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**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 2739/2025

In the matter between

THE STANDARD BANK OF SOUTH AFRICA LIMITED

APPLICANT

(Registration Number: 1962/000738/06)

and

FRANCO PHILLIPUS WIID

FIRST RESPONDENT

(Identity Number: 72[...])

JOHANNA ELIZABETH WIID

SECOND RESPONDENT

(Identity Number: 75[...])

FRANCO PHILLIPUS WIID N.O.

THIRD RESPONDENT

JOHANNA ELIZABETH WIID N.O.

FOURTH RESPONDENT

VERONICA CHARLENE STEYN N.O.

FIFTH RESPONDENT

(Third to Fifth Respondent in their capacity as Trustees
of the Franlese Trust, IT 268/2001)

Neutral citation: *The Standard Bank of South Africa Limited v Wiid and Others*
(2739/2025) [2026] ZAFSHC 19 (22 January 2026)

Coram: MHLAMBI J

Heard: 28 August 2025

Delivered: This judgment was electronically handed down by email to the parties' representatives and released to SAFLII. The date and time of the hand-down are deemed to be 22 January 2026 at 9h30.

Summary: Trusts and trustees – variation of trust deed – distinction between unanimous-decision trusts and majority-decision trusts – contractual nature of trusts – rights of beneficiaries – court not entitled to rely on abstract values of fairness and

equity to ignore clear provisions of a deed or established law of contract

ORDER

Prayers 1, 1.1, 1.2, 1.3, 2, 2.1, 2.2, and 3 of the notice of motion are granted.

JUDGMENT

Mhlambi J

[1] This is an opposed application in which the applicant sought an order in the following terms:

1. Judgment against the first and second respondents, jointly and severally, the one to pay the other to be absolved on a guarantee as well as a settlement agreement, as follows:

1.1 On a business current account, the sum of R12,045,140.70 together with interest on the amount of R12,045,140.70 calculated at 15% per annum, compounded daily and capitalised monthly from the 25th of February 2025 to date of final payment, both days inclusive;

1.2 On a medium-term loan account in the amount of R32,865,059.47 together with interest thereon at 12% per annum on the first R2 200 000.00 and interest of 14.5% per annum on amounts in excess of R2 200 000.00 compounded daily and capitalised monthly from the 25th of February 2025 to date of final payment, both days inclusive.

1.3 On a vehicle and asset finance account in the amount of R1,335,486.11 together with interest thereon at the rate of 12.150% per annum compounded daily and capitalised monthly from the 25th of March 2025 to date of final payment, both days inclusive.

2. Judgment against the third, fourth and fifth respondents, jointly and severally with each other as well as with first and second respondents, the one to pay the other to be absolved on a guarantee as follows:

2.1 On the same accounts as set out in para 1 above to the maximum aggregate sum of R 40 000 000.00;

3. Interest on the aforesaid amount *a tempore morae*. Costs of the application on the scale of attorney and client, as far as the first and second respondents are concerned, and on Scale C of the Uniform Court Rules as far as third, fourth, and fifth respondents are concerned;

4. Further and/or alternative relief.

[2] On 13 November 2018, the first and second respondents, in their personal capacities, jointly and severally, signed a guarantee at Modderfontein, in terms of which they guaranteed and undertook, as a principal and independent obligation to and in favour of the applicant, the due, punctual, and full payment of all debts that Franlese Boerdery (Pty) Ltd (Franlese Boerdery) owed or may in the future owe to the applicant arising from agreements concluded or to be concluded between the debtor (Franlese Boerdery) and the applicant, and to pay to the applicant, on written demand and without delay, all amounts that will or may become due and payable in respect of the debts.¹

[3] Annexure 'B2', a copy of a guarantee signed by the third and fourth respondents on 13 November 2018 at Modderfontein, is attached to the founding affidavit. The terms of the guarantee are identical to those of the guarantee signed by the first and second respondents.

[4] The applicant relies on certificates of balance for the three accounts, for which it holds the main debtor and the respondents liable to pay.² On 6 September 2022, the first and second respondents signed a settlement agreement in Bloemfontein for the full

¹ FA: paras 5.3.1-5.3.7.

