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REPUBLIC OF SOUTH AFRICA

IN 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
8 April 2026 _____	
DATE	SIGNATURE

CASE NUMBER: 2024-134454

In the matter between:

EMM PROPERTY HOLDINGS (PTY) LTD

APPLICANT

And

WORDLWIDE RAIL AND MINING SOLUTIONS (PTY) LTD

FIRST RESPONDENT

JASON VISAGIE

SECOND RESPONDENT

Heard: 2 February 2026

Delivered: 8 April 2026

JUDGMENT

WINDELL J:

Introduction

[1] This is an application for summary judgment brought in terms of Rule 32 of the Uniform Rules of Court. The plaintiff seeks payment of alleged arrear rental and charges in the amount of R35 414.00, together with interest, and the ejectment of the first defendant from leased premises following cancellation of a written lease agreement.

[2] The defendants oppose the application, raising both points in limine and defences on the merits. Central to their opposition are contentions that the matter is *lis alibi pendens*, that the lease was not validly cancelled, that the amount claimed is not liquidated or easily ascertainable, and that a substantial counterclaim defeats summary judgment.

Background facts

[3] The plaintiff, EMM Property Holdings (Pty) Ltd, concluded the lease agreement with the first defendant, Worldwide Rail and Mining Solutions (Pty) Ltd, on 10 May 2023. In terms of the lease, the first defendant occupied commercial premises situated at Jet Park, Boksburg, comprising portions of Erf 4[...] and Erf 4[...], Jet Park Extension 15 Township, and portions of the farm Witkoppie No. 64, Registration Division IR, Gauteng Province (collectively, “the premises”).

[4] The first defendant utilised the premises for the repair of rail carriages and related engineering work, together with the administration thereof.

[5] In terms of the lease agreement and addenda, the first defendant was, inter alia, obliged to pay to the plaintiff: (a) with effect from 1 June 2024, a basic monthly rental of R600 000.00, escalating at 7% per annum, compounded; (b) municipal rates in the amount of R40 300.00 per month, together with such increases as contemplated in the lease agreement; (c) all charges for electricity and water consumed on or attributable to the premises, as measured by the relevant meters or sub-meters; and (d) all sanitary, refuse removal (including special refuse removal), sewerage and other local authority charges attributable to the premises.

[6] The second defendant bound himself as surety and co-principal debtor for the obligations of the first defendant in terms of the lease.

[7] The agreement provided that a certificate of balance by the plaintiff would determine and prove the balance of the first defendant's indebtedness arising from the lease agreement at any time and be prima facie proof of the fact of the first defendant's indebtedness and the amount thereof.

[8] It is alleged that during October 2024 the first defendant fell into arrears. On 8 October 2024 the plaintiff addressed a written demand to the first defendant, in terms of the lease agreement, affording it seven days to remedy the breach. At that stage, the first defendant was in arrears in the sum of R1 050 490.00. The breach was not remedied, and on 16 October 2024 the plaintiff cancelled the lease agreement for non-payment. The first defendant nevertheless remained in occupation of the premises.

[9] Thereafter, the first defendant made payment towards the outstanding amounts. The plaintiff contends that such payment did not extinguish the indebtedness and that an amount of R35 414.00 remained outstanding. In support of its monetary claim, the plaintiff relies on a statement of account and a certificate of balance reflecting arrears in that amount, which it contends is liquidated and readily ascertainable.

[10] The plaintiff issued summons on 15 November 2024. In the action, the plaintiff advances two claims. Claim 1 is for payment of the amount of R35 414.00, together with interest and ejectment from the premises. Claim 2 is a claim for damages in the amount of R31 850 248.42. The present application for summary judgment is confined to Claim 1 and the claim for ejectment.

The defendant's case

[11] The defendants oppose summary judgment on both procedural and substantive grounds.

