as the "donation agreement". They say that the first Sunlyn agreement was concluded in this context and that Olifant delivered the laptops pursuant to that arrangement.

³ *Johnson v Incorporated General Insurance Ltd* 1983 (1) SA 318 (A); *Botha v Fick* 1995 (2) SA 750 (A) at 778I-J

[11] They contend that Olifant failed to disclose that the school would be billed for software installed on the laptops and that this resulted in debit amounts higher than they believed would be debited. When these higher debits appeared on the school's bank statements, the school cancelled the debit orders. The defendants attribute the higher debits, and their misunderstanding of the rental term and rental amounts, to Olifant's conduct and omissions and maintain that the written agreements differ materially from what he represented during negotiations.

[12] In assessing this defence, the starting point is the written agreements. Both record a rental period of 60 months adjacent to the signature of the school's representative. The term is clear, visible and unambiguous. Our law applies the doctrine of quasi-mutual assent.⁴ Even if the defendants subjectively believed the term to be three years, they remain bound by the objective manifestation of agreement reflected in the documents they signed. A unilateral mistake arising from inattention or misplaced reliance does not render a contract unenforceable.⁵

[13] The allegation that Olifant acted as agent for Sunlyn or CRS is also unsupported. The agreements expressly state that the school was referred by the vendor and that Sunlyn and CRS purchased the equipment at the school's special instance and request. Instead, it is evident from the first rental agreement that the school acted as Sunlyn's agent in taking delivery of the printer and inverter, instead of Olifant acting as Sunlyn's agent. This contractual stipulation (recording the relevant form of fictional delivery

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

⁵ See *National and Overseas Distributors Corporation (Pty) Ltd v Potato Board* 1958 (2) SA 473 (A) at 479G-H.

(attornment⁶) was necessary to ensure that ownership in the equipment vests in Sunlyn, or its successors in title. The same reasoning applies in respect of the second rental agreement with CRS.

[14] The express terms of the agreements further record that the finance houses were not the suppliers of the equipment. The first page of the first rental agreement records (in capitalised font) that "YOU WERE REFERRED BY THE VENDOR OF THE GOODS TO US" and that "WE HAVE BOUGHT THE GOODS FROM THE VENDOR AT YOUR SPECIAL INSTANCE AND REQUEST". The second master rental agreement similarly records that " ... [C]RS is NOT the supplier of the equipment".

[15] These provisions preclude any inference that the vendor or its representative was authorised to act on behalf of the financiers. The documents contain no indication that Olifant represented either Sunlyn or CRS in a capacity capable of binding them and clearly shows that Olifant was the supplier (or vendor). The defendants provide no factual basis explaining how he could have acted for two separate finance houses in agreements concluded weeks apart.

[16] The defendants' further complaint that Olifant failed to disclose software charges or the contractual duration does not advance the defendants' case. To the extent that software charges were incurred, these arose from the separate donation arrangement and not from the rental agreements. More importantly, the duration of each agreement appears plainly on the face of the documents next to the defendants' signatures. A party

⁶ *Page Automation (Pty) Ltd v Profusa Properties CC t/a Homenet or Tambo and Others* 2013 (4) SA 37 (GSJ) at [20] to [23].

cannot rely on alleged pre-contractual discussions to avoid the consequences of a written term that is readily ascertainable.

[17] Even taking the defendants' allegations at their highest, the defence amounts to no more than a failure to appreciate the written terms of the agreements. The alleged oral representations are contradicted by the documents. The factual basis for the agency allegation is absent, and the alleged non-disclosures cannot override clear contractual provisions. What remains is a unilateral mistake that cannot avoid contractual liability. The defendants have therefore not disclosed a bona fide defence based on misrepresentation or agency.

Plaintiff's breach and over-compensation

[18] The defendants also rely on the higher debit amounts, now advancing a separate contention that the plaintiff, or the cedents from whom it derives its rights, breached the agreements by debiting monthly rentals that exceeded the amounts they say were agreed. They allege that certain debits were attributable to software charges arising from the donation arrangement, while others were unexplained, and maintain that these amounts placed strain on the school's finances and undermined the contractual relationship. On this footing, the defendants submit that the plaintiff seeks to enforce obligations tainted by its own prior conduct.

