REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **2024-039847**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
16 February 2026	[redacted]
DATE	SIGNATURE

In the matter between:

STANDARD BANK OF SA LTD Plaintiff

and

RAYMOND PAUL SWARTS Defendant

JUDGMENT

MODIBA J

[1] This is an application for summary judgment. Standard Bank Ltd as the plaintiff intends to recover from the defendant, Raymond Paul Swarts the debt it extended

to Skytrade 1 CC (Skytrade), for he agreed to stand surety. The Defendant was the sole director of Skytrade. Skytrade is no longer trading. It had a current account with the plaintiff. The current account is linked to an overdraft facility in respect of which the plaintiff and Skytrade concluded an overdraft agreement. The plaintiff alleges that Skytrade is indebted to the plaintiff in the amount of R605 226.69 under the overdraft agreement.

[2] There was no appearance for the respondent at the hearing. Notwithstanding, the matter was dealt with on an opposed basis as he had filed an affidavit resisting summary judgment. To be granted leave to defend the action, the defendant must show that his defences have been sufficiently disclosed, the material facts underlying them are both *bona fide* and good in law and he has not simply advance them to delay the plaintiff's action. The defendant denies that he is liable for the debt under the suretyship. He raised various defence which I will deal with shortly. The plaintiff contends that none of the defences are *bona fide*, the defendant has raised them to delay its claim.

[3] The defendant denies that Mr van der Walt who deposed to the plaintiff's affidavit in support of summary judgment can swear positively to the facts set out therein as "the alleged sub-delegation of authority is not mentioned, explained and/or otherwise addressed…." The plaintiff contends that the defendant conflates the requirement for a deponent's knowledge of the facts with the deponent's authority to bring the application, the purported defect in the deponent's authority has no bearing on his knowledge of the facts contained in his deposition.

[4] The defendant's contention is incorrect in law. A deponent to an affidavit does not need authorization to depose to what he knows.[1] Mr van der Walt's states that by virtue of his position, he has familiarised himself with the documents regarding this matter. The defendant has not disputed this. There is therefore no merit to the defendant's contention that Mr van der Walt cannot swear positively to the facts set out in the plaintiff's affidavit in support of summary judgment. It is the institution

[1] *Ganes And Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) par 19.

of the proceedings and the prosecution thereof which must be authorised.[2] This is not the point the defendant's takes.

[5] The defendant also contends that the documents attached to Standard Bank's affidavit evidencing its incorporation as a company and registration as a bank are impermissible in terms of rule 32(4) as evidence may only be placed before court by way of affidavit. The plaintiff contends that the documents have correctly been placed before the court. The subrule provides as follows:

"(4) No evidence may be adduced by the plaintiff otherwise than by the affidavit referred to in subrule (2), nor may either party cross-examine any person who gives evidence orally or on affidavit: Provided that the court may put to any person who gives oral evidence such questions as it considers may elucidate the matter."

[6] In *Raumix Aggregates (Pty) Ltd v Richter Sand CC, and Similar Matters*,[3] the court explained the purpose of summary judgment as follows:

'The purpose of a summary judgment application is to allow the court to summarily dispense with actions that ought not to proceed to trial because they do not raise a genuine triable issue, thereby conserving scarce judicial resources and improving access to justice. Once an application for summary judgment is brought, the applicant obtains a substantive right for that application to be heard, and, bearing in mind the purpose of summary judgment, that hearing should be as soon as possible. That right is protected under section 34 of the Constitution.'[4]

[7] Given the purpose of the summary judgment procedure as set out above, the object of the subrule is logical. While the subrule does not preclude the leading of oral evidence, it primarily requires evidence to be placed before the court by way of an affidavit. The documents the defendant takes issue with are annexures to the plaintiff's affidavit in support of summary judgment.

[8] His contention they the subrule precludes the introduction of documents at this stage of the proceedings is not supported by the language used in the subrule, its purpose and context. The subrule does not preclude the attachment of documents

[2] Ibid.
[3] *Raumix Aggregates (Pty) Ltd v Richter Sand CC, and Similar Matters* 2020 (1) SA 623 (GJ).
[4] At 627E–F.

to affidavits. The defendant also does not impugn the contents of the documents. I find that the documents have been placed before the court in accordance with the subrule.

[9] The defendant also takes issue with the verification of the plaintiff's course of action and the amount claimed because the plaintiff refers to its particulars of claim and incorporates them into its founding affidavit by reference. He has put up no authority for this proposition. Ironically, he adopted the same approach in his affidavit opposing summary judgment. Mr van Walt confirmed the basis of the plaintiff's claim as pleaded in its particulars of claim. He went on to elaborate on the basis for the claim in the affidavit and dealt with the defendant's defences as pleaded to demonstrate that he lacks a *bona fide* defence.

[10] The defendant also contends that the cheque account and the certificate of balance cannot be accepted as the basis on which the plaintiff's claim is founded. The plaintiff's claim is based on his indebtedness to Standard Bank as it arises from the suretyship, an accessory agreement to the overdraft agreement in terms of which certificate of balance is prima facie proof of the defendant's indebtedness.

