



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Case no 2025-015988

Date: 17 February 2026

Eduplessis

In the matter between:

Z H GROUP (PTY) LTD

Plaintiff

and

A G COMPRESSOR (PTY) LTD

Defendant

JUDGMENT

DU PLESSIS J

Introduction

[1] This is an opposed provisional sentence in which the main live issue is prescription of an acknowledgement of debt that stipulates a future “repay by” date. The question is when the debt is regarded as being “due” in such instances.

[2] The plaintiff, ZH Group (Pty) Ltd, asks for a provisional sentence against the defendant, AG Compressor (Pty) Ltd, based on a written acknowledgement of debt (hereafter referred to as “AOD”) concluded on 22 January 2021. The principal amount

acknowledged is R2 848 652,80, being the balance due for compressors and parts supplied, with interest at 1,5% above the prime rate, accruing from 31 January 2021, and a contractual “repay by no later than 1 April 2022” clause. The amount claimed as of 31 January 2025 is R4 313 750, supported by a certificate of balance showing certain credits and the addition of contractual interest. The provisional sentence summons was issued and served in February 2025.

[3] The defendant opposed the grant of a provisional sentence on the ground that the claim had prescribed under the Prescription Act.¹ It is the defendant’s case that the prescription began to run as soon as the AOD was signed, or, alternatively, from 31 January 2021, when interest began to run. By February 2025, more than three years had elapsed, and the claim was prescribed.

[4] The plaintiff submits that parties agreed expressly in the AOD that the debt would be repaid “by no later than 1 April 2022”, that the creditor could not have demanded repayment before that date without breaching the agreement, and that prescription therefore began running only once the debtor was in mora, in other words, from 2 April 2022.

[5] Section 12(1) of the Prescription Act 68 of 1969 provides that a prescription shall run as soon as it is due. Debt is “due” when it is both owing and payable, in the sense that the creditor has a complete cause of action and may institute proceedings to enforce it.²

[6] Where parties agree on a specific future date for payment, the authorities and commentary explain that the debt is not yet “due” for the purposes of prescription until that date arrives, because until then, the creditor cannot claim performance.³ Thus, where parties agree in a contract that a debtor shall pay “by” or “on” a specified date,

¹ 68 of 1969.

² *Truter v Deyzel* 2006 (4) SA 168 (SCA) para 15.

³ *Deloitte Haskins & Sells Consultants (Pty) Ltd v Bowthorpe Hellerman Deutsch (Pty) Ltd* 1991 (1) SA 525 (A) para 16.

that clause will suspend the “due-ness” of the debt until that date,⁴ unless there is a separate acceleration mechanism that brings the debt forward on default.⁵

[7] How does this relate to the matter? The defendant argues that prescription began when the AOD was signed, or alternatively from 31 January 2021, when interest started to accrue. The plaintiff asserts that the parties explicitly agreed the debt would be repaid by no later than 1 April 2022; that the creditor could not have demanded repayment before that date without breaching the agreement; and that prescription only started once the defendant was in mora.

[8] It seems to me that the ordinary meaning of “repay ... by no later than 1 April 2022” is that, although the indebtedness is acknowledged, the debtor is given time to pay and is only in breach if payment is not made by 1 April 2022. This implies that until that date, the debtor is not in mora, and the creditor would not have a complete cause of action for non-payment.

[9] Counsel for the defendant submitted that interest could only accrue on a debt that was already due, and that the reference to 31 January 2021 therefore meant that the debt was due from that date, with clause 2 merely providing a grace period to pay “by no later than 1 April 2022”. Counsel for the plaintiff, on the other hand, emphasised that “due” in the Prescription Act sense means both owing and payable; that the AOD contains no express term that the capital is payable from 31 January 2021, that the defendant does not seek rectification, and that the defendant’s construction would amount to importing a tacit term that is directly at odds with the express pay-by date.

