IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case number: 2024/059936

[1] REPORTABLE: NO
[2] OF INTEREST TO OTHER JUDGES: NO
[3] REVISED: NO

SIGNATURE **DATE:** 10 FEBRUARY 2026

In the matter between:

INVESTEC PROPERTY (PTY) LIMITED	Plaintiff
and	
WEST PACK LIFESTYLE FRANCHISE (PTY) LIMITED (registration no. 2012/152219/07) (in business rescue) t/a WEST PACK LIFESTYLE	First Defendant
JOSE CHRISTOVAO PERREIRA DA SILVA (id no. 8[…])	Second Defendant

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JUDGMENT

DALRYMPLE AJ:

BACKGROUND

[1] The plaintiff applies for summary judgment against the second defendant.

[2] The plaintiff and the first defendant were parties to a written agreement of lease ("the lease") in terms of which the plaintiff let certain commercial premises to the first defendant. In terms of a written deed of suretyship, the second defendant bound himself as surety for the first defendant's obligations under the lease. The plaintiff alleged that the first defendant breached the provisions of the lease when it failed to make payment of the monthly amounts due to the plaintiff and fell into arrears. As a result of the first defendant's breach, on 24 May 2024, the plaintiff had made a demand in respect of the arrears and cancelled the lease.

[3] The plaintiff thereafter instituted action against the first and second defendants. Prior to institution of the action, the first defendant was placed in business rescue and as such the only relief sought against it was ejectment from the premises. As against the second defendant, the plaintiff claimed the arrear rental, a proportionate share of the tenant installation allowance as provided for in the lease and damages. The first defendant did not oppose the action and does not feature in this application.

[4] In his plea, the second defendant admitted conclusion of the lease, the terms thereof, compliance therewith by the plaintiff, that the first defendant enjoyed and continued to enjoy beneficial occupation of the premises, that the plaintiff had cancelled the lease on 23 May 2024 and that he had signed the suretyship in the plaintiff's favour. However, the second defendant raised the following defences in his plea:

[4.1] He denied the validity of the resolution by the first defendant authorising him to sign the lease and put the plaintiff to the proof thereof.

[4.2] He denied that the plaintiff's representatives were authorised to act in terms of the resolution attached to the lease and put the plaintiff to the proof thereof.

[4.3] He asserted that the lease and the suretyship were unenforceable because the negotiations and entering into the lease contravened the provisions of sections 40, 48, 49, 51 and 52 of the Consumer Protection Act 68 of 2008.

[4.4] He challenged the accuracy of annexure "C" to the particulars of claim which annexure comprised the plaintiff's account to the defendant. He contended that it had duplications and gave an example of one for December 2022. He pleaded that annexure "C" was not a true calculation of the arrears, that it did not take into account all payments, that the arrears could not be calculated because there were no running balances and that the rental charged to the first defendant was exorbitant.

[4.5] In addition to the above, the second defendant denied the first defendant had breached the lease, contended that the plaintiff was not entitled to cancel the lease as the first defendant was in business rescue and that the plaintiff could not claim both damages in addition to the proportional part of the installation allowance.

[5] The plaintiff took the view that the various defences raised by the second defendant were mutually destructive and without merit. It brought an application for summary judgment against the second defendant for:

[5.1] Payment of the amount of R583 170,81 (plaintiff's claim 1 in respect of the arrear rental);

[5.2] Payment of the amount of R141 526,65 (plaintiff's claim 3 in respect of the *pro rata* portion of the tenant installation allowance);

[5.3] Interest on both sums at a rate of 13.75% per annum compounded monthly from 2 May 2024 to date of payment; and

[5.4] Costs of suit on the scale as between attorney and client.

[6] The plaintiff did not seek summary judgment in respect of its claim 2, being its damages claim.

[7] The second defendant opposed the application for summary judgment. In his affidavit opposing summary judgment, he raised a point *in limine* to the effect that the plaintiff's deponent had not complied with Rule 32 in that the plaintiff had failed to verify the actual causes of action in respect of its claims for arrear rental and the proportionate share of the tenant installation allowance and had failed to verify such amounts in its affidavit. He also contended that the amount claimed in relation to the proportionate share of the tenant's allowance did not constitute a liquidated amount in money and thus fell outside the ambit of summary judgment.

