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

Case Number: 2025-107347

1. NOT REPORTABLE 2. NOT OF INTEREST TO OTHER JUDGES Date: 23 March 2026 Signature: Khaba AJ

In the matter between:

ALPHA INSURE (PTY) LTD

Applicant

And

MONT BLANC FINANCIAL SERVICE

[Registration Number: 2002/001890/07]

Respondent

In re:

ALPHA INSURE (PTY) LTD

Plaintiff

And

MONT BLANC FINANCIAL SERVICE

[Registration Number:2002/001890/07]

Defendant

Neutral Citation: *Alpha Insure (Pty) Ltd v Mont Blanc Financial Service (107347-2025)*
[2026] ZAGPJHC ----- (23 March 2026)

Coram: Khaba AJ

Heard: 12 February 2026

Delivered: 23 March 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to CaseLines and by release to SAFLII. The date for hand-down is deemed to be 23 March 2026.

Summary: Vague pleadings and the 'Bare Denial' fallacy: When a respondent's denial of an oral agreement is sufficient to resist summary judgment- application dismissed.

ORDER

1. The application for summary judgment is dismissed.
 2. The respondent is granted leave to defend the action.
 3. The respondent is ordered to pay the costs of this application on the scale as between attorney and client scale, including cost counsel on scale C, such costs to be taxed on scale C.
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JUDGMENT

KHABA AJ:

Introduction:

- [1] This is an opposed application for summary judgment. The applicant (plaintiff in the main action) seeks judgment against the respondent (defendant in the main action) for payment of the sum of R6 049 624.90, together with interest at the prescribed rate *a tempore morae* and costs on scale C. The application is brought in terms of Rule 32(1) and (2) of the Uniform Rules of Court.
- [2] The applicant contends that its claim is for a liquidated amount in money, arising from an oral agreement concluded in November 2023. In terms of that agreement, the applicant allegedly advanced funds to settle a judgment debt owed by the respondent to its erstwhile landlord, with the respondent undertaking to repay the amount within a reasonable period.
- [3] The respondent opposes the application on multiple grounds. It has filed a special plea challenging the authority of the applicant's attorneys to institute proceedings, a plea on the merits denying the existence of the alleged oral agreement, and a comprehensive answering affidavit raising substantial factual and legal disputes. The respondent contends that the application for summary judgment must be dismissed with costs, and that it should be granted leave to defend the action.
- [4] Having carefully considered the pleadings, affidavits, heads of argument, and oral submissions made by both counsels, I have concluded that the application for summary judgment falls to be dismissed. The respondent has disclosed a *bona fide* defence that is both cognisable in law and supported by sufficient

material facts. The applicant is ordered to pay the costs of this application on an attorney and client scale, including the costs of counsel on scale C.

The Parties:

- [5] The applicant is Alpha Insure (Pty) Ltd, a private company duly incorporated and registered in terms of the laws of the Republic of South Africa with registration number 2004/022210/07, having its registered address at [...]th Floor, A[...] Building, [...] N[...] Road, B[...], Johannesburg.
- [6] The respondent is Mont Blanc Financial Services (Pty) Ltd, a private company duly incorporated and registered in terms of the laws of the Republic of South Africa with registration number 2002/001890/07, having its registered business address at [...]th Floor, A[...] Building, 2[...] B[...] Road, B[...], Johannesburg.

The Factual Background:

The Underlying Judgment Award:

- [7] The factual matrix giving rise to this dispute is complex and interconnected. The respondent's erstwhile landlord, Blue Crest Holdings (Pty) Ltd, obtained a judgment award against the respondent in the sum of R4 894 009.02, together with interest on that amount at Nedbank prime rate plus 2% from 01 February 2022 to the date of final payment ("*the award amount*"). The award was made an order of court, a copy of which is annexed to the particulars of claim as annexure "A".
- [8] A perusal of annexure "A" reveals that the underlying litigation was multifaceted. The order reflects proceedings involving multiple parties, including Insurance Underwriting Managers (Pty) Ltd and Mont Blanc Financial Services (Pty) Ltd as applicants in certain applications, and Blue Crest Holdings (Pty) Ltd as

respondent in counter-applications. Critically, the order records that Insurance Underwriting Managers (Pty) Ltd and Mont Blanc Financial Services (Pty) Ltd were ordered to pay the costs of certain applications jointly and severally.

- [9] According to the applicant, the respondent informed the applicant that it was unable to pay the award amount at that time.

The Alleged Oral Agreement:

- [10] In and during November 2023, at Johannesburg, the parties allegedly entered into an oral agreement. The applicant contends that it was duly represented by its directors, Mr. Werner Daniel Roets (*“Mr. Roets”*) and Mr. Antonio Lozzo (*“Mr. Lozzo”*), and that the respondent was duly represented by its authorised representatives (although the identity of such representatives is not specified in the particulars of claim).