² Paras 5.7.1-5.7.3.

outstanding indebtedness of Franlese Boerdery as of that date, together with interest and costs, including all taxed attorney-client legal costs. The settlement agreement was made an order of the court on 14 October 2022. As of 25 March 2025, the total of the three certificates of balance, excluding interest, was R46 245 686.28.

[5] It is common cause that the first respondent was the sole director of Franlese Boerdery, with the Franlese Trust (the Trust) as the sole shareholder. In his capacity as sole director, he passed a resolution shortly after the settlement agreement was signed, placing Franlese Boerdery in business rescue. During this period, the applicants' claims were never disputed by either the main director or the first respondent, in his capacity as the company's director. The business rescue was terminated, and Franlese Boerdery was liquidated at the applicant's instance.

[6] The first and second respondents admitted in their answering affidavits that they signed the personal guarantees³ and the settlement agreement.⁴ In their view, the court could not enforce the personal guarantees and the settlement agreement against them because they were contrary to public policy.⁵ They never represented to the applicant that they would be able to pay the princely sum of R40 000 000.00 upon the principal debtor's default. They executed the personal guarantees on the basis that there was no choice at all, with the hope and belief that the principal debtor's business would be successful and that the principal debtor would not default. They did no more than yield to the applicant's insistence.⁶

[7] A reasonable care provider, they stated, would consider itself bound by the *boni mores* of society, which expect reasonable economic activity and responsible lending and credit practices.⁷ The execution of a personal guarantee that does not mitigate risk or ensure payment is nothing but a meaningless document, executed at the credit

³ Para 46 of the answering affidavit.

⁴ Para 52.

⁵ Para 3.

⁶ Para 30 of the answering affidavit.

⁷ Para 22.

provider's insistence for empty solace, merely to check an administrative box.⁸ The applicant must have known that the first and second respondents would, in all reasonable likelihood, never be in a position to satisfy a potential maximum debt of R40 000 000.00.⁹ The applicant's insistence on personal guarantees was meaningless, arbitrary, and irrational.¹⁰

[8] In signing the guarantee, the first and second respondents warranted, among others, represented and undertook in favour of the applicant that:

8.1 they have the legal capacity to enter into and perform their obligations under the guarantee, and the terms of this guarantee do not conflict with and do not constitute a breach of the terms of any other agreement or undertaking, or any act that is binding on the guarantors;

8.2 they would comply with the formalities required by its constitutive documents, as well as all legislation and regulations applicable to the guarantee and their business activities;

8.3 The obligations stated to be assumed by the guarantors under the guarantee were valid and binding on and enforceable against the guarantors;

8.4 all of the provisions of the guarantee and the restrictions contained therein were fair and reasonable in the circumstances and were part of the parties' overall intention in connection with the guarantee, and the guarantors:

8.4.1 understood and appreciated the risks, costs, and obligations under the guarantee; and

8.4.2 have been given an adequate opportunity to read and understand the guarantee and are aware of all the terms printed in bold;

⁸ Para 23.

⁹ Para 25.

¹⁰ Para 26.

8.5 the guarantors were in a sound financial position as of the signature date and had neither been placed under administration nor committed an act of insolvency as defined in the Insolvency Act, 24 of 1936;

8.6 they were free to obtain independent legal, tax, accounting, and other advice regarding the nature and effect of all the provisions of the guarantee, and that they have either obtained such advice or waived the need to do so.

[9] Similar warranty provisions were included in the guarantee signed by the trustees of the Trust (Annexure 'B2').

[10] In the answering affidavit, the third through fifth respondents stated that what a trust, acting through its trustees, can do is found within the four corners of the trust deed. Outside the provisions of the trust deed, the trust estate cannot be bound. Clause 8 of the deed addressed the trustees' decisions. Clause 8.6.4 of the deed specifically provides that any decision to provide a guarantee or security will be valid and binding only if all the posts of trustees are filled, and all the trustees have authorized it.¹¹ On 13 November 2018, there were three trustees in office, namely the third, fourth, and fifth respondents.¹²

[11] The respondents contended that the 'Resolution to go with a Guarantee' dated 13 November 2018 (the resolution) unequivocally stated that a meeting of trustees took place on that date. This was palpably false. The resolution¹³ was drawn up by the applicant, who presented it to:

'the first/ third respondent for signature by him and us. As the resolution was prepared by the Applicant we were of the view that the resolution serves to comply with the internal requirements of the Applicant. We did not realise that the resolution was intended to create a ruse that the provisions of the Deed had been complied with.