[10] I agree with the latter submission. A debt cannot sensibly be said to be “due” on a particular date if, by the same agreement, the debtor is granted a further period within which it is entitled to perform. On a proper interpretation, the last day for performance was 1 April 2022, and prescription began to run only once that date had passed. The fact that interest is charged from a specific date does not convert the capital into a debt immediately due for purposes of prescription. The accrual of interest

⁴ *Trinity Asset Management (Pty) Ltd v Grindstone Investments 132 (Pty) Ltd* ZACC 32 para 123.

⁵ *Standard Bank of South Africa Ltd v Miracle Mile Investments 67 (Pty) Ltd* 2017 (1) SA 185 (SCA) para 15.

is not a trigger for prescription. The trigger for the commencement of prescription is when the creditor can sue. That was on 2 April 2022, so in terms of s 12(1), the three-year period expires on 1 April 2025, making service in February 2025 within the prescription period.

[11] During the argument, reference was made to statements made in earlier urgent proceedings, which contradict both parties' current positions. Whatever their respective understandings may have been in that matter, it is for this court, applying the approach set out in *University of Johannesburg v Auckland Park Theological Seminary*,⁶ to interpret the written AOD. Context and purpose may be used to illuminate its language, but extraneous utterances that contradict or vary the clear pay-by date in clause 2 cannot alter its meaning. For the reasons set out above, namely that the defendant was not in mora before 1 April 2022, and that the plaintiff only had a cause of action from 2 April 2022, that prescription only began to run then.

[12] Moreover, the onus rests on the defendant to establish, on a balance of probabilities, the date on which prescription commenced. On the wording of the contract, the defendant has not shown that the capital debt was payable before 1 April 2022.

[13] That leaves me with the provisional sentence. A provisional sentence is an extraordinary procedure that allows a creditor to secure quick provisional relief when the claim is based on a liquid document, such as a written contract in which the debtor unconditionally admits indebtedness in a fixed or easily determinable amount.

[14] The requirements for a provisional sentence were set out in *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*⁷ and are stated as follows:

“Uniform rule 8 provides for provisional sentence where a claim is founded upon a liquid document. The theory behind provisional sentence is that:

⁶ 2021 (6) SA 1 (CC) para 93.

⁷ 2009 (5) SA 1 (SCA).

‘it is granted on the presumption of the genuineness and the legal validity of the documents produced to the court. The court is provisionally satisfied that the creditor will succeed in the principal suit. The debt disclosed in the document must therefore be unconditional and liquid (zuiwer en klaar of liquid)’. If a document ‘upon a proper construction thereof, evidenced by its terms, and without resort to evidence extrinsic thereto...[is] an unconditional acknowledgment of indebtedness in an ascertained amount of money the payment of which is due to the creditor’ it is one upon which provisional sentence may properly be granted.”

[15] In other words, the court will grant a provisional sentence if the plaintiff’s claim is based on a liquid document and where either the plaintiff can satisfy the court of the probabilities of success in the principal case, or the defendant cannot produce sufficient proof to satisfy the court that the probabilities of success in the principal case are against the plaintiff.

[16] In this case, the plaintiffs produced an acknowledgement of debt that records an unconditional indebtedness in a fixed capital amount, stipulates interest, and a due date for repayment. It contains a clause to state that a certificate issued by a director of the creditor shall be sufficient proof of the amount due and render the document liquid for purposes of a provisional sentence. Nothing in the record put this document’s authenticity in dispute. On the face of the documents, the plaintiff has established a liquid claim competent for a provisional sentence.

[17] The plaintiff has thus discharged its onus and is entitled to a provisional sentence. The AOD provided for costs on an attorney-client scale, and I see no reason to depart from it in that respect.

Order

[18] The following order is made:

1. The defendant is to make payment to the plaintiff in the amount of R4 313 750,00, together with interest on the aforesaid amount at 11% per annum from the date of judgment to the date of final payment; and
2. Costs of suit on the attorney and client scale.

Eduplessis

WJ du Plessis

Judge of the High Court, Gauteng Division,
Johannesburg

Date of hearing:	17 February 2026
Date of judgment:	17 February 2026
For the applicant:	AL Roeloffze instructed by Edward Nathan Sonnenbergs Inc
For the respondent:	R Bhima instructed by Pisanti Attorneys