REPUBLIC OF SOUTH AFRICA

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

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
4/2/2026	[redacted]
DATE	SIGNATURE

CASE NO: 2024-020087

In the matter between:

DESMOND GIULIO SACCO **Applicant**

and

JONATHAN WOLPE **Respondent**

Neutral Citation: **<u>Delivered:</u>** By transmission to the parties via email and uploading onto Case Lines the Judgment is deemed to be delivered.

JUDGMENT

<u>SENYATSI</u>

Introduction

[1] This is an opposed application for the repayment of a loan in the sum of R5 500 000.00 together with interest and costs. The Applicant, Mr Desmond Sacco, claims that he lent the amount to the Respondent, Mr Jonathan Wolpe, in his personal capacity. The Respondent opposes the application on the grounds that (a) the loan was advanced to his company, United Charter Services (Pty) Ltd ("UCS"), and not to him personally; (b) the debt was compromised in a settlement meeting; and (c) the loan is subject to the National Credit Act 34 of 2005 ("NCA") and is unenforceable due to non-compliance. The Respondent also seeks condonation for the late filing of his answering affidavit.

Condonation Application

[2] The Respondent's answering affidavit was filed approximately five months late. The explanation provided is that, after a meeting on 29 November 2024, he believed the matter had been settled. Upon receiving the notice of set down in January 2025, his attorney, whose father had passed away on 12 January 2025 could only attend to the matter after the memorial service on 30 January 2025. The affidavit was filed on 5 February 2025.

[3] The principles governing condonation are well-established. The court must consider the degree of lateness, the explanation offered, the prospects of success, and the prejudice to the parties. While the delay is significant, the explanation, though not exemplary, is not indicative of recklessness or mala fides. The personal circumstances of the attorney, while not absolving the Respondent entirely, provide some context for the delay. Moreover, the merits of the Respondent's defence are a crucial consideration. However, for reasons

set out below, the Respondent's defences lack merit. Nevertheless, in the interests of justice and to ensure that the matter is fully ventilated, condonation is granted. The late filing of the answering affidavit is accordingly condoned.

Merits of the Application

[4] The crisp issues are:

(a) whether the loan was extended to the Respondent personally or to UCS;

(b) whether the debt was compromised; and

(c) whether the NCA applies to render the loan unenforceable.

Identity of the Debtor

[5] The Respondent contends that he acted solely in his capacity as director of UCS and that the loan was intended for the company. He relies on the fact that the funds were paid into UCS's bank account.

[6] The Applicant's version is supported by contemporaneous documentary evidence. The loan agreement dated 13 October 2023 ("DGS.7") is expressly between "Desmond Sacco" and "Jonathan Wolpe". It records the loan amount, identifies both parties by their personal identity numbers, and is signed by both in their personal capacities. There is no reference to UCS, nor any indication that the Respondent signed as a representative. Crucially, the Respondent's SMS and email communications, annexed to the founding affidavit, repeatedly refer to a personal obligation. In his email of 9 February 2024 ("DGS.9"), the Respondent states: "*I acknowledge the amount owing to your client and have never evaded or denied the debt.*" This unequivocal admission is directed at the Applicant personally and makes no mention of

UCS as the obligor. Importantly,the attorney's letter of demand dated 9 February 2024 ("DGS.8") is addressed to the Respondent personally, demanding repayment from him. His response ("DGS.9") does not dispute this but reaffirms his personal obligation.

[7] The mere fact that funds were deposited into a company account does not, in the face of the clear written agreement and admissions, displace the personal liability of the Respondent. The Respondent's belated attempt to introduce UCS as the true debtor is opportunistic and conflicts with his own prior written admissions. This defence is not bona fide and is rejected. This is so because the Respondent gave instructions as to which account the money had to be paid.

Alleged Compromise

[8] The Respondent alleges that the debt was settled in a meeting on 29 November 2024, where it was agreed that the Applicant would use UCS's charter services and that profits would be set off against the debt.

[9] The Applicant denies that any binding compromise was reached. This denial is supported by the chronology of events. The Respondent filed his notice of intention to oppose in August 2024 and was ordered to file an answering affidavit. He did not do so. The alleged settlement meeting occurred in November 2024, yet he took no steps to withdraw his opposition or inform the court of the settlement. His attorney's email of 14 January 2025, claiming settlement, was promptly rebutted by the Applicant's attorney on 15 January 2025. No confirmatory correspondence or written record of the alleged settlement has been produced by the Respondent. In the context of his dilatory

conduct and the clear terms of the written loan agreement, the defence of compromise is spurious and devoid of merit.