[12] As a point in limine, they contend that the application is *lis alibi pendens*. They rely on earlier proceedings between the same parties concerning the same lease and premises, in which judgment was granted against the first defendant by Noko J on 9 May 2025. They argue that entertaining the present application undermines the pending appeal and offends section 18 of the Superior Courts Act 10 of 2013.

[13] The defendants further submit that ejectment was not properly pleaded, as the particulars of claim do not contain sufficient averments to sustain such relief and cancellation cannot competently be confirmed at the summary judgment stage.

[14] On the merits, the defendants deny that the lease was validly cancelled. They contend that the plaintiff attempted to cancel the lease on several occasions, that those cancellations were disputed and ineffective, and that the plaintiff cannot repeatedly cancel the same agreement. They further rely on the plaintiff's acceptance of rental and municipal payments over an extended period as demonstrating waiver of any prior cancellation or, alternatively, reinstatement of the lease. The defendants also rely on an alleged lien over the premises.

[15] In relation to the monetary claim, the defendants contend that the amount of R35 414.00 is not liquidated or easily ascertainable. They argue that the internal statement of account relied upon by the plaintiff does not reconcile, that supporting municipal invoices are absent, and that the certificate of balance is tainted by inaccuracies.

[16] The defendants also persist with a counterclaim for damages arising from alleged water damage to a diesel locomotive, quantified in foreign currency and said to far exceed the plaintiff's claim. They contend that this counterclaim constitutes a bona fide defence and gives rise to set-off.

Evaluation

[17] It is trite that Rule 32 is not intended to shut a defendant out of court where a triable issue is disclosed. At the same time, it is designed to prevent defendants from delaying judgment by raising defences that are illusory, vague or bad in law.¹

¹ See *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A).

[18] A defendant resisting summary judgment must disclose fully the nature and grounds of the defence and the material facts relied upon. The question is whether the facts alleged, if established at trial, would constitute a defence in law.²

[19] The plaintiff submits that the defences raised by the defendants are bald, unsubstantiated, and do not disclose facts which, if proved at trial, would constitute a defence to the claims. It accordingly seeks summary judgment as prayed.

Lis alibi pendens

[20] The defendants rely on lis alibi pendens arising from the prior proceedings before Noko J.

[21] A plea of lis pendens is a matter of substance which is ordinarily required to be raised by way of a special plea. In this matter, the defence was raised in the answering affidavit resisting summary judgment, but not in the plea.

[22] While a court is not precluded, in an appropriate case, from considering such a defence even if not formally pleaded, the failure to plead it is not without consequence. It underscores the absence of a properly formulated factual foundation for the defence and the fact that it was raised only at a later stage of the proceedings.

[23] In any event, even if the defence is considered on its merits, it cannot succeed.

[24] A plea of lis pendens is dilatory in nature. Its purpose is to prevent the duplication of litigation and the risk of conflicting judgments where there is pending litigation

² *PCL Consulting (Pty) Limited t/a Phillips Consulting SA v Tresso Trading 119 (Pty) Limited* 2009 (4) SA 68 (SCA), paragraph 8.

between the same parties, based on the same cause of action, and in respect of the same subject matter. The requirements for its successful invocation are well established: there must be pending litigation; between the same parties; based on the same cause; and in respect of the same relief.³

[25] While the parties and the lease are common to both sets of proceedings, the present claim is founded on alleged arrears arising in October 2024 and a cancellation effected on 16 October 2024.

[26] The earlier proceedings relied upon by the defendants concerned a different alleged cancellation and arose from a different factual matrix. In those proceedings, the first defendant breached the lease by failing to pay rates charges, despite a demand made on 2 August 2023. The breach was not remedied, and the plaintiff cancelled the lease by written notice.

[27] Proceedings were thereafter instituted, which were defended, and on 9 May 2025 Noko J granted an order ejecting the first defendant from the premises. That order is the subject of an appeal.