16. It was only when we took advice on this application from the Trust's legal representatives

¹¹ Paras 4 and 6.

¹² Para 8.

¹³ Annexure 'B2'.

that it was made clear to us that the resolution was not an internal requirement by the Applicant, but in fact an attempt by the Applicant to falsify the true state of affairs by purporting to demonstrate their compliance with the Deed.’¹⁴

These paragraphs militate against the warranties given by the first and second respondents, who are representatives of the trust and cited as third and fourth respondents.

[12] According to the respondents, the resolution offered by the applicant paid lip service to various trust principles by purporting to act within the four corners of the trust deed; to abide by the principle that trustees must act jointly, and to show that a valid and lawful decision, binding the trust estate, had been taken. The applicant relied on the resolution whose four corners delineate a meeting that was never held.

[13] Their main contention is that, at the time the guarantee was signed, a valid resolution did not support it because it was not signed by all the trustees, and, in addition, the trustees did not act jointly at that time. Upon a proper interpretation of the trust deed, at the time the guarantee is executed, there must be a valid and binding decision authorising its execution. A guarantee executed before all the trustees authorized it would be void *ab initio*.¹⁵

[14] The fifth respondent deposed to the answering affidavit and stated that she signed the resolution on 14 November 2018 when the first, alternatively, third, respondent brought it to her place of employment in Bloemfontein. She never attended any meeting at the applicant’s offices or branch, nor did she sign any document relating to the Trust.

[15] In reply, the applicant pointed out that the Trust’s own trust deed authorized the trustees to decide as they did on 13 November 2018 because clause 8.5 provides that a

¹⁴ Paras 15 and 16.

¹⁵ Para 9.

written decision signed by all the trustees (or their alternatives) is as valid as a decision taken at a meeting of the trustees. If the resolution to proceed with the guarantee had not been taken, as can be inferred from the resolution itself, it would have been expected of the trustees, or at least some of them, to apply for rectification, which they did not do. They were therefore bound by the four corners of the written document. The reason is that they all admit their own signatures.

[16] The applicant stated that clause 8.6.4 of the trust deed, read together with the heading of clause 8.6, provides that, notwithstanding any other provision of this deed, any decision to provide a guarantee or security is valid and binding only if all trustee positions are filled, and all the trustees have approved it in writing. The resolution to proceed with the guarantee does not indicate where it was signed, only that it was signed on 13 November 2018, the same day the guarantee itself was signed. It was represented to the applicant that it was signed by all three trustees of the Trust.

[17] The applicant contended that it was expected of the fifth respondent that, if she signed the resolution on a date other than 13 November 2018, she would have indicated that fact. It would also have been expected of her to have had insight into the guarantee when she signed the resolution, insofar as the resolution makes clear that she gave authority to the other two trustees to negotiate and finalize the content of the guarantee and to execute, for and on behalf of and in the name of the trust, the guarantee on such terms and conditions as they, in their sole discretion, may deem appropriate.

[18] Central to the dispute are the questions of whether:

18.1 the personal guarantees by the first and second respondents and the settlement agreement were contrary to public policy.

18.2 the third through fifth respondents acted within the four corners of the trust deed when they provided the applicant with the guarantee.

[19] The applicant contended that it was common cause that the main debtor was indebted to the applicant in the amounts alleged; that the guarantee furnished by the first and second respondents to the applicant and their indebtedness were established by a settlement agreement that was made an order of court; that the National Credit Act 34 of 2005 was not applicable; that the applicant demanded payment from the first and second respondents; that the main debtor was in liquidation and, before that, had gone into business rescue shortly after the settlement agreement was made an order of court; and that the first and second respondents failed to repay any amounts due to the applicant.

