**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, JOHANNESBURG**

Case number: 2022-1528

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

**SIGNATURE** **DATE:** 18 FEBRUARY 2026

In the matter between:

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| **FIRSTRAND BANK LIMITED T/A AS FIRST NATIONAL BANK** | Plaintiff |
| and | |
| **CRESTAR PRINTERS AND PUBLISHERS (PTY) LIMITED (Registration no. 2008/011544/07)** | First Defendant |
| **IKRAAM JAFFER (ID number. 8[…])** | Second Defendant |
| **HAWA JAFFER (ID no. 6[…])** | Third Defendant |
| **SALAHHUDDEEM JAFFER (ID no. 8[…])** | Fourth Defendant |

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**JUDGMENT**

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**DALRYMPLE AJ:**

[1] The plaintiff seeks summary judgment against the second to fourth defendants, jointly and severally, the one paying the other to be absolved for payment of the amount of R477 431,60 together with interest thereon at the rate of 9.25% per annum calculated and capitalised monthly from 1 June 2021 to date of final payment both days inclusive. The plaintiff also seeks an order that the overdraft facility agreement is declared cancelled and that the second to fourth defendants pay the costs on the scale as between attorney and client inclusive of sheriff's fees.

[2] The facts are briefly as follows. On 6 May 2020 the plaintiff and the first defendant concluded an overdraft facility agreement ("the overdraft facility") in terms of which the first defendant was granted an overdraft facility by the plaintiff in an amount of R600 000,00. Prior to that date, on 18 July 2018, the second to fourth defendants had concluded written agreements of suretyship in favour of the plaintiff in terms of which they bound themselves jointly and severally *in solidum* with the first defendant for the repayment on demand of any sum of money which the first defendant then owed to the plaintiff or might owe in the future from whatever cause arising.

[3] The plaintiff cancelled the overdraft facility and claimed payment of the outstanding balance in the amount of R477 431,62. The amount was not repaid by the first defendant. The plaintiff instituted action against all four defendants. The claim against the second to fourth defendants was made against them as sureties with the first defendant.

[4] In their plea, the defendants raised a special plea that the first defendant was in business rescue as contemplated in section 131 of the Companies Act 71

of 2008 ("the Companies Act") and the business rescue practitioner was in the process of completing a business rescue report. The defendants averred that in terms of section 133(1) the plaintiff's rights against [all] the defendants were unenforceable by virtue of the moratorium placed on legal proceedings as contemplated in section 133(1) of the Companies Act.

[5] In the defendants' plea over on the merits, the defendants admitted conclusion of the overdraft facility and all of its terms. The defendants admitted that the plaintiff had complied with the terms of the overdraft facility by lending and advancing money to the first defendant in the overdraft facility account with number 6[…]. They also averred that they were waiting for two payments from the South African Revenue Service (SARS) which would restore the overdraft to a positive balance.

[6] In relation to the plaintiff's averments that the overdraft facility had been cancelled, that there was a balance outstanding in the amount of R477 431,62, that it was unpaid, that the second to fourth defendants had bound themselves as sureties, that the National Credit Act did not apply, that demand had been made, the defendants' plea constituted a bare denial of the allegations and the plaintiff was put to the proof of each and every allegation. The defendants sought a dismissal of the plaintiff's claim. All four defendants counterclaimed for a statement and debatement of the overdraft facility which they contended was necessary before the plaintiff was entitled to make its claim against them under the overdraft facility.

**LEGAL PRINCIPLES**

[7] Amended Rule 32(2)(b) requires a plaintiff who wishes to apply for summary judgment to explain why the defence "as pleaded" does not raise any issue for trial.

[8] The "defence as pleaded" should comply with the provisions of Rules 18(4) and 22(2), i.e. it should clearly and concisely state all the material facts relied upon for the defence in order to put the plaintiff in a position to assess whether or not "the defence as pleaded" raises any issue for trial. Thus, a plea consisting of bare denials would, generally speaking, not raise any issue for trial.[1]

[9] Save for the special plea relying on business rescue, the defendants' plea constituted bald denials. It was thus not surprising that the plaintiff applied for summary judgment against the second to fourth defendants. Summary judgment was not applied for against the first defendant presumably because it was in business rescue.

[10] 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

1 Erasmus, RS25, 2024, D1 Rule 32-53

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]

that if such statements of fact are found at trial to be correct, judgment should be given for the defendant.[3]

[11] 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]

[12] 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*

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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]

7 *Tumileng Trading CC v National Security and Fire (Pty) Limited supra* at para [23]

> *nature and grounds of the defence and the material facts relied upon therefore' have been canvassed by the deponent.*"[8]

[13] 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]

**ANALYSIS**

[14] It is thus necessary to assess whether the second to fourth defendants have disclosed the nature and grounds of their defence as required and whether, on the facts so disclosed, they appear to have a defence which is *bona fide* and good in law, or whether the defence presented is not genuine and simply a device to cause delay.