[19] This argument has no merits. The defendants' own pleadings and their affidavit resisting summary judgment acknowledge that the higher debit amounts were largely attributable to software charges arising from the separate donation arrangement. Those charges do not form part of the rental obligations under the written agreements and

cannot be relied upon to characterise the plaintiff's conduct as a breach. The defendants cannot conflate two separate arrangements to allege misconduct. The facts and the law do not support this.

[20] The allegation that the rentals themselves were inflated also cannot be sustained. The first agreement stipulates a monthly rental of R4 900 excluding VAT (R5 635 with VAT). The debits fall within this range, before adding the cost of insurance which the school specifically requested. The second agreement sets a monthly rental of R8 625 and expressly provides for variations linked to changes in the prime rate. The fluctuating debit amounts were therefore contemplated by, and consistent with, the express terms of the agreements. There is no factual basis for asserting that the plaintiff overcharged or breached its obligations.

[21] As a matter of principle, dissatisfaction with the quantum of a debit order does not constitute a defence to liability under a written agreement. The agreements prescribe the procedure to be followed if charges were disputed. The school did not invoke that process but instead cancelled the debit orders. That act constituted the breach that precipitated cancellation of the agreements. The plaintiff cannot be accused of breaching the agreements simply for enforcing their written terms.

Acceleration and Alleged Penal Effect

[22] The defendants also argue that the plaintiff's claim, which includes arrear rentals, accelerated future rentals and interest at the agreed rate of prime plus 6%, amounts to over-compensation or constitutes a penalty as contemplated in the Conventional Penalties Act 15 of 1962. They submit that the combination of accelerated rentals

together with the return of the equipment yields a punitive outcome disproportionate to the plaintiff's actual loss.

[23] This contention is not supported by the facts or by legal principle. An acceleration clause, which renders all future rentals immediately due upon breach, is a recognised and enforceable contractual mechanism. In *Claude Neon Lights*⁷ the court confirmed the distinction between acceleration of an existing debt, which is not a penalty, and contractual provisions that impose additional burdens not originally contemplated. In this matter the plaintiff seeks only the rentals that would in any event have become due over the lifetime of the agreements. No new or arbitrary obligation is created. The plaintiff merely seeks to bring forward the due date of amounts that were contractually owing. The defendants placed no evidence before the court to show that the return of the equipment would result in recovery exceeding the outstanding debt or that the plaintiff will obtain any benefit beyond what the agreements provide for.

[24] The interest rate of prime plus 6% was expressly agreed to. A rate that forms part of the contract cannot, without more, be regarded as a penalty. For an interest provision to fall within section 1(2) of the Act, it must arise by virtue of a breach and must operate *in terrorem*.⁸ The rate in this matter applies uniformly to arrears and accelerated rentals and does not impose an amount disproportionate to the plaintiff's actual or potential loss.

[25] The defendants have placed no factual material before the court to demonstrate that the amounts claimed are excessive, inequitable or out of proportion to the plaintiff's

⁷ *Claude Neon Lights (SA) Ltd v Schlemmer* 1974 (1) SA 143 (N).

⁸ See *Parekh v Shah Jehan Cinemas and Others* 1982 (3) SA 618 (D) and *Western Bank Ltd v Meyer* 1973 (4) SA 697(T).

loss. A party seeking relief under section 3 of the Conventional Penalties Act must provide a factual foundation that enables the court to assess disproportionality. The defendants supplied none. They make a bare allegation of disproportionality without offering evidence of the plaintiff's prejudice, the value or anticipated residual value of the equipment, or any comparative rental calculations. In summary-judgment proceedings, unsupported assertions cannot amount to a bona fide defence.

[26] On the papers, the plaintiff's claim reflects no more than the contractual consequences of the defendants' breach: arrear rentals, future rentals validly accelerated, interest at the agreed rate, and return of the hired equipment. There is no duplication, no double recovery and no penal outcome. Once the equipment is returned, any residual value is dealt with under ordinary contractual and delictual principles. The defendants' characterisation of the claim as over-compensation is therefore without factual or legal merit.

Liability of the Second and Third Defendants

[27] The defendants also dispute the basis on which the Department of Education, Gauteng, and the Member of the Executive Council for Education, Gauteng, are held liable. They argue that the particulars of claim do not adequately establish joint and several liability on the part of the State.