[20] The applicant submitted that the first and second respondents' ideological view was that enforcing the guarantees was contrary to public policy. It argued that neither the company (as the main debtor) nor the first and second respondents objected when a business current account with a facility of R12 000 000.00, a medium-term loan of more than R32 000 000.00, and the vehicle and asset finance agreement of more than R1.3 000 000.00 were made available and advanced to the main debtor. In addition, the first and second respondents signed a settlement agreement on the 6th of September 2022, admitting their indebtedness to the total amount due by the main debtor and agreeing to the terms of repayment.

[21] It was, therefore, contrary to the interests of justice for the first and second respondents to suddenly complain that the advances made and the signing of the guarantees were against public policy when the applicant moved for judgment against them to enforce payment. The guarantors undertook to repay the advances made in the ordinary course of business, and that undertaking was not against public policy. The first and second respondents knew the consequences of failing to pay.

[22] The respondents accept that there can be no easy release from a guarantee, as guarantors should not be allowed to escape obligations they freely undertook. In

Barkhuizen v Napier,¹⁶ the determination of fairness hinged on two questions. The first was whether the clause itself was unreasonable. Secondly, if the clause was reasonable, whether it should have been enforced given the circumstances that prevented such compliance. It was stated as follows:

'57. The first question involves the weighing-up of two considerations. On the one hand, public policy, as informed by the Constitution, requires, in general, that parties should comply with contractual obligations that have been freely and voluntarily undertaken. This consideration is expressed in the maxim *pacta sunt servanda*, which, as the Supreme Court of Appeal has repeatedly noted, gives effect to the central constitutional values of freedom and dignity. Self-autonomy, or the ability to regulate one's own affairs, even to one's own detriment, is the very essence of freedom and a vital part of dignity. The extent to which the contract was freely and voluntarily concluded is clearly a vital factor as it will determine the weight that should be afforded to the values of freedom and dignity. The other consideration is that all persons have a right to seek judicial redress. These considerations express the constitutional values which must now inform all laws, including the common law principles of contract.

58. The second question involves an inquiry into the circumstances that prevented compliance with the clause. It was unreasonable to insist on compliance with the clause or impossible for the person to comply with the time limitation clause. Naturally, the onus is upon the party seeking to avoid the enforcement of the time limitation clause. What this means in practical terms is that once it is accepted that the clause does not violate public policy and non-compliance with it is established, the claimant is required to show that, in the circumstances of the case there was a good reason why there was a failure to comply.'

[23] The court concluded that the first inquiry must focus on the contract's objective terms. If the objective terms are not inconsistent with public policy on their face, the further question is whether they are contrary to public policy in light of the relative circumstances of the contracting parties.¹⁷

[24] The respondents' approach to the matter is quite peculiar. The first and second

¹⁶ *Barkhuizen v Napier* [2007] ZACC 5; 2007 (5) SA 323.

¹⁷ *Ibid* para 59.

respondents (also the third and fourth respondents) deposed to affidavits stating that they opposed the application on the basis of legal advice that enforcing the guarantee was contrary to public policy.¹⁸ They accepted the general principle that guarantees are required to mitigate risk and that credit providers are not required to conduct a credit assessment when the principal debt's credit agreement is excluded from the provisions of the National Credit Act.¹⁹ What they have a problem with is the applicant's alleged insistence on the guarantees. This is in stark contrast to the warranties they gave.

[25] They deny that the applicant inquired about their financial status, and the financial information provided to the applicant makes it clear that neither of them held assets in their own names. They never represented to the applicant their ability to pay the principal debt of R40 000 000.00 on demand, either at the time of executing the personal guarantee or at any time thereafter. The onus is on the respondents to show why it is impossible for them to comply with the demand for a personal guarantee on the stated terms. Save for the denial stated above, they did not present facts showing that, in the circumstances of this case, there was a good reason for the failure to comply. In the given circumstances, the first and second respondents have failed to show that the applicant was either unreasonable or acted arbitrarily.