- [11] The applicant pleads that by 10 November 2023, the award amount had accrued to R6 049 624.90. The applicant claims to have complied with its obligations by making payment of this amount to the respondent's erstwhile landlord, as evidenced by a bank statement annexed as annexure *“B”*. Despite demand, the respondent has allegedly failed, refused, or neglected to make payment.

- [12] The applicant contends that the express, alternatively tacit, further alternatively implied terms of the oral agreement were that:

[12.1] The applicant would pay the award amount on behalf of the respondent to the respondent's erstwhile landlord.

[12.2] The respondent would repay the award amount to the applicant within a reasonable period of time.

[12.3] No interest would be levied by the applicant on the award amount paid by it on behalf of the respondent.

[13] The applicant pleads that by 10 November 2023, the award amount had accrued to R6 049 624.90. The applicant claims to have complied with its obligations by making payment of this amount to the respondent's erstwhile landlord, as evidenced by a bank statement annexed as annexure "B".

[14] The applicant contends that the respondent has failed to make payment within a reasonable time and is accordingly indebted to it in the sum claimed. Despite demand, the respondent has allegedly failed, refused, or neglected to make payment. The applicant pleads that the summons itself constitutes demand.

The Procedural History:

[15] The combined summons were issued on 07 July 2025 and served on the respondent on 08 July 2025. On 04 August 2025, the respondent delivered a notice in terms of Rule 7(1) disputing the authority of Rogers Kruger Smith Inc to act on behalf of the applicant. The respondent requested copies of powers of attorney, the applicant's memorandum of incorporation, and resolutions authorising the institution of the action.

[16] The applicant responded on 18 August 2025, tendering a special power of attorney signed by Mr. Daniel Werner Roets dated 15 August 2025, a directors' resolution dated 01 August 2025, and a fidelity fund certificate.

[17] On 26 August 2025, the respondent delivered its special plea and plea on the merits.

- [18] On 10 September 2025, the applicant launched this application for summary judgment. The applicant's founding affidavit was deposed to by Mr. Werner Daniel Roets, a director of the applicant.
- [19] The respondent delivered its opposing affidavit on 14 October 2025, deposed to by Ms. Kirsty Bezuidenhout, the internal legal officer of the respondent, duly authorised by resolution.
- [20] The applicant filed heads of argument on 11 November 2025. The respondent filed heads of argument on 26 November 2025 and subsequently filed updated heads of argument on 11 February 2026.

THE PLEADINGS:

The Applicant's Particulars of Claim:

- [21] The applicant's claim is succinctly pleaded. It alleges the existence of the underlying judgment award, the respondent's inability to pay, the conclusion of the oral agreement in November 2023, the terms thereof, and the applicant's payment of R6 049 624.90 to the respondent's erstwhile landlord. It alleges that the respondent has failed to make payment within a reasonable time and is accordingly indebted to the applicant.

The Respondent's Special Plea:

- [22] In its special plea, the respondent raises a threshold challenge to the validity of the proceedings. The respondent pleads that:

[23.1] The action was instituted on 07 July 2025 and served on the respondent on 08 July 2025.

[23.2] The institution of the action was allegedly authorised by Mr. Werner Daniel Roets on behalf of the applicant, acting in his capacity as director and purportedly authorised by way of resolution dated 01 August 2025.

[23.3] At the time of institution of the action, the applicant had three directors, namely Mr. Werner Daniel Roets, Mr. Antonio Iozzo, and Mr. Gregory Hutchinson.

[23.4] Mr. Hutchinson allegedly resigned as director on 17 July 2025, *after* the institution of the action, and did not authorise the institution of the proceedings.

[23.5] The applicant now, at this late stage, attempts to ratify the actions taken by the other directors by way of special power of attorney and resolution, which the respondent pleads is merely an attempt to circumvent the failure to obtain authorisation from the board of directors in accordance with section 66(1) of the Companies Act 71 of 2008.

[23.6] The respondent prays that the plaintiff's action be dismissed with costs.

The Respondent's Plea on the Merits:

[23] In its plea on the merits, the respondent admits the jurisdictional allegations in paragraphs 2 and 3 of the particulars of claim.

[24] In relation to paragraph 4, the respondent "notes" the contents of annexure "A".

