REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2024-086870

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

In the matter between:

SOUTH AFRICAN SECURITISATION Applicant

PROGRAMME (RF) LIMITED

and

PRO PHIL STEEL SERVICES (PTY) LIMITED First Respondent

(Registration Number: 2016/069421/07)

CLINTON VAN DER MERWE Second Respondent

(Identity Number: 9[…])

JUDGMENT

SENYATSI J

Introduction

[1] This is an application for summary judgment brought by the Plaintiff against the First and Second Defendants, jointly and severally, for payment of the capital sum of R156,190.28, together with interest and costs on the attorney and client scale. The Defendants oppose the application and seek leave to defend.

[2] The application is premised on a hire agreement entered into between the First Defendant and Sunlyn (Pty) Ltd, which was subsequently ceded to Sasfin Bank Limited and thereafter transferred to the Plaintiff. The Second Defendant bound himself as guarantor and co-principal debtor.

[3] The Defendants, in their plea and opposing affidavit, raise several purported defences, including challenges to the Plaintiff's locus standi, the legibility of the contract, alleged cancellation due to repossession, and bare denials of the guarantee and breach.

[4] The application for summary judgment is brought in terms of Uniform Rule of Court 32. The Plaintiff claims payment of arrears and accelerated future rental due under a hire agreement, together with interest and costs. The Defendants have filed an opposing affidavit and heads of argument.

<u>The Respondents Defences</u>

[5] The Respondents raise the following defence:

(a) Lack of locus standi;

(b) The alleged illegibity;

(c) Bold denial of breach by failure to pay;

(d) Alleged repudiation of contract by the applicant and subsequent possession;

(e) Bare Denial of Guarantee and Certificate of Balance and

(f) The alleged lack of the Applicant 's deponent's authority.

[6] Before dealing with each defence, it is crucial that this Court deals with the applicable legal principles pertaining to summary judgment,

<u>Legal Principles</u>

[7] The summary judgment application is regulated by Rule 32 of the Uniform Rules which states thus:

> "Summary judgment
>
> (1) *The plaintiff may, after the defendant has delivered a plea, apply to court for summary judgment on each of such claims in the summons as is only—*
>
> *(a) on a liquid document;*
>
> *(b) for a liquidated amount in money;*
>
> *(c) for delivery of specified movable property; or*
>
> *(d) for ejectment."*

[8] The objective of the rule is to prevent a plaintiff's claim, based upon certain causes of action, from being delayed by what amounts to abuse of the process of court.[1] The procedure is not designed to shut down a defendant

[1] Meek v Kruger 1958(3) SA154(T)at 159-160; Joob Joob Investments (Pty)Ltd v Stocks Mavundla Zek Joint Venture 200(5) SA 1 (SCA)at 11C-G.

who can show that there is a triable issue applicable to the claim from laying his defence before the court.[2]

[9] It therefore clear that the legal principles governing summary judgment are settled. The purpose of the remedy is to allow the court to dispose summarily of matters where the defendant has no bona fide defence. The label of summary judgment as "drastic" should not be allowed to protect a defendant who has no real defence.[3]

[10] A defendant opposing summary judgment must satisfy the court by affidavit that he has a bona fide defence, which is stated with sufficient clarity and completeness to enable the court to conclude that, if proved at trial, it would constitute a valid defence.[4]

Analysis of Defences Raised

(a) Locus Standi

[11] The Defendants challenge the Plaintiff's locus standi on the basis that they were not privy to the cession and transfer agreements and that the documentation presented does not clearly establish a valid cession from Sunlyn to the Plaintiff.

[12] This contention is without merit. The Plaintiff's particulars of claim clearly set out the chain of cession: first from Sunlyn to Sasfin Bank Limited, and then from Sasfin to the Plaintiff via a sale transfer agreement. The Defendants are strangers to these agreements and cannot impugn them.[5]

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[2] Majola v Nitro Securitisation 1 (Pty)Ltd 2012 (1) SA 226(SCA) at 232F-G.
[3] *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Ventures* 2009 (5) SA 1 (SCA) at para 33.
[4]See *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 426 C.

[5]*Letseng Diamonds Ltd v JCI Ltd and Others* 2009 (4) SA 58 (SCA)

Moreover, the court in *South African Securitisation Programme (RF) Ltd and Others v 7 SIRS Group (Pty) Ltd and Others* [6]rejected an identical defence as not constituting a triable issue.