[26] The third through fifth respondents contended that the applicant relied on the written guarantee.²⁰ The matter turned on the interpretation of the resolution of 13 November 2018 and the trust deed.²¹ The resolution should be considered in light of the trust deed and construed in the context of a meeting of trustees. Provisions of the trust deed that do not relate to meetings of trustees were irrelevant to determining the lawfulness of the alleged decision.²² I find this submission peculiar, as the respondents rely on the applicant's failure to comply with the provisions within the four corners of the trust deed.

¹⁸ AA: para 3.

¹⁹ AA: Para 19.

²⁰ Respondents' heads of argument: para 1.

²¹ Para 3.

²² Para 12.

[27] The respondents relied on a passage from *Shepstone and Wylie Attorneys v De Witt N.O. and Others*²³ (*Shepstone and Wylie*), which reads as follows:

‘[66] Clause 13.4 is a standard round-robin provision that permits decisions to be taken without a meeting (its counterpart in the standard articles was clause 76). The policy behind the requirement that all trustees must sign such a resolution is that, because a meeting is being dispensed with, a trustee who might disagree with a proposed decision is deprived of the opportunity at a meeting of persuading his or her fellow trustees. If, however, all the trustees agree on a course of action, the holding of a meeting would be superfluous. In short, clause 13.4 is irrelevant where a decision is taken at a meeting.’

[28] This is the crux of the respondents’ argument that clause 8.5 in the trust deed is a round-robin clause, which the applicant sought to rely on. They contend that this clause is irrelevant because the decision was made at a meeting. The resolution specifically referred to an extract of the minutes that the applicant failed to present to the court.

[29] The respondents argued that even if the court found that the third and fourth respondents signed the resolution at Modderfontein in each other's presence, a duly constituted meeting without proper notice to the fifth respondent could not have been held under the trust deed. The resolution did not lend itself to an interpretation as a resolution under clause 8.5 of the trust deed, which provided that a written decision signed by all the trustees was on an equal footing with one taken by the trustees at a meeting. The reason is that, at the time the guarantee was signed on 13 November 2018, there was no valid, lawful, and binding resolution under clause 8.5 of the trust deed, as the fifth respondent had not signed it.

[30] The relevant provisions of the Trust Deed are the following:

(a) Clause 5.2: always, there will be three and a maximum of five trustees in office.

²³ *Shepstone and Wylie Attorneys v De Witt N.O. and Others* [2025] ZACC 14; 2025 (11) BCLR 1299 (CC).

- (b) Clause 8.2: Subject to paragraph 5.7, two trustees will constitute a quorum for a meeting, provided that, as long as FP Wiid is a trustee, his presence or that of his alternate will be necessary.
- (c) Clause 8.3.3: each trustee has the right to call a meeting of trustees by giving a reasonable written notice.
- (d) Clause 8.3.2: A decision taken at the meeting must be properly noted and signed by the trustees at present.
- (e) Clause 8.5: a written decision signed by all the trustees (or their alternatives) is as valid as a decision taken at a meeting of the trustees.
- (f) Clause 8.6.4: notwithstanding any other provision of this deed, any decision to provide a guarantee or security will be valid and binding only if all the trustee positions are filled, and all the trustees have approved it in writing.

[31] In *Shepstone and Wylie*, the court had to interpret the trust deed and determine whether the trust was bound by a suretyship agreement made at a quorate meeting in the absence of one trustee. Considering the respondents' main contention (in this matter) that the guarantee's signature was not supported by a valid resolution signed by all the trustees, the court said the following:

'This takes us to another error in the Supreme Court of Appeal majority's analysis of trust law. After relying on *Le Grange*, the Supreme Court of Appeal majority stated that "[e]ven when the Trust Deed provides for a majority decision, the resolution must be signed by all the trustees". This is plainly in conflict with the principle expressed in *Nieuwoudt* and *Parker* that a trust deed can provide for decision-making other than by joint action. The apparent reliance on *Le Grange* is misconceived. *Le Grange* stated that resolutions signed by trustees are "usually" a manifestation of trustees' joint decision. The Court went on to say that where (as on the facts of that case) the majority (being two trustees) had signed a resolution and the third abstained, it would be placing "form over substance" to insist on having the third trustee's signature on the resolution.'²⁴

²⁴ Ibid para 57.