[8] Insofar as the merits are concerned, the second defendant averred that he had *bona fide* defences that were set out in his plea. The defences referred to in his affidavit opposing summary judgment were summarised in the second defendant's counsel's heads of argument as follows:

[8.1] The amounts claimed in the particulars of claim were incorrect and/or not due and payable;

[8.2] The first defendant had continued to make intermittent payments to the plaintiff that had not been taken into consideration;

[8.3] The statement provided by the plaintiff consists of several duplications and exorbitant charges that were never agreed to;

[8.4] The plaintiff was not entitled to cancel the lease in the circumstances where the first defendant went into voluntary business rescue on 15 May 2024;

[8.5] The plaintiff provided no substantiation in relation to the alleged installation allowance that was provided, which was denied, and was accordingly not entitled to reclaim such allowance or any portion thereof;

[8.6] In addition, the plaintiff was not entitled to claim payment of a portion of the tenant installation allowance in circumstances where the first defendant went into voluntary business rescue on 15 May 2024 and the plaintiff elected to cancel the lease in order to proceed with the enforcement action proceedings.

[9] The second defendant also relied upon the defences in his plea as to the validity of the resolutions.

[10] In the heads of argument and oral submissions, counsel for the second defendant confirmed that the second defendant abandoned reliance on allegations as to non-compliance with the Consumer Protection Act and conceded that it did not apply in the circumstances of the current matter. Nothing more need be said about such defences.

REQUIREMENTS FOR SUMMARY JUDGMENT

[11] Amended Rule 32 of the Uniform Rules of Court, in relevant part provides as follows:

> "*(2)(a) Within fifteen days after the date of delivery of the plea, the plaintiff shall deliver a notice of application for summary judgment, together with an affidavit made by the plaintiff or any other person who can swear positively to the facts.*
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> *(b) The plaintiff shall, in the affidavit referred to in subrule (2)(a), verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence as pleaded does not raise any issue for trial.*
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> …
>
> *(3) The defendant may –*
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> > *(a) give security to the plaintiff to the satisfaction of the court for any judgment including costs which may be given; or*
> >
> > *(b) satisfy the court by affidavit (which shall be delivered five days before the day on which the application is to be heard), or with the leave of the court by oral evidence of such defendant or of any other person who can swear positively to the fact that the defendant has a bona fide defence to the action; such affidavit or evidence shall*

disclose fully the nature and grounds of the defence and the material facts relied upon therefor.

…

(6) If on the hearing of an application made under this Rule it appears –

…

(b) That the defendant is entitled to defend as to part of the claim, the court shall –

(i) give leave to defend to a defendant so entitled thereto and give judgment against the defendant not so entitled; or

(ii) give leave to defend to the defendant as to part of the claim and enter judgment against the defendant as to the balance of claim, unless such balance has been paid to the plaintiff;

… "

[12] In respect of the contents of the affidavit which must support an application for summary judgment under the amended Rule 32, in *Tumileng Trading CC v National Security and Fire (Pty)* the court held as follows:

"*[21] The requirement that the plaintiff's supporting affidavit should explain briefly why the pleaded defence 'does not raise an issue for trial' is of more interest…the plaintiff is not required to explain that the plea is excipiable. It is required to explain why it is contended that the pleaded defence is a sham.*

[22] What the amended Rule does seem to do is to require of a plaintiff to consider very carefully its ability to allege a belief that the defendant does not have a bona fide defence. This is because the plaintiff's supporting affidavit now falls to be made in the context of the deponent's knowledge of the content of a delivered plea. That provides a plausible reason for the requirement of something more than a 'formulaic' supporting affidavit from the plaintiff. The plaintiff is required to engage with the content of the plea in order to substantiate its averments that

the defence is not bona fide and has been raised merely for the purposes of delay."[1]

[13] A defendant is required, in an affidavit opposing summary judgment to disclose fully the nature and grounds of the defence and the material facts relied upon.[2] The Rule requires a defendant set out in the affidavit sufficient facts which, if proven at trial, would constitute an answer to the plaintiff's claim. The court must be appraised of the facts upon which the defendant relies with sufficient particularity and completeness so as to be able to hold that if such statements of fact are found at trial to be correct, judgment should be given for the defendant.[3]