National Credit Act

[10] The Respondent contends that if the loan is found to be personal, it is subject to the NCA and unenforceable because the Applicant is not a registered credit provider.

[11] Section 4 of the NCA provides that the Act does not apply to, among others, "a credit agreement between two persons who are in a relationship of association as described in subsection (2), other than an agreement contemplated in subsection (1)(b)". Subsection (2) refers to a relationship where the credit provider is a natural person and the consumer is a "related person" as defined, or where the transaction is "incidental" to their relationship.

[12] The loan in question was a once-off, urgent financial assistance between individuals who had a longstanding business relationship of approximately seven years. The loan was interest-free, repayable within a short period, and was not part of the Applicant's ordinary business. This was not an arm's length credit transaction in the ordinary course of business. The purpose of the NCA is to regulate the credit industry and protect consumers in formal credit relationships, not to invalidate informal, one-off loans between acquaintances. The NCA is therefore not applicable. In the instant case, the applicant did not intend to derive a maximum advantage from the Respondent and this is so because the loan was as stated, interest-free.

[13] In *Forsyth v Heydenrych*,[1] where a loan agreement originated from a familial relationship, and the plaintiff did not strive to maximise the return on the loan, it was found that the NCA was not applicable. This was confirmed on appeal[2].

[14] This view found support in *Allied Steelrode (Pty) Ltd v Dreyer and Another*[3] where Masipa AJA said the following:

> " In *Paulsen and Another v Slip Knot Investments 777 (Pty) Ltd,*[4] the Constitutional Court found it illogical and unnecessary to require registration by a person who provides loans solely to her friends which stated that in order to determine the validity of the agreement, section 40(4) must be read with s 89(2)*(d)*. Section 89 of the NCA[5]can only be understood to refer to those credit agreements which are subject to the NCA[6]. The AOD, despite not falling under the ambit of the NCA, remains a credit agreement. The finding by the trial court that the agreement is unlawful and void as provided for in s 89 constitutes a misdirection. Based on the evidence, the loan originated from an oral agreement, with no interest charged between parties who had a familial relationship, which was conducted outside the scope of arm's length dealings. On the facts of this case, it is evident that neither the loan nor the AOD were subject to the NCA. The trial court was therefore in error and its order must be set aside"

[15] This defence is without substance.

[1] (2018) JDR 1937 (GJ) at para 19.
[2] *Heydenrych v Forsyth* 2022 JDR 1655 (GJ) at paras 19 and 23.
[3] 2023 JDR 4927 (SCA) at para 35.
[4] [2015] ZACC 5; 2015 (3) SA 479 (CC); 2015 (5) BCLR 509 (CC) para 38
[5] The section deals with unlawful credits
[6] *Paulsen and Another v Slip Knot Investments 777 (Pty) Ltd* [2014] ZASCA 16; 2014 (4) SA 253 (SCA); [2014] 2 All SA 527 paras 9-13.

Material Disputes of Fact

[16] The Respondent argues that his defences raise material disputes of fact warranting dismissal of the application or referral to trial under Rule 6(5)(g). The test is whether the disputes raised are genuine and bona fide.

[17] For the reasons already given, the Respondent's defences are not bona fide. They are contradicted by his own prior written admissions and the unambiguous loan agreement. A dispute of fact is not "material" if it is contrived and unsupported by credible evidence. The Respondent's version is so far-fetched and untenable considering the documentary evidence that it can be rejected on the papers.[7]

Conclusion

[18] The Applicant has established a clear and undisputed entitlement to repayment of the loan. The Respondent's defences are opportunistic and lack any merit. His conduct throughout these proceedings has been dilatory and aimed at frustrating the Applicant's claim.

Order

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

(a) The Respondent's application for condonation for the late filing of his answering affidavit is granted.

(b) The Respondent is ordered to pay the Applicant the sum of R5 500 000.00.

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[7] See: *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634 G-I and 635A-C.

(c) The Respondent is ordered to pay interest on the said amount at the rate of 6.5% per annum from the date of service of this application (26 February 2024) to the date of final payment.

(d) The Respondent is ordered to pay the costs of the application, including the costs of the condonation application.

[redacted]

ML SENYATSI

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

DATE APPLICATION HEARD: 2 FEBRUARY 2026

DATE JUDGMENT HANDED DOWN: 04 FEBRUARY 2026

APPEARANCES

Counsel for the Applicant:	ADV K. MEYER
Instructed by:	THOMPSONS ATTORNEYS
Attorney for the Respondents:	ADV J BHIMA
Instructed by:	TRACY LOMAX ATTORNEYS