- [25] In relation to paragraphs 5, 6, and 7, the respondent denies the allegations. It specifically denies that it informed the applicant that it was unable to pay the amount as per the award. It further denies that an oral agreement was concluded at Johannesburg and puts the applicant to the proof thereof.
- [26] In relation to paragraph 8, the respondent "notes" the allegations.
- [27] In relation to paragraph 9, the respondent denies the allegations insofar as the applicant avers that an oral agreement existed. It specifically pleads that no oral agreement was entered into between the applicant and the respondent, and that if the applicant paid the respondent's erstwhile landlord, it did so of its own volition, and not as a result of any agreement between the parties.
- [28] In relation to paragraph 10, the respondent denies the allegations. The respondent denies that it had to make payment to the applicant, or that it was indebted to the applicant in regard to the said sum or any other amount and puts the applicant to the proof thereof.
- [29] In relation to paragraph 11, the respondent denies the allegations. The respondent pleads that it is not indebted to the applicant for any amount allegedly due, owing, and payable, and as such it did not refuse or neglect to make payment of any amount as a debt does not exist and no payment is due to the applicant. The respondent prays for judgment in its favour and that the plaintiff's claim be dismissed with costs on an attorney and client scale.

THE APPLICATION FOR SUMMARY JUDGMENT:

The Notice of Motion:

[30] The applicant seeks summary judgment for payment of R6 049 624.90, interest at the prescribed rate *a tempore mora*, and costs of suit on party and party scale C.

The Applicant's Founding Affidavit:

[31] The founding affidavit is deposed to by Mr. Werner Daniel Roets, ("*Mr. Roets*") who describes himself as a director of the applicant and its former chief financial officer. Mr. Roets avers that the facts are within his personal knowledge and that he was personally involved in the discussions and agreement with the respondent.

[32] Mr. Roets verifies the cause of action and the amount claimed. Mr. Roets avers that the applicant's claim is for a liquidated amount in money arising from the oral agreement entered into in November 2023. Mr. Roets further submits that he and Mr. Antonio Iozzo ("*Mr. Iozzo*") represented the applicant, and that the respondent was represented by its authorised representatives.

[33] Mr. Roets sets out the background to the agreement, including the underlying judgment award, the respondent's alleged inability to pay, and the accrual of the award amount to R6 049 624.90 by 10 November 2023. Mr. Roets avers that the applicant made payment of R6 049 624.90 to the respondent's erstwhile landlord, as evidenced by the bank statement annexed as "FA1".

[34] In relation to the special plea on authorisation, Mr. Roets relies on section 20(3) of the Companies Act 71 of 2008 and avers that any purported lack of initial full board authorisation has been validly ratified. Mr. Roets attaches the Rule 7 notice and response as "FA2" and "FA3".

[35] Mr. Roets engages with the pleaded defences at length. Mr. Roets contends that:

- [36.1] The special plea lacks *bona fides* because the institution was done by attorneys duly appointed, the resolution of 01 August 2025 expressly ratifies the institution, and section 20(2) of the Companies Act permits ratification.
- [36.2] The respondent's admission of the award (by "noting" paragraph 4) means the award is an undisputed fact.
- [36.3] The denials regarding the oral agreement are bald and unsupported by material facts.
- [36.4] The respondent benefited directly from the payment of R6 049 624.90 to its landlord, which discharged its liability under the award.
- [36.5] If no agreement existed, the respondent would have protested or rejected the benefit at the time, yet it did not.
- [36.6] The respondent's allegation that any payment was made of the applicant's "*own volition*" is inconsistent with the undisputed fact that the payment discharged the respondent's debt.
- [36.7] A reasonable time for repayment has long elapsed, as over 18 months have passed since payment, and demand has been made.
- [36.8] Mr. Roets concludes that the respondent does not have a *bona fide* defence and has delivered a notice of intention to defend and a plea solely for the purpose of delaying the action.

The issues for Determination:

[36] The central issues for determination by this court are:

[36.1] Whether the respondent has a *bona fide* defence to the applicant's claim, or whether the defences raised are sham and intended solely to delay judgment.

[36.2] Whether the plea on the merits, denying the existence of the oral agreement and any indebtedness, discloses a triable issue or constitutes bare denials without material facts.

[36.3] Whether the opposing affidavit aligns with the plea and sufficiently discloses the nature and grounds of the defence with supporting material facts.

[36.4] The appropriate order as to costs.

The Applicant's Heads of Argument:

[37] The applicant's heads of argument, prepared by Mr. Van Niekerk, contend that:

[37.1] The matter is ideally suited for summary judgment, as the respondent's purported defences fail to disclose any triable issue or material facts that would constitute a valid defence in law.

[37.2] The undisputed facts are that the respondent's erstwhile landlord obtained a court order against the respondent, and the applicant paid R6 049 624.90 to the landlord on 10 November 2023, which discharged the respondent's liability.

[37.3] In terms of *Standard Bank of South Africa Ltd v Sekhethela* [2025] ZAGPJHC 913¹ and *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another* (A28/2006) [2006] ZAWCHC 78², the respondent's "noting" of paragraphs constitutes admissions, and its denials are bare and fail to seriously and unambiguously address the facts.