[32] The resolution signed by the three trustees states that the trustees of Franlese Boerdery met on 13 November 2018 and resolved that the Trust was authorized to enter into a guarantee for its obligations to the applicant. The three trustees appended their signatures to the document titled 'Resolution to go with a guarantee' under the subheading 'approved as a true extract of the minutes'. At the bottom of the document, examples of the two authorized signatures (belonging to the third and fourth respondents) were shown. It is not in dispute that the signatures on this resolution belong to respondents three to five. It is also not in dispute that the first to the fourth respondents signed the resolution on 13 November 2028.

[33] Clause 8.6.4 of the trust deed, read together with the heading of clause 8.6, states as follows:

'8.6 NIETEENSTAANDE ENIGE ANDER VOORSKRIF VAN HIERDIE AKTE IS ENIGE BESLUIT WAARKRAGTENS:

...

8.6.4 'n waarborg of 'n sekerheidstelling verstrek word

SLEGS GELDIG EN BINDEND INDIEN AL DIE POSTE VAN TRUSTEES GEVUL IS EN AL DIE TRUSTEES DIT SKRIFTELIK GOEDGEKEUR HET.'

[33] The respondents admit that the ability, as well as the manner in which the trustees must act to execute a lawful guarantee, must be derived from the four corners of the trust deed. They admit that as of 13 November 2018, all three trustees were in office. They state that the trust deed is clear that all three trustees must authorize the guarantee for it to be valid.

[34] The word '*goedkeur*' may mean authorize or approve in English. However, these terms are not fully equivalent. Authorization is the granting of authority before an action, whereas approval is the expression of a positive opinion or the formal confirmation of something, often after an initial action or as a final sanction. Authorize means to give authority or official power to, or to empower, while approving means to

confirm or sanction formally, or to ratify. The respondents do not challenge the validity of the decision under this clause. Their focus is on clause 8.5, and, strangely, they submit that the provisions of the trust deed that do not relate to meetings of the trustees are irrelevant to determining the lawfulness of the decision. In my view, the decision to provide a guarantee on 13 November 2018 was valid under clause 8.6.4.

[35] In their heads of argument, the respondents submit that it is unnecessary to address the trust deed's provisions on calling a meeting, as they deny that a meeting of the trustees was held on 13 November 2018. A review of the trust deed shows that there is no heading or chapter addressing this topic.

[36] The two guarantees were signed by the first through fourth respondents at Modderfontein on 13 November 2028. The resolution does not specify the time and place of signing. The fifth respondent states that the resolution was prepared by the applicant for her and the other two trustees. They believed it was intended to comply with the applicant's internal requirements and never realized it was meant to deceive by suggesting that the trust deed's provisions had been complied with. This statement indicates contemporaneousness and that the resolution was presented to all three trustees simultaneously.

[37] The fifth respondent stated that the third respondent informed her that he had, on his own, attended the applicant's office in Kimberley on 13 November 2018 and signed the guarantee and the resolution without authority. The fourth respondent did not accompany him, so he was the only person who signed the guarantee and the resolution.²⁵ This contradicts what is reflected in both guarantees, as the first through the fourth respondents signed the guarantees in Modderfontein on 13 November 2018.

[38] As the applicant points out, the fifth respondent's behavior is incomprehensible. She failed to object to signing the documents on a date different from that in the

²⁵ AA: Paras 23 and 24.

resolution and remained silent for years until she received advice from the trust's lawyers in 2025. Taken as a whole, their evidence is contradictory and unsatisfactory and cannot be relied upon. I agree with the applicant's counsel that the averments in the fifth respondent's affidavit do not constitute a bona fide defense or a factual dispute. I find that no real and substantial dispute has been raised by the respondents, and that the applicant has made out a proper case for the relief sought.

[28] The applicant, as the successful party, is entitled to the costs.

[29] I, therefore, grant the following order:

Prayers 1, 1.1, 1.2, 1.3, 2, 2.1, 2.2, and 3 of the notice of motion are granted.

J MHLAMBI
JUDGE OF THE HIGH COURT

Appearances

For the Appellant:	P Zietsman
Instructed by:	PH Attorneys
For the Respondent:	CE Thompson
Instructed by:	DU Toit Lamprechts Inc