



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2023-01362

- 1. Reportable: No
- 2. Of interest to other judges: No
- 3. Revised

A handwritten signature in blue ink is written over a black rectangular redaction box. The signature appears to be "Wright J".

16 March 2026

WRIGHT J

SIGNATURE

In the matter between:

GARTH IAN UPTON

APPLICANT

and

SOUTH AFRICAN SECURITISATION PROGRAMME

(RF) LTD

FIRST RESPONDENT

SASFIN BANK LIMITED

SECOND RESPONDENT

JUDGMENT – WRIGHT J

1. Default judgment was granted in favour of the present respondents against Mr Upton, the present applicant. Mr Upton now seeks rescission of that judgment. He bases his application on Rule 31(2)(b). His application was launched a few days late. He needs to explain his lateness and he needs to establish absence of wilful default in not defending the action and he needs to put up a defence to the claim.
2. He says that he never received the summons. The day after he found out about the judgment he contacted an attorney. There was a short delay in counsel finalising the rescission papers.
3. The answering affidavit concedes on the short delay in getting the present application out and it concedes that Mr Upton did not wilfully fail to defend the action. In these circumstances the only question is whether Mr Upton puts up a defence to the action.
4. Mr Upton alleges that the particulars of claim are excipiable as not disclosing a cause of action.
5. The particulars of claim do not make for easy reading. I shall attempt to capture the essence as best I can.
6. In short, the respondents, as creditor or cessionary of a creditor's claim, lent money to a company, Maximise, that Mr Upton was once involved in.

7. The particulars of claim allege, in paragraph 8, that Mr Upton, on 18 December 2013 bound himself in writing as guarantor and co-principal debtor for the debts of Maximise to Sunlyn, the present second respondent. A copy of the agreement is attached to the particulars of claim and it reflects Mr Upton as signatory.
8. A Mr De Sousa, apparently a former business associate of Mr Upton, appears to have signed at least one document relevant to present proceedings.
9. The particulars of claim allege, in paragraph 29, that Mr Upton, on 14 April 2020, acting in his personal capacity and as representative of Maximise, admitted to having breached a certain warranty agreement “ *by signing the guarantee to the rental agreement provided by De Sousa* “. Mr Upton “ *witnessed to the purported signing of the guarantee by De Sousa under circumstances where he was not present when the guarantee was signed; De Sousa having subsequently denied that the signature appearing on the guarantee is his signature.*”
10. In paragraph 30 it is alleged that “ *the allegations of De Sousa, are correct, and as a consequence the plaintiffs are not able to recover from De Sousa the balance of the rental instalments due and payable.* “
11. It may be, that at the end of the day the respondents have a valid cause of action against Mr Upton. It may be that the document signed by Mr Upton on 18 December 2013 forms the basis for a discrete cause of action. The problem now for the respondents is that their cause of action, assuming that they have one, is camouflaged by the unclear allegations relating to Mr De Sousa and the witnessing of an agreement.

In my view, the particulars of claim are excipiable, at least for the reason that they are vague and embarrassing.

12. The judgment cannot stand.

13. Counsel for Mr Upton handed up a draft order.

ORDER

1. X –



WRIGHT J

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 16 March 2026

DELIVERED : 16 March 2026

APPEARANCES :

APPLICANT P Maluleke

Instructed by

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RESPONDENTS

No appearance

Instructed by