[37.4] The purpose of summary judgment is to prevent sham defences from defeating the rights of parties by delay.

[37.5] The special plea lacks merit because the applicant has complied with Rule 7, and section 20(2) of the Companies Act expressly allows ratification of unauthorised acts.

[37.6] The denial of the oral agreement is bald and unsupported by any alternative explanation for why the applicant would pay R6 million to discharge the respondent's debt for free.

[37.7] Even if no agreement existed, equity demands restitution under the *condictio indebiti*.

THE RESPONDENT'S COMPREHENSIVE GROUNDS FOR OPPOSITION:

The Opposing Affidavit:

[38] The opposing affidavit is deposed to by Ms. Kirsty Bezuidenhout, the internal legal officer of the respondent, duly authorised by resolution. Ms. Bezuidenhout confirms that the respondent has a *bona fide* defence to the applicant's claim, which requires ventilation at trial through oral and documentary evidence.

¹ Standard Bank of South Africa Ltd v Sekhethela [2025] ZAGPJHC 913 at para 16.

² Wightman t/a J W Construction v Headfour (Pty) Ltd and Another (A28/2006) [2006] ZAWCHC 78 at para 13.

The Challenge to the Sufficiency of the Applicant's Pleading and Proof:

[39] The respondent contends that the applicant fails to provide particulars regarding which authorised representatives of the respondent allegedly entered into the agreement. The applicant fails to disclose the identity of the respondent's representatives, the date and place of the alleged agreement with sufficient specificity, and the precise terms of repayment, referring vaguely to "*payment within a reasonable period of time*".

[40] The respondent challenges the sufficiency of the bank statement annexed as proof of payment. It points out that:

[40.1] The bank statement does not contain particulars of the bank account from which payment was allegedly made.

[40.2] The statement does not contain any reference to the respondent.

[40.3] The two latter amounts on the statement are in excess of the judgment amount against the respondent, including the calculated interest thereon.

[40.4] None of the amounts recorded on the statement accord with the content of the order attached to the particulars of claim.

[40.5] The applicant fails to set out how the amount was arrived at and fails to disclose what the Nedbank prime rate was for the period between 01 February 2022 and 10 November 2023.

The Denial of the Oral Agreement:

- [41] The respondent denies ever concluding an oral agreement with the applicant as pleaded. The respondent submits that the applicant has not discharged the onus of proving the existence of an oral agreement.

The Applicant's Co-Liability Under the Underlying Order:

- [42] The respondent raises a material fact conspicuously absent from the applicant's founding affidavit: the applicant was previously known as Insurance Underwriting Managers (Pty) Ltd, which was the first respondent in the matter in which the order was granted. The order was thus also granted against the applicant.
- [43] The respondent contends that the applicant was a tenant of Blue Crest Holdings (Pty) Ltd, and the order was subsequently made against the applicant. The applicant therefore had its own independent obligation to pay the judgment amount.
- [44] This fact is of fundamental importance. If the applicant was itself liable under the order, the payment it made to the landlord may well have been in discharge of its own liability, not that of the respondent. The respondent is entitled to explore this at trial.

The Parties' Relationship:

- [45] The respondent avers that the applicant and the respondent are related companies that form part of a group of companies. This is corroborated by the common address in the Alpha Building, Bedfordview, and the interconnected nature of the underlying litigation reflected in annexure "A". This related-party dynamic raises further complexities that cannot be resolved on affidavit.

The Challenge to Quantum and Calculation:

[46] The respondent challenges the calculation of the alleged amount. The respondent contends that:

[46.1] The applicant fails to disclose how the alleged accrued amount was calculated and merely refers to a bank statement.

[46.2] The applicant fails to provide the court with a breakdown of the calculation allegedly done in terms of the award.

[46.3] The applicant fails to inform the court what the "Nedbank prime rate plus 2%" was from 01 February 2022 to the date of alleged payment.

[46.4] The amount claimed is not verified by calculation from the award.

The Respondent's updated Heads of Arguments:

[47] The respondent's updated heads of argument, prepared by Mr. Dean Whittington, advance a further compelling argument concerning *mora*.