[28] The present proceedings are, however, founded on alleged arrears arising in October 2024 and a cancellation effected on 16 October 2024. A subsequent breach of contract may give rise to a fresh cause of action, notwithstanding the existence of prior litigation between the same parties. The distinction between the earlier cancellation and

³ *Caesarstone Sdot-Yam Ltd v The World of Marble and Granite 2000 CC and Others* (741/12) [2013] ZASCA 129 paras [1] to [3]; 2013 (6) SA 499 (SCA); [2013] 4 All SA 509 (SCA).

the October 2024 cancellation lies at the heart of the defendants' reliance on *lis pendens*.

[29] Section 18 of the Superior Courts Act regulates the execution and operation of orders that are the subject of appeal. It does not preclude the institution of fresh proceedings based on subsequent events. The defence of *lis alibi pendens* was, in any event, not pleaded, but raised only in the answering affidavit.

[30] In these circumstances, the defence does not, on the facts alleged, constitute a bona fide defence to the present claims.

The alleged arrears

[31] The defendants' denial of arrears is not supported by any factual detail. They state that have been paying rental in the amount of R600 000 per month. It is common cause, however, that the total monthly rental is approximately R645 000 plus VAT. On the defendants' own version, they were therefore not paying the full rental due in terms of the lease and were in arrears.

[32] The defendants do not set out what amounts were due, what payments were made, when such payments were made, or how any alleged arrears were extinguished prior to cancellation. A bare denial of indebtedness, unsupported by factual detail, does not constitute a bona fide defence.

[33] It is further common cause that, after the cancellation of the lease on 16 October 2024, the first defendant made a payment. The plaintiff alleges that this payment did not extinguish the indebtedness and that an amount remained outstanding.

[34] The timing of the payment is significant. A payment made after cancellation does not cure the breach that entitled the plaintiff to cancel, nor does it retrospectively invalidate a cancellation lawfully effected. To resist ejectment, the first defendant was required to show that it had discharged its obligations prior to cancellation. This it has not done.

[35] The defendants' reliance on a subsequent payment, coupled with a bare denial of arrears, does not constitute a bona fide defence.

Alleged lien

[36] In their plea, the defendants make reference to an alleged lien over the premises. However, no facts are set out in the answering affidavit in support of such a defence. The nature of the lien, the basis upon which it is said to arise, and the factual circumstances giving rise to it are not disclosed.

[37] A defendant resisting summary judgment is required to set out fully the material facts upon which the defence is based. A bare assertion of a lien, without supporting facts, does not constitute a bona fide defence and falls to be disregarded.

Waiver and reinstatement

[38] Waiver is not lightly inferred. It occurs where a party, with full knowledge of a right, intentionally relinquishes or abandons it. The test is objective: the party's intention is assessed with reference to their outward conduct, whether expressed through words, actions, or a combination of both. In *Coppermoon Trading 13 (Pty) Ltd v Government*,

Eastern Cape Province,⁴ the court held that where waiver is not expressly stated, the conduct relied upon must, on a reasonable interpretation, be more consistent with an intention to waive the right than to assert it.

[39] The onus rests on the party alleging waiver to establish it on the facts. The defendants rely primarily on the plaintiff's acceptance of rental and municipal payments over a period of time, as well as the dispatch of a further demand and cancellation in October 2024. They contend that this conduct is indicative of a waiver of the plaintiff's right to cancel, or alternatively, a reinstatement of the lease.

[40] This contention is not supported by the facts alleged. The acceptance of payments, without more, does not constitute a waiver of a prior breach or cancellation. It is not inconsistent with an intention to enforce contractual rights, particularly where the underlying breach has not been remedied.

[41] Significantly, the defendants do not allege the conclusion of any agreement—whether express or tacit—by which the lease was reinstated. Nor do they set out facts demonstrating conduct that is unequivocally consistent only with an intention to abandon the right to cancel.

[42] The plaintiff's conduct in issuing a fresh demand and cancelling the lease in October 2024 is, if anything, indicative of an intention to enforce its rights under the lease, rather than to waive them.

⁴ 2020 (3) SA 391 (ECB) at para 23.