[14] In *Breitenbach v Fiat SA (Edms) Bpk*[4] the court held that bald, vague and sketchy defences should not be countenanced. In *Joob Joob Investments (Pty) Limited v Stocks Mavundla Zek Joint Venture*[5] the Supreme Court of Appeal explained that summary judgment procedure is not intended to deprive a defendant with a triable issue or a sustainable defence or of his or her day in court. In considering whether a defendant does indeed have a triable issue or sustainable defence, the court should first consider whether there was a sufficient disclosure by the defendant of the defence sought to be relied upon. Second, it should be considered whether the defence so disclosed is *bona fide* and good in law.[6]

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1 2020 (6) SA 624 (WCC) at paras [21] to [22]

2 Rule 32(3)(b); *PCL Consulting (Pty) Limited t/a Philips Consulting SA v Tresso Trading 119 (Pty) Limited* 2009 (4) SA 68 (SCA) at para [8]

3 *Marsh and Another v Standard Bank of SA Limited* 2000 (4) SA 947 (W) at 949A

4 1976 (2) SA 226 (T) at 229 F to H

5 2009 (5) SA 1 (SCA)

6 *Joob Joob Investments (Pty) Limited supra*, at paras [31] and [32]

[15] When considering a summary judgment application, the court's role is not to evaluate the merits of the defence raised by the defendant or the likelihood of it succeeding. Instead, the court's task is to determine whether the defence presented is genuine and not simply a device intended to cause delay.[7] As to the method by which a court should determine whether the defence disclosed is *bona fide*, Binns-Ward J in *Tumileng* put it thus:

> "*The assessment of whether a defence is bona fide is made with regard to the manner in which it has been substantiated in the opposing affidavit; viz upon a consideration of the extent to which 'the nature and grounds of the defence and the material facts relied upon therefore' have been canvassed by the deponent.*"[8]

[16] In *NPGS Protection and Security Services CC and Another v FirstRand Bank Limited*[9] the Supreme Court of Appeal confirmed again that summary judgment applications require an opposing affidavit to disclose fully the nature and grounds of the defence and the material facts relied upon therefore. To stave off summary judgment, a defendant cannot content him or herself with bald denials, for example, that it is not clear how the amount claimed was made up. Something more is required. If a defendant disputes the amount claimed, he or she should say so and set out a factual basis for such denial.[10]

EVALUATION

Compliance with Rule 32

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[7] *Tumileng Trading CC v National Security and Fire (Pty) Limited supra* at para [23]
[8] *Tumileng Trading CC v National Security and Fire (Pty) Limited supra* at para [25]
[9] 2020 (1) SA 494 (SCA)
[10] *NPGS* at para [11]

[17] Our courts have consistently held that strict compliance with Rule 32 is required for a summary judgment application to succeed.[11] It is thus apposite that I start with the second defendant's allegation that the plaintiff's affidavit was non-compliant with Rule 32, since non-compliance will bring an end to the application for summary judgment.

[18] As to compliance with Rule 32, the second defendant's counsel's argument boiled down to the following:

[18.1] The plaintiff's mere statement of verification of the cause of action and the amounts was not a proper verification;

[18.2] A complete cause of action in relation to claim 3 had not been identified in the affidavit in support of summary judgment and thus could not be verified;

[18.3] The amounts in respect of claims 1 and 3 had not been verified by the deponent;

[19] Identification requires the deponent to refer to the facts set out in the particulars of claim.[12] The deponent to the affidavit in support of summary judgment averred that the plaintiff's claim was based on the lease and suretyships agreements, the first defendant's breach of the lease and the falling into arrears which had caused the plaintiff to cancel the lease and become entitled to repayment of the proportionate share of the tenant

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[11] *Shackleton Credit Management (Pty) Limited v Micro Zone Trading 88 CC and Another* 2010 Vol 5, SA 112 (KZP) at para [25]; *Sanlam Life Assurance Limited v Africhick Trading (Pty) Limited and Others* 2024 JDR 1615 (KZD) at paras [17] to [18]; *DB Fine Chemicals (Pty) Limited and Another v Sparta Pharmaceuticals CC* 2023 JDR 3745 (GJ) at paras [51] to [55]

[12] *Saglo Auto (Pty) Limited v Blackshades Investments (Pty) Limited* 2021 (2) SA 587 (GP) at para [45]

installation allowance (and damages – the latter not being pursued in the application for summary judgment). I am satisfied that this constitutes an identification of a complete cause of action on which the claim is based.