[11] He further alleged that the plaintiff failed to respond to the notice in terms of 86(4)(b) of the National Credit Act 34 of 2005 (NCA). He pleaded that on 21 July 2023, the Magistrates' Court in Midvaal declared him over-indebted. Therefore, further alleged the defendant, the claim against him is premature as he had complied with the payment terms of the court order. These contentions lack merit. As the plaintiff demonstrated in its affidavit in support of summary judgment, the court order the Magistrate's order which rearranged his debt did not apply to the overdraft facility as the principal debt relates to an entity with the annual asset value of more than R1 million as provided for in s 4(1(a)(ii)[5] or is exempt in terms of s

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[5] Section 4(1)(a)(ii) provides as follows:
"4 Application of Act
(1) Subject to sections 5 and 6, this Act applies to every credit agreement between parties dealing at arm's length and made within, or having an effect within, the Republic, except-
(a) a credit agreement in terms of which the consumer is-
(i) a juristic person whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic persons, at the time the agreement is made, equals or exceeds the threshold value determined by the Minister in terms of section 7 (1);"

4(1)(b)[6] of the NCA. Further, by extension, in terms of s 4(2)(c)[7] and 8(5)[8], the overdraft facility is not regulated in terms of the NCA.

[12] The Defendant contends that he cannot fully plead as Standard Bank has failed to make out a case for the relief it seeks "as a result of a failure to adhere to the prescripts of rule 18(4) and 18(6)". He also argues that the Particulars of Claim do not allege the basis for the 29.5% interest. As the plaintiff contends, he has failed in both his plea and answering affidavit to set out which material facts under Rule 18(4) were omitted or which requirement under Rule 18(6) has not been complied with. Further, he has not brought an exception under Rule 23 or an objection under Rule 30.

[13] The overdraft agreement makes provision for prime interest rate and a margin of 18%. In addition, it provides that the certificate of balance is admissible proof of the balance owing. There is no obligation on the plaintiff to provide a computation of the interest particularly in circumstances where the defendant has not set out the basis on which he disputes it.

[14] Lastly, the defendant contends that the plaintiff's claim has prescribed in terms of s 11 of the Prescription Act 68 of 1969 as the last payment in respect of the overdraft agreement was made on 28 June 2022. The plaintiff's summons was served on 24 April 2024 which is three years after the alleged claim arose. Calculating the running of prescription from the dates relied on by the defendant, his contention that the plaintiff's claim has prescribed lacks merit. Three years had

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[6] Section 4(1)(b) provides as follows:
"…a large agreement, as described in section 9 (4), in terms of which the consumer is a juristic person whose asset value or annual turnover is, at the time the agreement is made, below the threshold value determined by the Minister in terms of section 7 (1);"

[7] "For greater certainty in applying subsection (1)-
(a)
(b) …
(c) this Act applies to a credit guarantee only to the extent that this Act applies to a credit facility or credit transaction in respect of which the credit guarantee is granted;"

[8] Section 8(5) provides as follows:
"An agreement, irrespective of its form but not including an agreement contemplated in subsection (2), constitutes a credit guarantee if, in terms of that agreement, a person undertakes or promises to satisfy upon demand any obligation of another consumer in terms of a credit facility or a credit transaction to which this Act applies."

not expired when the plaintiff issued summons. The plaintiff is entitled to demand the full balance upon Skytrade's liquidation. The escalation clause expressly accords the plaintiff this right.

[15] Further, although the Defendant contends that this court lacks jurisdiction, as pointed out by the plaintiff, he has not disclosed the grounds for this Court's alleged lack of jurisdiction over this matter. The rest of his plea is based on bare denials. He has not established a tenable factual or legal basis for the averments and denials in his plea and affidavit opposing summary judgment. Therefore, a finding that he has failed to disclose a bona fide defence to the plaintiff's claim is inescapable.

[16] The plaintiff wants costs against the defendant on an attorney and client scale for pursuing what it styled unarguable defences. It contends that this constitutes a misuse of judicial resources. The fact that the defendant's defences are not 'arguable' does not in and of itself justify punitive costs. However, the agreement between the parties provides for costs on that scale. It is for that reason that I grant it.

[17] In the premises, I grant the following order:

Order

The defendant shall make payment to the plaintiff of the sum of R605 226.69, interest thereon at the rate of 29.5% per annum, from 26 February 2024 to date of payment and the costs of suit on the attorney and client scale.

[redacted]

LT MODIBA

JUDGE OF THE HIGH COURT

JOHANNESBURG

Appearances

For the Plaintiff: Adv Sikithi

Instructed by: Melani Ludick Findlay and Niemeyer Inc

For Defendant: No appearance

Date of hearing: 09 February 2026

Date of Judgment: 16 February 2026

This Judgment is handed down electronically by circulation to the parties' legal representatives by email and publication on Case Lines and SAFLII. The date for the handing down is deemed to be 10am on 16 February 2026.