[15] The first difficulty for the second to fourth defendants is that the defences raised in the affidavit opposing summary judgment had not been raised in the plea. In summary judgment proceedings, a defendant cannot for the first time raise defences in its affidavit opposing summary judgment where no such defences exist in its plea. When the defence raised in the affidavit resisting

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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]

summary judgment is inconsistent with the plea, it cannot in the absence of an explanation for the inconsistency be said to be *bona fide*.[11] There was no such explanation in the affidavit. Moreover, it is 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.[12] In order for the denials to found a *bona fide* defence, the second to fourth defendants were required to place adequate information before the court so as to satisfy it that their defences were *bona fide*.

[16] Insofar as the affidavit opposing summary judgment is concerned, it is difficult to discern the nature and grounds of the defence to the claim and identify the material facts relied upon in support of such defence. The affidavit mainly raised complaints about the documentation attached and pointed to different balances being referred to in different documents. In addressing the matters of substance, the deponent simply resorted to repeating the denials as to liability, asserting that the defence was *bona fide*, that there were triable issues and that the matter was not being defended solely for delay.

[17] Presumably recognising this, a number of new defences not sourced in the plea nor the affidavit opposing summary judgment were raised by the second to fourth defendants' counsel from the bar during oral argument and in practice notes. One of these practice notes was uploaded on the morning of the hearing and the other uploaded following the hearing. This was in circumstances where inexplicably, no heads of argument had been filed on

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11 *AMHR Hospitality v Da Silva* 2024 (3) SA 100 (WCC) at para [14]

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

the defendants' behalf at all. Nonetheless the various defences raised in the affidavit and from the bar are dealt with below.

[18] The first complaint in the affidavit opposing summary judgment pertained to documentation. It was suggested that certain documents were incomplete, that one suretyship document was not attached to the particulars of claim and that none of the suretyships were attached to the summary judgment papers. Certain other documents the second to fourth defendants could not identify were attached to the summary judgment as were irrelevant. These complaints did not set out defences. Moreover, as plaintiff's counsel pointed out, all of the suretyship agreements were attached to the particulars of claim before the court. The papers were complete. There was no need to reattach them to the summary judgment papers either. The deponent had verified the facts set out in the summons and it is unnecessary to repeat the particulars or reattach the documents referred to.[13]

[19] The second principal challenge advanced in the affidavit opposing summary judgment was directed towards the quantum of the plaintiff's claim. This was however not done by way of setting out any facts that addressed the question of liability. There was no substantiated allegation of the first defendant not being indebted to the plaintiff or that it had not enjoyed the benefit of the overdraft. On the contrary the challenges were raised as queries as to the correctness of the amounts claimed. It was suggested that various letters of demand sent by the plaintiff from time to time claimed different amounts. The bank statements furnished ended with a balance that was higher than that

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13 *Saglo Auto (Pty) Limited v Blackshades 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]

that was being claimed. There was thus no certainty on the papers as to the amounts actually due and payable. As a result, all liability was denied, and this, so the argument went, entitled the defendants to a statement and debatement of the overdraft facility, which would then enable them to know what amount was actually due. As set out above, the defendants counter claimed for such an account and debatement thereof. It was stressed in the belatedly filed practice note and also pressed in oral agreement, that claims for statement and debatement were incapable of being the subject of an application for summary judgment because such a claim is not for a liquidated amount in money.

[20] In my assessment, the second to fourth defendants' attacks on quantum were without merit.

[21] The first and most obvious problem for the second to fourth defendants is that they expressly asserted in their plea that the first defendant had procured the overdraft facility for the specific purpose of first defendant's VAT payments to the South African Revenue Service (SARS). The first defendant was awaiting two payments from SARS in the aggregate amount of R1 023 334,93 which would place the overdraft in credit by R545 903,31. The same assertion was made, under oath, in the affidavit opposing summary judgment. These assertions were unqualified and constituted an unequivocal admission of the indebtedness by the first defendant (and so too the second to fourth defendants) to the plaintiff. These assertions put paid to any allegations as to uncertainty as to the amount due which assertions in any event implicitly conceded indebtedness. The assertions also put paid to the second to fourth

defendants' counsel's argument that there was no evidence that the amount of the overdraft had actually been advanced as well as to the denial of indebtedness.