[20] Verification is done by referring to the facts set out in the summons. It is unnecessary to repeat the particulars.[13] In paragraph 5 of the affidavit in support of summary judgment the deponent averred that she was able to and did swear positively to and verify the facts, causes of action and the amounts claimed in the summons and the particulars of claim. The second defendant is thus incorrect in his assertion that the plaintiff's deponent had not verified the causes of action and the amounts claimed. The deponent had done so in precise terms. It was not necessary for the plaintiff's deponent to repeat the amounts in the affidavit nor repeat the allegations made in the particulars of claim.

[21] In the circumstances, I find that the plaintiff's affidavit does comply with Rule 32. I turn to address the defences raised in this plea.

Defences Raised

[22] The second defendant disputes the validity of the plaintiff's and the first defendant's resolutions in authorising conclusion of the lease. In relation to both resolutions, in his plea, the second defendant's challenge was advanced by way of bald denials and putting the plaintiff to the proof thereof. In his affidavit opposing summary judgment, the second defendant did not take

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[13] *Saglo Auto (Pty) Limited v Black Shades Investments (Pty) Limited* 2021 (2) SA 587 (GP) at para [50]; *Tumileng Trading CC v National Security and Fire (Pty) Limited, supra* at para [20]; *Standard Bank of SA Limited v De Waal* [2025] 3 All SA 276 (NCK) at para 23

these denials any further. He said nothing further about the validity of the resolutions but simply averred that he stood by his plea.

[23] The second defendant thus did not advance any facts in support of the denials. No information was provided in his affidavit as to why it was contended that the two resolutions were invalid. When I put this to the second defendant's counsel, she argued that the second defendant was simply not in a position to admit or deny the validity of the plaintiff's resolution and hence put the plaintiff to the proof thereof. It is however insufficient for a defendant in summary judgment proceedings to simply put the plaintiff to the proof of its case. If it was, it would be far too easy to avoid summary judgment.[14] In order for the denial of the validity of the resolution to found a *bona fide* defence, the second defendant was required to place adequate information before the court so as to satisfy it that the defence was *bona fide*. But on its own version, the defendant could not do so, it was conceded the second defendant had nothing to support the challenge.

[24] In contrast to the position vis-à-vis the plaintiff's resolution, the second defendant was most certainly in a position to do more than merely put the plaintiff to the proof of the validity of the first defendant's resolution. As was pointed out by the plaintiff's counsel in argument, the resolution of the first defendant attached to the particulars of claim indicates on the face of it that the second defendant was a director of the first defendant and that he was a signatory to the lease. In these circumstances, at the very least one would have expected the second defendant to give an explanation in his affidavit as

[14] *Vetpac Animal Health CC v Tantus Trading* 274 CC 2012 JDR 0190 (KZP) at para [10]

to why he contended the first defendant's own resolution was not valid especially when the countervailing evidence would be within his knowledge.[15] The second defendant did not do so and failed to place sufficient information before the court to raise a *bona fide* defence.

Claim 1

[25] In response to the plaintiff's allegation, in relation to its claim 1, that the first defendant had failed to make payment of the agreed monthly rental and other charges and was in arrears in an amount of R583 170,81, the amount of which was set out and calculated on annexure "C" to the plaintiff's particulars of claim, in his plea, the second defendant denied that the first defendant had breached the lease, that annexure "C" was a true calculation of the alleged arrears (which were in any event denied), that the arrear amount, if any, could not be ascertained from annexure "C" in the absence of a running balance, that all the payments made by the first and/or second defendant were correctly reflected on annexure "C" or at all and denied that the amount claimed was due, owing and payable. Once again, he put the plaintiff to the proof thereof.