[28] This objection overlooks the wording and purpose of section 60(1)(a) of the Schools Act. That provision renders the State liable for any delictual or contractual damage or loss caused in connection with any school activity conducted by a public school. The plaintiff's claim is not for specific performance but for contractual damages

arising from the school's breach of the rental agreements, which were concluded for the operation and functioning of the school as a public institution.

[29] In *MEC, Department of Education, Eastern Cape v Komani School & Office Suppliers CC*⁹ the Supreme Court of Appeal has confirmed that the State's liability under section 60(1)(a) extends to contractual damages flowing from a school's breach of contract. The defendants do not dispute that the agreements were concluded for the benefit and functioning of the school. Nor do they suggest that the rental arrangements fall outside the scope of "school activities" as contemplated in the Act.

[30] On the papers, there is no factual or legal basis to distinguish this case from the established line of authority applying section 60(1)(a). The challenge to the liability of the second and third defendants is accordingly without merit and does not disclose a triable issue.

Conclusion

[31] The established principles in *Maharaj v Barclays National Bank Ltd*¹⁰ and subsequent authorities remain applicable: the defendant must fully disclose the nature and grounds of the defence and the material facts on which it is founded, and demonstrate a bona fide defence that is good in law. Mere conclusions, speculation, or disputes inconsistent with admitted contractual documents do not suffice.

[32] The defendants admit the conclusion of the agreements, delivery of the equipment and non-payment. The matters they raise in opposition have been considered: the alleged

⁹ 2022 (3) SA 361 (SCA) at [38] and [50].

¹⁰ 1976 (1) SA 418 (A).

misrepresentations by Olifant, the complaints regarding the debit amounts, the cession point, and the liability of the State. None of these grounds discloses a defence that meets the threshold required to resist summary judgment.

[33] The agreements clearly record the essential terms, including the rental period, rental amounts and payment structure. The defendants' alleged understanding of different terms is contradicted by the documents they signed. The agency allegation has no factual foundation, and the issues concerning software charges arise from a separate arrangement and do not affect the obligations under the rental agreements.

[34] The plaintiff claims no more than what the agreements entitle it to following the defendants' admitted breach. The acceleration clause is enforceable, the interest rate was agreed, and the defendants place no evidence before the court to suggest disproportionality or over-compensation. The cessions are valid and undisputed, and the State's liability follows directly from section 60(1)(a) of the Schools Act.

[35] There is accordingly no genuine or triable issue that warrants a referral to trial. The plaintiff has established its entitlement to summary judgment.

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

1. Summary judgment is granted in favour of the plaintiff against all three defendants, jointly and severally, the one paying the others to be absolved, for:

1.1 Claim A:

1.1.1 Confirmation of termination of the Master Rental Agreement.

1.1.2 Return of the following goods: 1 X SHARP BP-30M28 PRINTER with serial number 25101446 1 X INVERTER 3KVA/48 VOLT/HYBRID INVERTER with serial number 2022063006969.

1.1.3 Payment of R265 670.28.

1.1.4 Payment of the arrear rentals as set out in the summons.

1.1.5 Interest on the aforesaid amounts at the rate of prime plus 6% from 16 May 2024 to date of payment.

1.1.6 Costs on an attorney client scale.

1.2 Claim B:

1.2.1 Confirmation of termination of the Second Master Rental Agreement.

1.2.2 Return of the following goods: 1 X NEW HOSTED PBX SOLUTION 1 X BROADSIS WIRELESS DESKTOP PHONE with serial number 861158060463464; 7 X CORDLESS PHONES - ULEFONE ARMOR X8 RUGGED with serial number 3093SH3010006481, 3093SH3010006363, 3093SH3010006399, 3093SH3010006361, 3093SH3010006373, 3093SH3010006365, 3093SH3010006411.

1.2.3 Payment of R406 937.84.

1.2.4 Interest at the prime interest rate plus 6% per annum from 16 May 2024 to date of payment thereof.

1.2.5 Costs on an attorney client scale.



L WINDELL

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand down is deemed to be 4 December 2025.

Appearances

For the plaintiff:	JG Botha
Instructed by:	ODBB Attorneys
For the defendants:	N Mncube
Instructed by:	The State Attorneys
Date of Hearing:	20 October 2025
Date of Judgment:	4 December 2025