

REPUBLIC OF SOUTH AFRICA

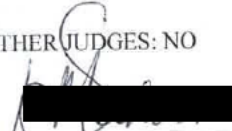


IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO.: 100061/2024

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

09 February 2026
DATE


SIGNATURE

In the matter between:

SGR FINANCE (PTY) LTD

Plaintiff

and

CENTURION MED INC

First Defendant

ENGELA MAGDALENA VAN WYNGAARDT

Second Defendant

JUDGMENT

Mahosi, J

Introduction

[1] This is an opposed application for summary judgment in terms of which the plaintiff, SGR Finance (Pty) Ltd, seeks payment of R111 952.50 plus interest thereon, and costs against the defendants, Centurion Med Inc. (the first defendant) and Ms. Engela Magdalena Van Wyngaardt (the second defendant).

[2] The defendants have filed an affidavit resisting summary judgment, raising several points *in limine* and substantive defences.

Background

[3] The plaintiff's claim arises from a Master Rental Agreement concluded on 22 May 2024, in terms of which the plaintiff rented telecommunications and office equipment to the first defendant. The second defendant bound herself as surety and co-principal debtor.

[4] The plaintiff alleges that the first defendant defaulted on its monthly rental obligations, leaving arrears of R3 795.00 and future rentals amounting to R108 157.50. The plaintiff issued a simple summons, followed by a declaration. The defendants entered an appearance to defend and filed a plea. Dissatisfied with the defendants' preliminary points and defenses, the plaintiff launched this application claiming that the defences raised by the defendants in their plea do not raise any issue for trial. In turn, the defendants filed an affidavit resisting summary judgment.

Legal Framework

[5] Rule 32 of the Uniform Rules requires the defendant to "fully" disclose, in an affidavit, the nature and grounds of the defence and the material facts relied upon. It is trite that the summary judgment is a "drastic" and "extraordinary" remedy, designed to prevent a defendant who has no *bona fide* defense from delaying the claim. A court will grant summary judgment if the plaintiff has made out a clear case and the defendant has failed to set out a *bona fide* and good-in-law defence. Thus, the Court does not at this stage decide disputed issues of fact, but only whether the defendant has made out a *prima facie* case for leave to defend.

[6] In the current matter, the defendants raised five points *in limine* in their affidavit resisting summary judgment. I deal with them in turn.

Points in limine

Authority to depose to the affidavit

[7] The defendants argue that Ms. Natasha Domingo, the deponent to the plaintiff's founding affidavit, lacks authority to bring the application on behalf of the plaintiff, a juristic person. They contend that no board resolution authorising her has been attached.

[8] It is trite that a deponent in motion proceedings need not prove specific authorisation to depose to an affidavit. Only the initiation of the proceedings and their prosecution require authorization.¹ The plaintiff correctly referred this Court to a judgment in *Unlawful Occupiers of the School Site v City of Johannesburg*², where the Court clarified that challenges to the authority of someone acting on behalf of an applicant should be raised under Rule 7(1) rather than as a preliminary issue.

[9] Additionally, Rule 32(2)(a) provides for the affidavit supporting the notice of application for summary judgment to be made by the plaintiff or any other person who can swear positively to the fact. Thus, an affidavit made by a deponent other than the plaintiff himself does not require special authority from the plaintiff to be valid. However, the deponent is required to state that facts are within his personal knowledge unless such knowledge appears from the other stated facts.³

[10] In the current matter, the deponent is the plaintiff's employee, the Collections Manager. She deposes to facts within her knowledge, stating that she has full, direct access and control over the first respondent's accounts, records, and other relevant documents relating to this application and the main action proceedings. This is not disputed. In light of the above, the supporting affidavit is compliant with the requirements

¹ *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA), at para 19.

² 2005 (4) SA 199 (SCA), at para 14.

³ See *Absa Bank Ltd v Lee Roux* 2014 (1) 475 (WCC), at 477B-H and 478A-B.

of sub-rule 32(2). Consequently, any points raised regarding authority in this context are misconceived and ought to be dismissed.