[26] In relation to annexure "C", the second defendant contended that it was "evident" therefrom that the plaintiff had charged the first defendant exorbitant rental and other charges, that the plaintiff duplicated "many" charges including, but not limited to a generator diesel refund for December 2022 and that payments made to the plaintiff since April 2024 had not been included on annexure "C".

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15 *Wright v Wright and Another* 2015 (1) SA 262 (SCA) at para [15]

[27] In its affidavit in support of summary judgment, the plaintiff explained that the first defendant had indeed made certain payments subsequent to annexure "C" being issued, but those payments had been utilised and allocated to holding over charges in accordance with the provisions of the lease. These had in no manner or form decreased the amount owing by the first defendant to the plaintiff and that this could be seen from an updated statement of account annexed to the summary judgment application. The plaintiff explained that any duplications that had been charged were also credited and the amount as set out in annexure "C" to the plaintiff's particulars of claim was accordingly correct. In addition, the plaintiff attached a certificate of balance in accordance with the provisions of the lease certifying the amount due.

[28] A plaintiff is entitled to attach a certificate of balance to an affidavit in support of summary judgment and such a certificate may even be handed up at the hearing of the matter. Such a certificate is not hit by the provisions of Rule 32(4).[16]

[29] Once the plaintiff furnished a certificate of balance, which constituted *prima facie* proof of the amount owing by the first and second defendants as it did, the second defendant was required to provide evidence which, if proven at trial, would be destructive of the *prima facie* proof and thus prevent it from becoming conclusive proof. Merely to cast suspicion on the correctness of the facts and mere theories and hypothetical suggestions will not avail a defendant.[17]

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16 *Rossouw v FirstRand Bank Limited* 2010 (6) SA 439 (SCA) at 454A to C

17 *Trust Bank of Africa Limited v Senekal* 1977 (2) SA 587 (W) at 593 and the cases cited there

[30] In *Jacobsen van den Berg SA (Pty) Limited v Triton Yachting Supplies*[18] the court referred to the fact that in *Nichas and Son (Pty) Limited v Pappenfus*[19] had held that a denial as to the correctness of the amount claimed was not sufficient to comply with the requirements of Rule 32(3)(b). The court also referred to *Traut v Du Toit*[20] in which it had been held that the defendant's allegations in an opposing affidavit for an amount outstanding for goods sold and delivered to the effect that he did not know how much he owed the plaintiff because he had not yet received "volle beshonderhede" of his account and that certain items in respect of the claim were not received by him did not constitute sufficient compliance with the subrule either.

[31] Erasmus J held further:

> "*It should also be noted that the present defendant by implication admits that he owes some money to the plaintiff, but his affidavit does not reveal what this amount is, neither does it reveal any intention on his part to pay his admitted debt. He has not stated the extent of his alleged defence so that the court could give judgment for a certain amount and leave to defend in respect of the balance claimed. Such a course would have been proper for a defendant with a bona fide defence to take. See Caltex Oil (SA) Limited v Webb and Another 1965 (2) SA 914 (N) at p918.*
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> *Every cause of action has peculiar characteristics as to its background, time, value, makeup, knowledge, conduct and attitude of the parties and so forth and every defence thereto must have corresponding features of its own. A defence without more to a summons based on an account of the nature before the court under Rule 32(3)(b) that the plaintiff did not credit the defendant with some payments made and charged him with goods he did not receive, could, if upheld, become common to all somewhat similar causes of action and I do not think a*

18 1974 (2) SA 584 (O) at p587E to F
19 1969 (2) SA 494 (O) at p496
20 1966 (1) SA 69 (O) at p71

> *court should be satisfied that it is bona fide made. Something more in respect of the peculiar characteristics of the claim itself or the alleged defence should be stated. If a defendant is not able to give any further information, he as buyer or one of the parties to the account should say so and give reasons why he cannot do so. It is only when adequate information is placed before the court that the court can be satisfied that the defence is bona fide.*"[21]

[32] In *SA Taxi Securitisation (Pty) Limited v Mbatha and Two Similar Cases*[22] the court held that a denial by the defendant that he was in default, that he was in breach of the credit agreement and was in arrears with his payment fell significantly short of the standard required by *Breitenbach v Fiat SA (Edms) Beperk*[23] and that for the denial to be effective, the defendant would have been required to state that he had made all of his payments, when he had made those payments, and the amount of each payment.