[48] It is submitted that the alleged agreement required repayment within a "reasonable period of time". This is not a fixed date for performance. In such cases, a demand (*interpellatio*) is required to place the debtor in *mora*. *Crookes Brothers Ltd v Regional Land Claims Commission for the Province of Mpumalanga and Others (590/2011) [2012] ZASCA 128* at para 17 held the following:

"[17] The term *mora* simply means delay or default. When the contract fixes the time for performance, *mora* (*mora ex re*) arises from the contract itself, and no demand (*interpellatio*) is necessary to place the debtor in *mora*. In contrast, where the contract does not contain an express or tacit stipulation in regard to the date when performance

is due, a demand (*interpellatio*) becomes necessary to put the debtor in mora. This is referred to as mora ex persona. (See *Scoin Trading (Pty) Ltd v Bernstein* NO 2011 (2) SA 118 (SCA) paras 11 & 12.) The purpose of mora interest is therefore to place the creditor in the position that he or she would have been in had the debtor performed in terms of the undertaking. Here a demand (*interpellatio*) was necessary to place the respondents in mora.”

[49] It has long been the law that the cause of action relied upon by a party must subsist when the summons is issued. *Ritch v Bhyat* 1913 TPD 589 at 592³, the court held that:

“If the debt is not payable, or if it is not legally recoverable, it cannot form the basis of an action at law. As a summons embodies the statement that an action at law exists, it would seem to me that a summons cannot be validly issued for a sum of money which is not at the moment of issue of summons due...”

- If no *interpellatio* setting a date for performance has occurred, the cause of action does not yet subsist, and the debt is not due.

[50] The respondent raised this in paragraph 11 of its plea: "The defendant [denies] that it is indebted to the Plaintiff for any amount allegedly due, owing and payable and as such did not refuse to make payment of any amount as a debt did not exist and no payment is due to the plaintiff."

[51] The respondent submits that the debt was not due at the time the proceedings were instituted, which constitutes a complete defence to the applicant's claim and, at the very least, a triable issue that operates to stave off summary judgment.

The Challenge to the Applicant's Reliance on Unjustified Enrichment:

³ *Ritch v Bhyat* 1913 TPD 589 at 592.

[52] The respondent submits that the applicant impermissibly attempts in its heads of argument to rely on the *condictio indebiti*.

[53] The requirements for the *condictio indebiti* are that the plaintiff must prove that property was transferred to the defendant, that such transfer was given *indebiti* (in the absence of a legal or natural obligation), and that it was transferred by mistake as was held in *Govender v Standard Bank of South Africa Limited 1984 (4) SA 392 (C) 400*⁴

[54] The respondent contends that the applicant's case cannot satisfy these requirements of the Rule 32:

[54.1] The applicant's case is that the amount was paid to a third party on the respondent's behalf, not to the respondent itself.

[54.2] The applicant's case is that it entered into an oral agreement to make payment on the respondent's behalf – the transfer was allegedly made pursuant to a contractual obligation, not in the absence of a legal obligation.

[54.3] The applicant's case is that it made payment pursuant to an agreement, not by mistake.

[54.4] The respondent submits that any claim for judgment based on the *condictio indebiti* – appearing for the first time in an affidavit in support of summary judgment – must be dismissed out of hand.

The Respondent's submissions on the test for Summary Judgment:

⁴ Govender v Standard Bank of South Africa Limited 1984 (4) SA 392 (C) 400.

[55] The respondent relies on the established principles governing summary judgment. It submits that:

[56.1] The test is whether the defendant has set out facts which, if proved at trial, would constitute a defence in law. *Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A)*⁵.

[56.2] The court does not attempt to decide factual disputes or determine where the balance of probabilities lies.

[56.3] The defendant is not required to prove the defence at this stage, but only to set out facts which, if established at trial, would entitle the defendant to succeed.

[56.4] Summary judgment should not be granted where material factual disputes exist. *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA)*⁶.

[56.5] A real, genuine and *bona fide* dispute of fact exists where the defendant seriously and unambiguously engages with the facts. *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another 2008 (3) SA 371 (SCA)*⁷.

[56.6] The respondent submits that it has done exactly this by denying the existence of the oral agreement, challenging the alleged calculation, challenging the authority of any party to bind the defendant, disputing the origin and reliability of the alleged proof of payment, and raising issues regarding the plaintiff's own liability under the judgment.

The Legal principles governing Summary Judgement:

⁵ *Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A)* at 426.

⁶ *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA)* at para 11.

⁷ *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another 2008 (3) SA 371 (SCA)* at 375C-D.

[56] The purpose of summary judgment is well-established in our law. It is a procedural mechanism designed to prevent undue delay in the enforcement of clear and undefended claims, allowing a plaintiff to obtain swift judgment where the defendant's opposition is frivolous or intended merely to delay justice. *Joob Joob*⁸.

[57] However, as was emphatically stated that in: *Maharaj v Barclays*⁹ that the court does not attempt to decide factual disputes or determine where the balance of probabilities lies. All that the court enquires into is: (a) whether the defendant has "fully" disclosed the nature and grounds of his defence and the material facts upon which it is founded; and (b) whether on the facts so disclosed the defendant appears to have, as to either the whole or part of the claim, a defence which is both bona fide and good in law. If satisfied on these matters, the court must refuse summary judgment."