Plaintiff not the contracting party / Lack of Locus Standi

[11] The defendants contend that the plaintiff is not the correct contracting party. They point to a clause in the guarantee (clause 1), which refers to "Hirer Pty Ltd", arguing that this is a different entity from "SGR Finance (Pty) Ltd". They also allege that the plaintiff ceded the agreement to a third party (Digital One) and thus lacks standing to sue.

[12] An examination of the agreement as a whole makes it abundantly clear that "Hirer" is defined as and refers to SGR Finance (Pty) Ltd. The Master Agreement cover page (Annexure A1 to the declaration) expressly states: "ask us or Hirer SGR Finance (Pty) Ltd" and the debit order authority is in favour of SGR Finance (Pty) Ltd. The reference to "Hirer (Pty) Ltd" in clause 1 of the guarantee is clearly a typographical error. The defendants' own correspondence, which is the letter of demand from Hamel Attorneys dated 21 June 2024, acknowledges dealing with "SGR Finance".

[13] Furthermore, the document the defendants rely on as a "cession" (Annexure A5, the Payment Plan and Release Note) states the agreement "has been ceded "by us", which in context refers to the supplier ceding its rights to the plaintiff, not vice versa. The plaintiff's *locus standi* is clear. Thus, this defense is not *bona fide* and is subject to dismissal.

Claim not based on a liquid document or for a liquidated amount.

[14] The defendants argue the claim is not one for a liquidated amount of money as required by Rule 32, because it requires calculation and evidence. It is trite that a "liquidated amount in money" is an amount either agreed upon or capable of speedy and prompt ascertainment. The claim in this matter is for a specific sum of R111 952.50, comprising admitted arrears of R3 795.00 and the accelerated balance of future rentals, amounting to R108 157.50, as per the fixed-term agreement. The amount is readily ascertainable from the agreement's terms: 60 months at R1 897.50 per month.

Furthermore, clause 9 of the agreement provides that a certificate signed by the plaintiff's manager shall be proof of the indebtedness. Such a certificate has been provided as Annexure B1. It is apparent that the claim is liquidated. As such, this point is dismissed.

Non-compliance with Rule 32(2)(c)

[15] The defendants argue the plaintiff failed to annex a "liquid document" to its affidavit. As the claim is for a liquidated amount in money and not "founded" on a liquid document, Rule 32(2)(c) is not triggered. Therefore, the point has no merit and is dismissed.

Non-compliance with Rule 17(2)(a) – Use of Simple Summons

[16] The defendants contend that the plaintiff should have issued a combined summons because the claim is not liquidated and involves factual disputes.

[17] For the reasons stated above, the claim is liquidated. A simple summons was therefore appropriate. In any event, the plaintiff subsequently filed a declaration, and the defendants pleaded fully to it. They have suffered no prejudice. This technical point, raised defensively, does not bar summary judgment. Consequently, it is dismissed.

Jurisdiction of the Court

[18] Although raised in the plea and heads of argument, this point was not prominent in the summary judgment resistance. The defendants' chosen *domicilium* is in Centurion, which they argue falls under the Pretoria High Court's jurisdiction. However, Government Notice 408 of 2018 confirms the concurrent jurisdiction of this Court with the Gauteng Division, Pretoria. The plaintiff was entitled to institute proceedings here. Resultantly, this point is dismissed.

Substantive defences

[19] I turn to the substantive defenses raised in the affidavit resisting summary judgment.

Applicability of the National Credit Act 34 of 2005 ("NCA")

[20] The defendants argue that the agreement is a credit agreement subject to the NCA, that the plaintiff is not a registered credit provider, and thus the agreement is void under section 89(5).

[21] The agreement contains a conspicuous representation on its face, just above the signature block, wherein the first defendant warrants that its turnover or net asset value exceeds R2 million. This is intended to bring the transaction within the exclusions of sections 4(1)(a) and 6 of the NCA for large juristic persons. The second defendant, a medical doctor and director, signed this representation.