[43] The issue is not whether the defendants' version is probable, but whether the facts alleged, if proved at trial, would constitute a defence in law. On the facts alleged, the reliance on waiver or reinstatement is untenable and does not constitute a bona fide defence.

Ejectment and cancellation

[44] The particulars of claim allege the existence of the lease, breach by non-payment, demand, cancellation, and continued occupation. Ejectment is the natural consequence of a valid cancellation and holding over.

[45] The defendants' contention that the plaintiff cannot cancel the lease more than once is not supported by principle. Where a lessee commits fresh breaches, the lessor is not precluded from cancelling on the basis of those breaches, provided the contractual requirements are met.

[46] The defendants do not allege that the amounts demanded were paid prior to the October 2024 cancellation, nor do they allege any agreement reinstating the lease after cancellation. Reliance on post-cancellation negotiations or the acceptance of payments, without more, does not in itself establish waiver or reinstatement.

[47] The defence to ejectment is largely argumentative and does not disclose facts which, if proved, would probably defeat the plaintiff's claim.

Quantum/Counterclaim

[48] The defendants contend that the amount claimed is not easily ascertainable. While the claim arises from agreed charges under the lease and is supported by a

certificate of balance, the defendants have raised issues concerning the reconciliation of the account.

[49] The defendants further rely on a counterclaim sounding in damages. While such a claim does not, without more, constitute a defence to ejectment, it underscores that there are disputes relating to the monetary aspects of the claim.

[50] In the circumstances, and notwithstanding the deficiencies in the defendants' version, I am not persuaded that the plaintiff is entitled to summary judgment in respect of the monetary claim, which is more appropriately determined at trial.

Guarantee

[51] The defendants also rely on the existence of a guarantee, contending that it ought to be taken into account in determining the plaintiff's claim. This contention is not advanced as a defence to cancellation or ejectment, but rather as part of the defendants' challenge to the quantification of the amount allegedly owing and, implicitly, as a basis for set-off.

[52] In any event, the defendants do not allege that the conditions for repayment of the guarantee have been met. They remain in occupation of the premises and dispute the validity of the cancellation. In those circumstances, the reliance on the guarantee does not constitute a defence to ejectment and does not, on the facts alleged, avail the defendants in resisting summary judgment on that aspect of the claim.

Conclusion

[53] The defence of *lis alibi pendens* is without merit. The defendants have failed to disclose any facts which, if proved at trial, would constitute a defence to the plaintiff's entitlement to cancel the lease and seek ejectment.

[54] On the defendants' own version, they were not paying the full rental due and were accordingly in arrears at the time of cancellation. They have failed to establish that the breach was remedied prior to cancellation or to advance any factual basis upon which it can be said that the plaintiff was not entitled to cancel the lease. The plaintiff has accordingly established its entitlement to ejectment.

[55] In relation to the monetary claim, however, I am not persuaded that summary judgment is appropriate. That aspect is more suitably determined at trial.

[56] In the result, summary judgment is granted in favour of the plaintiff to the extent set out below:

1. Summary judgment is granted in favour of the plaintiff in respect of the ejectment of the first defendant.
2. The lease agreement between the plaintiff and the first defendant is declared to have been validly cancelled on 16 October 2024.
3. The first defendant is ordered to vacate the premises within 14 days from date of this judgment, that is on or before 21 April 2026, failing which the sheriff is authorised to eject the first defendant.

4. The defendants are granted leave to defend the plaintiff's claim for payment of R35 414.00 and any related monetary relief.
5. Costs are costs in the cause.

L. WINDELL

JUDGE OF THE HIGH COURT

**GAUTENG LOCAL DIVISION,
JOHANNESBURG**

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 8 April 2026.

APPEARANCES

For the applicant:	J G Dobie
Instructed by:	Reaan Swanepoel Attorneys
For the respondent:	A Allison
Instructed by:	Vardakos Attorneys
Date of hearing:	2 February 2026
Date of judgment:	8 April 2026