[22] The plaintiff attached copies of the bank statements in relation to the overdraft facility over the relevant period and also put up a certificate of balance to its affidavit in support of the summary judgment.

[23] As plaintiff's counsel correctly submitted, 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).[14]

[24] Once the plaintiff furnished a certificate of balance, which constituted *prima facie* proof of the amount owing by the second to fourth defendants, as it did, the second to fourth defendants were 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.[15]

[25] In *Jacobsen van den Berg SA (Pty) Limited v Triton Yachting Supplies*[16] the court referred to the fact that in *Nichas and Son (Pty) Limited v Pappenfus*[17] the court 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

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14 *Rossouw v FirstRand Bank Limited* 2010 (6) SA 439 (SCA) at 454A to C
15 *Trust Bank of Africa Limited v Senekal* 1977 (2) SA 587 (W) at 593 and the cases cited there
16 1974 (2) SA 584 (O) at p587E to F
17 1969 (2) SA 494 (O) at p496

also referred to *Traut v Du Toit*[18] 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.

[26] The second to fourth defendants made no attempt to address the bank statements nor to address the certificate of balance. In relation to the bank statements, without even questioning a single entry, the second to fourth defendants simply denied they were a correct reflection of the amounts due. In relation to the certificate of balance, the second to fourth defendants said nothing at all. In fact in their affidavit opposing summary judgment they once again resorted to a bare denial and the putting the plaintiff to the proof of its allegations. This was woefully insufficient.

[27] Another attack by the second to fourth defendants was that the account number given to the first defendant's overdraft facility referred to in the particulars of claim did not appear on the documents attached to the particulars of claim. In addition, the suretyships relied upon were executed before the overdraft facility agreement concluded in May 2020. The argument was that one could not link the suretyships sued upon to the overdraft.

[28] The plaintiff's counsel pointed to the numerous clauses in the overdraft facility and in suretyships that demonstrated the fallacy of the second to fourth defendants' argument. I need only refer to one. All three suretyship

18 1966 (1) SA 69 (O) at p71

agreements expressly provides that each of the second to fourth defendants had a continuous and ongoing obligation with the first defendant for the due payment of all and any monies due to the plaintiff owing either at the time of conclusion of the suretyship or from time to time thereafter and from whatsoever cause and howsoever arising.

[29] The first defendant's indebtedness to the plaintiff arising out of the overdraft facility was thus expressly covered by the suretyship. There was no need to refer to the specific account number. All debts of the first defendant were covered by the suretyships. The second to fourth defendants also overlooked that they had expressly admitted in their plea that the first defendant held the overdraft facility with the account number referred to. Moreover, the second to fourth defendants had, in seeking to explain that the overdraft facility would soon have a credit balance, unequivocally admitted their indebtedness to the plaintiff.

[30] It is so that a claim for statement and debatement is not suited to summary judgment. However, the plaintiff was not seeking summary judgment in a claim for statement and debatement. The plaintiff's claim was for summary judgment for an amount sounding in money and that is the claim I am asked to adjudicate. The argument that presumably was sought to be made, but which was not set out in any of the papers nor articulated in argument, was that the counter claim itself constituted a defence to the claim and so summary judgment should be refused. Whilst a counter claim in an unliquidated amount might provide a defence to a plaintiff's application for summary judgment, a defendant has to set out grounds of the defence with

sufficient particularity to satisfy the court that the defence is *bona fide*[19] and that the defence is good in law. The existing authority allows a counter claim to be considered in the same way as a plea so that the court should consider whether the counter claim is frivolous, unsubstantial and intended only to delay.[20]

[31] The second to fourth defendants claimed a right to a statement and debatement premised on an alleged fiduciary relationship between the plaintiff and the defendants and/or as a result of a material implied alternatively tacit term of the "loan agreement" to that effect. However, as was held in *Habib Overseas Bank Limited v Crestar Printers and Publishers and Others*,[21] which is a case which involved many of the same parties and in which the second to fourth defendants' counsel appeared, but which case he failed to refer to me in argument, the court rejected the defences premised on statement and debatement. The court held that a banker's relationship with his client is one of debtor and creditor. There is no fiduciary relationship entitling a debatement of an account arising out of contract or a statutory provision.[22] In this matter, the second to fourth defendants were not the plaintiff's customer and did not have any relationship of debtor and creditor with the plaintiff, let alone a fiduciary one. They were sureties for the first defendant's indebtedness to the plaintiff, if the bank's customer is not entitled to a debatement of the overdraft,

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19 *AE Motors (Pty) Limited v Levitt* 1972 (3) SA 658 (T)

20 *HI Lockhat (Pty) Limited v Domingo* 1979 (3) SA 696 (T) at 698; *Muller and Others v Botswana Development Corporation Limited* 2003 (1) SA 651 (SCA) at para [12]

21 2024 JDR 4660 (GJ)

22 *Habib Overseas Bank Limited v Crestar Printers and Publishers and Others, supra* at para [167]; *Absa Bank Bpk v Janse van Rensburg* 2002 (3) SA 701 (SCA) at paras [15] to [16]; see also *BMW Financial Services SA (Pty) Limited v Sela Molela Incorporated* 2025 (JDR) 4773 (JG) at paras [25] to [27]

then the sureties certainly are not either. Reliance on the counter claim was not *bona fide* and was bad in law.