[33] It is in the light of these authorities that the second defendant's challenges to the plaintiff's claim are to be assessed. In his affidavit opposing summary judgment, the second defendant did not address the certificate of balance nor provide evidence to gainsay it. He contended that no overcharges had been credited to the account since June 2023 but gave no detail of what overcharges should have been so credited. His complaint that the credit for an overcharge was neutralised by a fresh debit had no roots because he did not identify actual debit or credit.

[34] The second defendant made no attempt at explaining why it was contended that the first defendant had not breached the lease, nor did he elaborate on the allegedly exorbitant rentals, which, in any event, had been agreed to in the

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[21] *Jacobsen van den Berg SA (Pty) Limited v Triton Yachting Supplies, supra* at 588C to H
[22] 2011 (1) SA 310 (GSJ) at paras [15] to [16]
[23] 1976 (2) SA 266 (T)

lease. Just as in *Jacobsen*, the second defendant's plea impliedly admitted the first defendant (and thus he as surety) owed money to the plaintiff but did not take the court into his confidence as to this amount nor reveal any intention to pay this admitted debt. He did not state the extent of the indebtedness. The second defendant was the one in a position to say what had been paid and what had not been paid and identify every duplication or debit complained of. He did not need a running balance to do so. The second defendant provided no answer to the plaintiff's assertion that the total amount outstanding substantially exceeded the amount claimed in the summary judgment proceedings and did not reduce the arrear amount claimed. The second defendant thus failed to fully set out the grounds upon which his defence was based.

[35] Besides the above, the second defendant attacked the plaintiff's right to utilise payments made by the first defendant as holding over charges in circumstances where the first defendant was in business rescue. He suggested that all payments should have been credited to reduce the amount in arrears and that it was unfair that this did not occur.

[36] The first difficulty is that the second defendant did no more than make this complaint. He did not identify any payment that should have been credited to reduce the arrears.

[37] But more fundamentally, even if he had, the second defendant's complaint is legally flawed. As the plaintiff's counsel pointed out, the Companies Act makes provision for the business rescue practitioner to suspend any obligation of the company under business rescue. But there was no evidence

that the business practitioner did so in the present circumstances. Moreover, whilst the business rescue practitioner occupied the leased premises on behalf of the first defendant, he was obliged to make payments in respect of such occupation. There is thus no basis to suggest that these payments should have been used to settle the arrears. This is all the more so in circumstances where the lease provided that the plaintiff was entitled to appropriate and reappropriate amounts to such indebtedness as it deemed fit. The issue of fairness does not come into it.

[38] Furthermore, a surety is not released from liability in circumstances of business rescue.[24]

[39] In the circumstances I am not satisfied that the second defendant has a *bona fide* defence in respect of the plaintiff's claim 1 and the plaintiff is entitled to summary judgment in respect of its claim 1.

Claim 3

[40] I now address the plaintiff's claim 3. This was the plaintiff's claim for repayment of the first defendant's pro-rata portion of the tenant installation allowance. The second defendant opposed the plaintiff's claim for summary judgment for this amount on various bases, one of which was premised on the argument that the claim was not a liquidated amount.

[41] I disagree that the amount claimed is not for a liquidated amount. The authorities relied upon by both parties[25] make it clear that a liquidated amount

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[24] *Van Zyl v Auto Commodities (Pty) Limited* 2021 (5) SA 171 (SCA); *Newport Finance Co. (Pty) Limited and Another v Nedbank Limited* 2016 (5) SA (503) (SCA)

is, *inter alia*, an amount that is capable of prompt ascertainment or ascertained by a simple or mere calculation. As was argued on behalf of the plaintiff, the lease clearly provides for a formula by which the amount is to be ascertained and as such the amount and the ascertainment thereof is easily calculable. In the circumstances, I agree that an amount claimed in respect of the plaintiff's claim 3 is a liquidated amount. But that is the problem with the plaintiff's claim 3.