[58] In *Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T)*¹⁰ at 228, Colman J articulated the standard as follows:

"It will suffice, it seems to me, if the defendant swears to a defence, valid in law, in a manner which is not inherently and seriously unconvincing."

[59] The Supreme Court of Appeal in *Joob Joob* reaffirmed that the procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of their day in court. The court must be satisfied that the defendant has disclosed a defence which is both bona fide and good in law.

⁸ Supra note 6 at para 30.

⁹ Supra note 5 at 426A-E.

¹⁰ *Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T)* at 228.

[60] In *Marsh v Standard Bank of SA LTD 2000 (4) SA 947 (W) at 949E-F*¹¹, the court held that:

"At the summary judgment stage, it is not for the court to decide any balance of probabilities or determine the likelihood of the deponent's allegations being true or false. It is sufficient if the defendant's affidavit shows that there is a reasonable possibility that the defence advanced may succeed on trial."

[61] In relation to the issues of disputes of fact, the court in *Wightman*¹² the court held that:

"A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed."

[62] Since the amendment to Rule 32, which came into effect on 1 July 2019, an application for summary judgment may only be brought after the defendant has delivered a plea. The plaintiff must, in its supporting affidavit, verify the cause of action, identify any point of law relied upon, identify the facts upon which the claim is based, and explain briefly why the defence as pleaded does not raise any issue for trial.

[63] In *Tumileng Trading CC v National Security and Fire (Pty) Ltd* [2020] JOL 47144 (WCC)¹³, Binns-Ward J held that the phrase:

"...explain briefly why the defence as pleaded does not raise any issue for trial" should be interpreted to mean that the plaintiff must explain why the defence as pleaded does not genuinely raise any issue for trial – in other words, that the pleaded defence is a sham. The classical formulations of what is expected of a defendant remain applicable".

¹¹ *Marsh v Standard Bank of SA LTD 2000 (4) SA 947 (W) at 949E-F*

¹² *Supra* note 7 at para 13.

¹³ *Tumileng Trading CC v National Security and Fire (Pty) Ltd* [2020] JOL 47144 (WCC) at para 21-23.

[64] Importantly, in *Maharaj*¹⁴, the court held that:

“because of the drastic nature of summary judgment, the court has a discretion in terms of Rule 32(5) to grant the defendant leave to defend even where the defendant has failed to comply fully with Rule 32(3)(b). The court will grant summary judgment only where the plaintiff has an unanswerable case. If the court has the slightest doubt, it will not grant summary judgment”

EVALUATION:

The Special Plea on Authority: A Triable Issue:

[65] The respondent's special plea raises a threshold question of considerable importance: was the institution of these proceedings properly authorised? It is common cause that at the time of institution on 07 July 2025, the applicant had three directors: Mr. Werner Daniel Roets, Mr. Antonio Lizzo, and Mr. Gregory Hutchinson.

[66] It is also common cause that Mr. Hutchinson allegedly resigned as director on 17 July 2025 – ten days *after* the summons was issued. The respondent pleads that Mr. Hutchinson did not authorise the institution of the action.

[67] The resolution purportedly ratifying the institution of proceedings is dated 01 August 2025 – almost a month after the summons was issued. The special power of attorney is dated 15 August 2025. Both documents post-date the institution of the action.

[68] The applicant relies on section 20(2) of the Companies Act 71 of 2008 to argue that ratification renders the action valid *ab initio*. This submission is far from

¹⁴ Supra note 5 at para supra at 423 F -G.

self-evident. Section 66(1) of the Companies Act provides that "the business and affairs of a company must be managed by or under the direction of its board of directors, which has the authority to exercise all of the powers and perform any of the functions of the company". The statutory power to manage the company's affairs is conferred on the board as a collective body.

[69] The ratification occurred after the event sought to be ratified, and more pertinently, after the resignation of a director who did not authorise the proceedings. The respondent's contention that this constitutes an impermissible attempt to circumvent section 66(1) of the Companies Act raises a legitimate legal question that merits proper ventilation. The question of whether ratification can cure a defect in authority to institute proceedings, and if so, under what circumstances, is a matter of law that deserves proper consideration at trial.

[70] It is well established that the summary judgment procedure is not intended to replace the exception as a test of one or the other party's legal contentions. *Edwards v Menezes* 1973 (1) SA 299 (NC)¹⁵. Where a real difficulty as to a matter of law arises, the court should grant summary judgment only if satisfied that the point is really unarguable.

[71] I am not persuaded that the respondent's point on authority is unarguable. To the contrary, it raises a substantial question about the validity of these proceedings at their inception – a question that the respondent is entitled to have determined at trial.