[32] Insofar as reliance on the moratorium on legal proceedings as provided for in section 133(4) of the Companies Act is concerned, this defence was overtaken by events. The deponent explained that the first defendant was placed in voluntarily liquidation on 5 May 2022. It was not suggested that this event prevented any claim against the sureties which indeed it did not.

[33] The second to fourth defendants' counsel argued that the plaintiff was not entitled to summary judgment because in paragraph 8 of its particulars of claim the plaintiff had not alleged that the terms relied upon were "material or tacit or implied terms". But where a party relies on a contract its pleading is not rendered defective because use of the words "express alternatively tacit alternatively implied terms" was not used. A pleader is required to set out a clear and concise statement of the material facts upon which the pleader relies upon with sufficient particularity to enable the opposite party to reply thereto. The plaintiff set out the terms relied upon and described them as being "the most salient terms". This was certainly good enough. The second to fourth defendants' counsel's submission in this regard has no merit.

[34] In oral argument, and in the practice note, the second to fourth defendants' counsel raised the point that the plaintiff had not attached its National Credit Regulator (NCR) certificate to its founding affidavit in support of its summary judgment application. He argued that this was a legal point, that could be taken from the bar. Two arguments were advanced premised on the fact that no NCR certificate was attached. The first was that the summary judgment

was fatally defective and the second was that the overdraft facility agreement might be unlawful and *void ab initio*. The latter argument was ostensibly inspired by a finding in the SCA[23] that credit agreements entered into with unregistered credit providers who were required to be registered are null and void.

[35] Leaving aside the issue of whether it was a legal point or not, the defendants had expressly admitted that the plaintiff was a registered credit provider in terms of the National Credit Act 34 of 2005 so there can be no suggestion of the overdraft facility being null and void for want of registration as a credit provider.

[36] In *Nedbank Limited v Wiid Group of Companies (Pty) Limited and Others*[24] the Free State Division of the High Court addressed the question of whether a credit provider must attach its NCR registration certificate to pleadings or to the affidavit in support of summary judgment. The court held that it is not necessary to attach a certificate to the pleadings and explained that in the context of a summary judgment application, the deponent's confirmation of the plaintiff's registration as a credit provider is sufficient and the annexing of the certificate merely serves to verify what has already been pleaded. The absence of an NCR certificate does not render the summary judgment application defective and so this defence failed too.

**CONCLUSION**

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23 *Loan Company (Pty) Limited v National Credit Regulator and Another* 2025 (4) SA 501 (SCA) at para [47]

24 2025 JDR 1425 (FB)

[37] In the circumstances, I am not satisfied that the second to fourth defendants have *bona fide* defences in respect of the plaintiff's claim. The defences raised, both in the plea and in the affidavit resisting summary judgment were in the form of denials, are bald, vague and sketchy. No *bona fide* defences that are good in law have been demonstrated and in my view were simply devices to delay.

[38] The plaintiff sought costs on an attorney and client scale. The scale was provided for in the suretyship agreements.

[39] I accordingly grant an order in the following terms:

[1] Summary judgment is granted against the second to fourth defendants jointly and severally, the one paying the other to be absolved for payment of:

[1.1] the amount of R477 431,62;

[1.2] interest on the aforementioned amount at a rate of prime plus 2% per annum calculated and capitalised monthly from 1 June 2021 to date of final payment both days inclusive.

[2] The second to fourth defendants are to pay the costs of the application jointly and severally, the one paying the other to be absolved, 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 18 February 2026*

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| **DATE OF HEARING:** | **16 October 2025** |
| **DATE OF JUDGMENT:** | **18 February 2026** |

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| **APPEARANCES:** | |
| **COUNSEL FOR THE PLAINTIFF:** | **V Mabasa** |
| **COUNSEL INSTRUCTED BY:** | **Jay Mothibi Inc** |
| **COUNSEL FOR THE 2nd TO 4th DEFENDANTS:** | **MD Kohn** |
| **COUNSEL INSTRUCTED BY:** | **Jaffer Inc Attorneys** |