[42] The plaintiff pleaded that it had made payment to the first defendant in amount of R568 000,00 (including VAT) and set out in its particulars of claim the formula by which it calculated that amount. However, as was pointed out by the second defendant's counsel, there was an error in the calculation. After applying the formula utilising the amount of R568 000,00 which, as pleaded by the plaintiff was VAT inclusive, the plaintiff arrived at a figure of R123 066,66. However, contrary to its earlier pleading, the plaintiff alleged that that amount was exclusive of VAT and then proceeded to add VAT onto the amount to claim the amount of R141 526,65. The difficulty is that it is not clear what amount is correct and in fact what the plaintiff is entitled to claim for. Indeed the plaintiff's particulars of claim are excipiable in this respect.

[43] In *Gulf Steel v Rack-Rite BOP (Pty) Limited*[26] the court held that even before considering whether the defendant has established a *bona fide* defence, the court must be satisfied that the plaintiff's claim has been clearly established and that his pleadings are technically in order; if either of these two

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[25] *Oosrandse Bantu Sake Administrasieraad v Santam Versekeerings Matskappy Beperk* (2) 1978 (1) SA 164 (W) at 168G to H; *Lester Investments (Pty) Limited v Narshi* 1951 (2) SA 464 (C) at 469; *Fatti's Engineering Co (Pty) Limited v Vendico Spares (Pty) Limited* 1962 (1) SA 736 (T) at 738E to F

[26] 1998 (1) SA 679 (O) at 683H to 684B

requirements is not met, the court is obliged to refuse summary judgment even if the defendant has failed to put up any defence or has put up a defence which did not meet the standard required to resist summary judgment.

[44] *Gulf Steel* was approved of in this Division, by the full court, in *Liquor Network Agency CC and Another v Skylim Beverages CC.*[27] The court held that a plaintiff seeking summary judgment must establish a valid, competent claim before the court considers whether the defendant has a *bona fide* defence. A defective application cannot be remedied by the defendant's response: it is either valid on its own merits or it is not. If it is not, then it is not necessary for the court to consider whether a *bona fide* defence has been established.[28] The court held that the view in *Buttertum Property Letting (Pty) Limited v Dihlabeng Local Municipality*[29] that this sets the bar too high for plaintiffs, and that prejudice to the defendant is a material factor to be considered by a court faced with a defective application for summary judgment is contrary to binding precedent. [30]

[45] Thus the problem for the plaintiff in relation to claim 3 is that its pleadings are not technically correct. The plaintiff has thus not established its right to summary judgment for the amount of R141 526,65. The cause of action in relation to claim 3 was defective.

[46] The plaintiff is thus not entitled to summary judgment in respect of claim 3. It is thus not necessary for me consider the other defences raised by the

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[27] 2025 (2) SA 507 (GJ) at paras [24] to [25]
[28] *Liquor Network Agency CC and Another supra* paras [16] to [25]
[29] [2016] 4 All SA 895 (FB)
[30] *Liquor Network Agency CC and Another supra* paras [16] to [25]

second defendant including that of cancellation insofar as they pertain to claim 3.

[47] The lease relied upon by the plaintiff entitles it to costs on an attorney and client scale. The plaintiff has been successful in respect of claim 1. Costs in respect of claim 1 should follow the result on the scale provided for.

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

[1] Summary judgment is granted in respect of the plaintiff's claim 1 against the second defendant for:

[1.1] payment of the amount of R583 170,81;

[1.2] interest on the aforesaid sum at the rate of 13.75% per annum compounded monthly from 2 May 2024 to date of payment;

[2] The plaintiff's application for summary judgment in respect of claim 3 is dismissed.

[3] The second defendant is granted leave to defend claim 3 with effect from date of this order.

[4] The second defendant is to pay the costs of the application on the scale as between attorney and client.

T DALRYMPLE

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date for hand-down is deemed to be 10 February 2026

DATE OF HEARING: **15 OCTOBER 2025**

DATE OF JUDGMENT: **10 FEBRUARY 2026**

APPEARANCES:

COUNSEL FOR THE PLAINTIFF:	**G Dobie**
COUNSEL INSTRUCTED BY:	**Reaan Swanepoel Inc**
COUNSEL FOR THE DEFENDANT:	**B Delport**
COUNSEL INSTRUCTED BY:	**TL Attorneys Inc**