The Denial of the Oral Agreement: Not a Bare Denial:

[72] The respondent's denial of the existence of the oral agreement is clear and unequivocal: "The Defendant denies that an oral agreement was concluded at

¹⁵ *Edwards v Menezes* 1973 (1) SA 299 (NC) at 304.

Johannesburg, allegedly between itself and the Defendant and the Plaintiff is put to the proof thereof.”

- [73] The applicant characterises this as a *"bare denial"* lacking material facts. This characterisation is, with respect, misguided. The respondent has done precisely what it is entitled to do when faced with vague and unspecified allegations. The applicant's particulars of claim fail to identify who represented the respondent when this alleged oral agreement was concluded. The allegation is simply that "the Plaintiff, duly represented, and the Defendant, duly represented, entered into an oral agreement".
- [74] The applicant's founding affidavit, for the first time, identifies that it was represented by Mr. Roets and Mr. Lozzo. However, the identity of the respondent's alleged representatives remains undisclosed. The respondent's deponent, Ms. Bezuidenhout, was not involved in any such alleged agreement. The respondent cannot be expected to provide chapter and verse in response to allegations that are themselves devoid of particularity.
- [75] As the respondent correctly submits, the applicant bears the onus of proving the existence of the oral agreement. The respondent is not required to provide an alternative explanation for why the applicant made payment to the third party. That question calls for speculation. The applicant has chosen to base its claim on an alleged oral agreement. It must prove that agreement. It is not for the respondent to prove some other reason for the payment.
- [76] The principle is ancient and sound: "He who asserts, proves and not he who denies, since a denial of a fact cannot naturally be proved provided that it is a fact that is denied and that the denial is absolute." *Pillay v Krishna and Another* 1946 AD 946¹⁶.

¹⁶ *Pillay v Krishna and Another* 1946 AD 946 at 952-953.

- [77] Where a applicant's allegations are as vague as they are in this case – an oral agreement concluded at some point during November 2023, in the greater Johannesburg area, without identifying the respondent's representatives – a simple denial is not only permissible but is precisely what one would expect. The respondent cannot be expected to do more.

The Challenge to Quantum and Proof of Payment: Specific and Material:

- [78] The respondent has raised specific, material challenges to the quantum claimed. The bank statement annexed as annexure "B" does not contain particulars of the bank account from which payment was allegedly made, nor any reference to the respondent. The two latter amounts on the statement are in excess of the judgment amount against the respondent, including calculated interest.
- [79] The applicant has failed to disclose how the alleged amount of R6 049 624.90 was calculated from the original award of R4 894 009.02 plus interest at Nedbank prime rate plus 2%. The applicant does not disclose what the Nedbank prime rate was for the period between 01 February 2022 and 10 November 2023.
- [80] These are not bare denials. They are specific challenges to the very foundation of the applicant's claim. If the amount cannot be verified by calculation from the underlying award, the claim may not be liquidated as required by Rule 32(1)(b).

The Applicant's Co-Liability: A Material Fact Undisclosed:

- [81] Perhaps the most significant fact to emerge from the papers – and one conspicuously absent from the applicant's founding affidavit – is that the applicant was itself a party to the underlying litigation. The applicant was

previously known as Insurance Underwriting Managers (Pty) Ltd and was a respondent in the matter in which the judgment was granted.

- [82] A perusal of annexure "A" confirms this. The order records: "The application of Insurance Underwriting Managers (Pty) Ltd and Mont Blanc Financial Services (Pty) Ltd under case number 38025/2021 is dismissed."¹²⁹ It further records that both entities were ordered to pay costs jointly and severally.
- [83] This fact is of fundamental importance. If the applicant was itself liable under the order, it had its own independent obligation to pay the judgment debt. The payment it made to the landlord may well have been in discharge of its own liability, not that of the respondent. The respondent is entitled to explore this at trial, particularly in light of the related-party dynamics suggested by the common address in the Alpha Building, Bedfordview, and the interconnected nature of the underlying litigation.
- [84] The applicant's failure to disclose this fact in its founding affidavit is telling. It speaks to the bona fides of the application and reinforces the respondent's contention that this matter is not suitable for summary disposition.

The "Reasonable Period" and Mora: A Complete Defence:

- [85] The respondent's updated heads of argument raise a point of law that, if sustained, would be a complete defence to the claim. The alleged agreement required repayment within a "reasonable period of time". This is not a fixed date for performance. In such cases, a demand (*interpellatio*) is required to place the debtor in *mora*. *Crookes Brothers Limited v Regional Land Claims Commission for the Province of Mpumalanga and others* [2013] 2 All SA 1 (SCA)¹⁷.

¹⁷ *Crookes Brothers Limited v Regional Land Claims Commission for the Province of Mpumalanga and others* [2013] 2 All SA 1 (SCA) at para 17.