[13] The Defendants' reliance on the fact that Venga Tel is named as vendor in the sale transfer schedule is misplaced. Venga Tel was the supplier responsible for delivery and installation, a fact admitted by the Defendants in their plea. This does not detract from the validity of the cession chain.

(b) Illegibility of Contract

[14] The Defendants allege that the hire agreement annexed to the particulars of claim is illegible and therefore not the contract they signed. However, they have not availed themselves of the Uniform Rules to request a better copy, nor have they explained why they do not have their own copy. Critically, they admit the material terms of the agreement in their plea, including the rental amount, escalation clause, and the acceleration clause entitling the Plaintiff to claim future rentals upon default.

[15] In similar circumstances, this division has held that such a complaint does not constitute a bona fide defence.[7]

(c) Breach and Non-Payment

[16] The Defendants deny being in breach but provide no factual basis for this denial. In their opposing affidavit, the Second Defendant admits that the First Defendant was in arrears as early as September/October 2023 due to cash flow problems. They also admit the acceleration clause which entitles

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[6] 2024 JDR 1230 (WCC) at para 31.
[7] *South African Securitisation Programme RF Ltd v Initiative for Specialized Resources Management (Pty) Ltd and Others* 2024 JDR 2364 (GJ) at para 15.

the Plaintiff to claim all future rentals upon default. Despite this, they have not provided any evidence of payments made thereafter.

[17] Bare denials, unsupported by facts, are insufficient to resist summary judgment.[8]

(d) Cancellation Due to Repossession

[18] The Defendants contend that the Plaintiff repudiated the agreement by repossessing the equipment without consent or a court order, thereby cancelling the agreement. This argument fails for several reasons.

[19] First, on the Defendants' own version, the Plaintiff's right to claim the full outstanding amount had already accrued in late 2023 due to their admitted default. The alleged repossession in early 2024 is therefore irrelevant to the Plaintiff's accrued claim.

[20] Second, the Defendants admit in their plea that the hire agreement entitles the Plaintiff to repossess the equipment upon default. Their belated suggestion that consent or a court order was required is unconvincing and unsupported by any evidence.

(e) Bare Denial of Guarantee and Certificate of Balance

[21] The Defendants baldly deny the guarantee and the certificate of balance clause. The guarantee is legible and bears the Second Defendant's identifiable signature. No factual basis is advanced to contest its validity. Similarly, the certificate of balance is legible and unchallenged on the facts.

[22] A bare denial, without more, does not constitute a defence.[9]

[8] *NPGS Protection and Security Services CC and Another v Firstrand Bank Limited* 2020 at para 14.

(f) Deponent's Authority

[23] The Defendants challenge the authority of the Plaintiff's deponent without invoking Uniform Rule 7 or providing any factual basis for the challenge. This court has consistently held that such a challenge, made in the absence of a Rule 7 application, is not a valid defence.[10] It will therefore be remiss of this Court in its duty not to apply the legal principles based on the facts of this case by refusing to grant the summary judgment.

Conclusion on Defences

[24] None of the defences raised by the Defendants, whether considered individually or collectively, disclose a bona fide defence that is stated with sufficient particularity. The defences are vague, sketchy, contradictory, and in some instances, contradicted by the Defendants' own admissions. They do not meet the standard required to resist summary judgment as set out in Breitenbach v Fiat SA (Edms) Bpk . and reaffirmed in Joob Joob.

Costs

[25] The agreement provides for costs on an attorney and client scale, a term admitted by the Defendants. There is no reason to deviate from this agreed term.

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[9] *Maharaj v Barclays National Bank Ltd*, supra at footnote 4.

[10] *Firstrand Auto Receivables (RF) Ltd v Makgobatlou* 2021 JDR 2131 (GJ).

Order

[26] Summary judgment is granted in favour of the Plaintiff against the First and Second Defendants, jointly and severally, the one paying the other to be absolved,for:

(a) Payment of the sum of **R 156,190.28**;

(b) Interest on the aforesaid amount at the applicable mora rate from date of demand to date of final payment;

(c) Costs of suit on the scale as between attorney and client.

ML SENYATSI

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

DATE APPLICATION HEARD: 25 JANUARY 2026

DATE JUDGMENT HANDED DOWN: 02 FEBRUARY 2026

APPEARANCES

Counsel for the Applicant:	ADV N LOMBARD
Instructed by:	WRIGHT ROSE INNES INC
Attorney for the Respondents:	ORA DIPPENAAR
Instructed by:	DIPPENAAR ATTORNEYS