[22] The principle of “caveat subscriptor” applies. A party that signs a document is presumed to have read, understood and assented to its terms. The defendant now seeks to resile from this representation by attaching financial statements (Annexure SM2) allegedly showing a turnover below R2 million. This contradiction raises a clear dispute of fact: whether the first defendant’s turnover exceeds the threshold? The plaintiff relied on the defendant’s signed warranty. Whether this warranty was false, and if so, what the legal consequences are (including potential non-application of the NCA, or a defense of misrepresentation), cannot be determined on affidavit. It requires trial.

Applicability of the Consumer Protection Act 68 of 2008 (“CPA”)

[23] The same representation serves to exclude the application of the CPA (section 5(2)(b)). For the same reasons as above, the dispute over the accuracy of the turnover warranty raises a triable issue regarding the CPA’s applicability.

Validity of Cancellation and Breach

[24] The defendants allege that the equipment (a Yealink phone) was defective, and that the plaintiff breached first by supplying defective goods. The plaintiff relies on clause 24 of the agreement, which cedes to the “defendant” all claims the plaintiff may have against the supplier regarding the quality or state of the goods. The plaintiff argues that any defect is a matter between the defendant and the supplier (Digital One), not a breach by it. This clause is unusual, and its interpretation is arguable. Whether it effectively insulates the

plaintiff from any responsibility for the functionality of the core goods it is leasing, and whether such a term might be *contra bonos mores* or unreasonable, are arguable points.

[25] Furthermore, the defendants allege they complied with the cancellation clauses (clauses 2 & 22) by giving written notice. The plaintiff disputes the validity of this cancellation. Whether the defendant's cancellation was justified by a material breach going to the root of the contract, and the interplay between clauses 7 (acceleration on breach), 15 (variation in writing), 22 (cancellation), and 24 (cession of claims), involves complex interpretation best suited for trial.

Enrichment

[26] The defendants argue that the plaintiff would be unjustly enriched if it could claim the full rental while the equipment was faulty, used for only a short period, and had been repossessed.

[27] This defense is tied to the disputes over breach, cancellation, and the validity of the acceleration clause. If the defendant's version of the facts is accepted, an enrichment claim may be arguable. It cannot be dismissed summarily.

Conclusion

[28] The defenses raised regarding the NCA and CPA threshold, the cancellation of the agreement due to alleged defective performance, and the interpretation of the contractual risk-allocation clauses (especially clause 24) are not inherently unconvincing. They disclose triable issues of both fact and law. In light of the above, the defendants have set out the nature and grounds of her defense with sufficient particularity to satisfy the requirements of Rule 32. In the words of the authorities, there is a defense that is *bona fide* and good in law may succeed.

[29] In light of the above, the plaintiff has established a *prima facie* case. However, the defendant has succeeded in showing that she has a *bona fide* defense, which is good in law. It would not be appropriate to grant summary judgment.

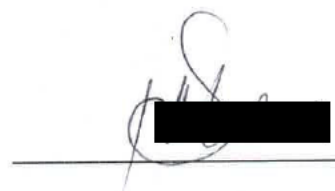
Costs

[30] Regarding costs, the defendants have been substantially successful in resisting summary judgment. While they raised several unsuccessful technical points, their core substantive defenses have merit. In the exercise of my discretion, I am of the view that the costs of the summary judgment application should be the costs in the cause of action.

Order

[31] Accordingly, the following order is made:

1. The application for summary judgment is dismissed.
2. The defendants are granted leave to defend the main action.
3. The costs of the summary judgment application are costs in the cause of action.



D. Mahosi J

Acting Judge of the High Court

Delivered: This judgment was handed down electronically by circulation to the parties' representatives through email. The hand-down date is deemed to be 09 February 2026.

Appearances

For the Plaintiff: Adv. U. Ahir
Instructed by: Jay Mothobi Incorporated Attorneys

For the Defendants: Adv. J. Brenkman
Instructed by: Hamel Attorneys Incorporated Attorneys