[86] It has long been the law that the cause of action relied upon by a party must subsist when the summons is issued. If no *interpellatio* setting a date for performance has occurred, the cause of action does not yet subsist, and the debt is not due.

[87] The respondent raised this in paragraph 11 of its plea: "The defendant [denies] that it is indebted to the Plaintiff for any amount allegedly due, owing and payable and as such did not refuse to make payment of any amount as a debt did not exist and no payment is due to the plaintiff." This is a complete defence to the applicant's claim. At the very least, it constitutes a triable issue that operates to stave off summary judgment.

The Applicant's Impermissible Reliance on Unjustified Enrichment:

[88] The applicant, in its heads of argument, suggests that even if no agreement existed, the respondent would be liable under the *condictio indebiti*. This is impermissible. The applicant cannot invoke an enrichment action at the summary judgment stage without having pleaded it. *McCarthy Retail Ltd v Shortdistance Carriers 2001 (3) SA 482 (SCA)*¹⁸.

[89] The applicant's particulars of claim rely solely on an alleged oral agreement. No enrichment claim is pleaded. The applicant cannot now, in heads of argument, attempt to rely on an alternative cause of action that was not pleaded.

[90] Moreover, even if the applicant had pleaded enrichment, the requirements for the *condictio indebiti* are not satisfied on the papers. The payment was allegedly made to a third party on the respondent's behalf, not to the respondent itself. The transfer was allegedly made pursuant to an oral agreement, not by mistake. The applicant's belated reliance on enrichment principles is a transparent attempt to salvage an application that is fundamentally flawed.

¹⁸ *McCarthy Retail Ltd v Shortdistance Carriers 2001 (3) SA 482 (SCA)* at para 11.

Compliance with Rule 32(2)(b):

- [91] The applicant's founding affidavit, while lengthy, does not adequately explain why the defence as pleaded does not genuinely raise any issue for trial. Much of the affidavit is argumentative, seeking to persuade the court of the merits of its case rather than demonstrating that the respondent's defences are sham.
- [92] The amended Rule 32 is likely to lead to argumentative affidavits dealing more with matters for argument than matters of fact. The present application exemplifies this concern. The applicant's affidavit engages in lengthy argument about why the respondent's defences should fail, but this does not alter the fundamental position: the respondent has raised genuine triable issues.
- [93] The respondent's opposing affidavit, while concise, discloses the nature and grounds of its defence with sufficient clarity. It denies the existence of the agreement, challenges the sufficiency of the proof of payment, raises material facts regarding the applicant's own liability under the underlying order, and discloses the related-party relationship. The conditional or incomplete claims may be permissible where all the surrounding circumstances are taken into account. The respondent is entitled to have these matters determined at trial.

The Respondent Has Disclosed a Bona Fide Defence:

- [94] Having evaluated all the papers, I am satisfied that the respondent has disclosed a bona fide defence that is both cognisable in law and supported by sufficient material facts. The defences raised – including the special plea on authority, the denial of the oral agreement, the challenge to the quantum and proof of payment, the applicant's co-liability under the underlying order, the issue of *mora*, and the related-party relationship – are genuine and cannot be characterised as sham or intended solely for delay. The applicant's claim is not

unanswerable. To the contrary, it is beset with factual and legal disputes that require ventilation at trial.

Costs:

- [95] The respondent seeks costs on an attorney and client scale, including the costs of counsel on Scale C. The applicant's heads of argument seek costs on Scale C should summary judgment be granted.
- [96] In the present matter, the applicant ought reasonably to have known that the respondent had a bona fide defence. The respondent's special plea raised a legitimate question regarding authority. The respondent's denial of the oral agreement was clear and unequivocal. The challenges to the quantum and proof of payment were specific and material. The related-party dynamics and the applicant's own co-liability under the underlying order suggested complexities that could not be resolved on affidavit.
- [97] Despite this, the applicant persisted with this application, requiring the respondent to incur substantial legal costs to oppose it. The applicant's conduct in this regard warrants a punitive costs order.
- [98] The introduction of scale C represents a significant development in our cost's jurisprudence. an award of costs on an attorney and client scale, including the costs of counsel on scale C. Such an order serves to discourage plaintiffs from pursuing summary judgment where genuine triable issues exist, and to compensate the respondent for the unnecessary expense to which it has been placed under.

Order:

[99] In the circumstances, the following order is made:

1. The application for summary judgment is dismissed.
2. The respondent is granted leave to defend the action.
3. The applicant is ordered to pay the costs of this application on the scale as between the attorney and client scale, including costs of counsel on scale C, such costs to be taxed on scale C.

KHABA AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

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Date of Hearing:

12 February 2026

Date of Judgment:

23 March 2026