REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-045713

1. NOT REPORTABLE
2. NOT OF INTEREST TO OTHER JUDGES
Date: 19 March 2026
Signature: Khaba AJ

In the matter between:

HBGSCHINDLERS ATTORNEYS AND NOTARIES	Applicant
And	
GLEN ACRE 16 (PTY) LIMITED [In business Rescue]	First Respondent
MARK VAN HOUTEN	Second Respondent

In re:

HBGSCHINDLERS ATTORNEYS AND NOTARIES Plaintiff

And

GLEN ACRES 16 (PTY) LIMITED
[In Business Rescue] First Defendant

MARK VAN HOUTEN Second Defendant

Neutral Citation: *HBG Schindlers Attorneys and Notaries v Glen Acres 16 (Pty) Ltd (In Business Rescue) & Mark Van Houten (045713-2025) [2026] ZAGPJHC ------ (19 March 2026)*

Coram: Khaba AJ

Heard: 10 February 2026

Delivered: 19 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 19 March 2026.

Summary: Application for Summary Judgment – whether the requirements contained in Rule 32(1) and (2) of the Uniform Rules of Court have been satisfied – No facts pleaded to support bona fide defence – Application granted.

ORDER

---

1. The second respondent's point *in limine* is dismissed.

2. The application for summary judgment is granted against the second respondent.

3. The second respondent is ordered to pay the applicant the sum of R 800 190.39

4. Interest on the aforesaid amount at a rate of 2% per month, compounded from date of first demand to date of payment.

5. The second respondent is ordered to pay the costs of this application on the scale as between attorney and client scale, including cost consequent upon the employment of senior counsel, such costs to be taxed on scale C.

JUDGMENT

KHABA AJ:

Introduction:

[1] This is an opposed application for summary judgment. The applicant, HBGSchindlers Attorneys and Notaries *("Schindlers"),* a firm of attorneys, instituted action against the first and second respondents for the recovery of legal fees in the amount of R800,190.39. The first respondent, Glen Acre 16 (Pty) Ltd *("Glen Acre"),* is cited as being under business rescue. No relief is sought against the first respondent at this stage. The claim against the second respondent, Mr. Mark van Houten *("Van Houten"),* is founded upon a deed of suretyship contained within a written fee agreement concluded on 19 May 2022.

[2] The second respondent has filed a plea and an affidavit resisting summary judgment. The first respondent's attorneys filed a notice of withdrawal on 25

November 2025, and the first respondent was not represented in these proceedings.

[3] The applicant launched an application for summary judgment against the second respondent in terms of Rule 32(1) and (2) of the Uniform Rule of Court. The relief sought is for payment of the capital sum, of R 800 190.39 (eight hundred thousand, one hundred and ninety rand and thirty-nine cents); interest at the rate of 2% per month compounded from the date of first demand, and costs on the attorney and client scale.

[4] The second respondent has opposed the application, raising a point *in limine* concerning the adequacy of the verifying affidavit, and substantive defences based on the nature of the claim and the validity of the suretyship.

The Factual Background:

[5] The material facts, as gleaned from the pleadings and the voluminous annexures, are largely common cause. On or about 19 May 2022, the applicant and the first respondent concluded a written fee agreement *(the "fee agreement").* The second respondent signed the fee agreement on behalf of the first respondent in his capacity as its sole director.

[6] The first page of the fee agreement contains a clear and prominent notification: "The client will instruct Schindlers from time to time in respect of the client's requirements for legal advice and assistance and Schindlers and the client's relationship will be governed in each such instruction by the terms and conditions set out in this letter of engagement, which incorporates a suretyship." (Emphasis added).

[7] Clause 35 of the fee agreement, under the bold heading *"SURETYSHIP"*, provides as follows:

"35.1 Notwithstanding anything to the contrary herein contained, if the Client is a legal entity, the Representative (the 'Surety') hereby binds himself/herself as surety and co-principal debtor in solidum with the Client, in favour of Schindlers, for the due and proper performance of all of the obligations of the Client in terms of this Agreement."

[8] The clause continues by setting out the terms of the suretyship and includes a renunciation of the benefits of excussion, division, and others. Critically, clause 35.2.5 places the onus on the surety, should they dispute the indebtedness, to prove that the amount is not owing.

[9] Between 31 May 2022 and 25 January 2024, the applicant rendered legal services to the first respondent. Invoices were rendered monthly. The first respondent never disputed any of the charges. Despite demand, the first respondent failed to pay the outstanding amount of R800,190.39, as certified by a certificate of balance signed by a partner of the applicant on 26 March 2025.

[10] Formal demand was made upon the second respondent in his capacity as surety on 17 January 2025. The second respondent failed to make payment, prompting the applicant to issue summons on 01 April 2025.

[11] The second respondent delivered a plea on 13 June 2025, essentially denying that he bound himself as surety, alleging that the fee agreement was illegible, and claiming that the suretyship constituted a *"trap for the unwary"* and was therefore void. The second respondent also denied that the fees were reasonable.

[12] The applicant thereafter launched this summary judgment application. The affidavit in support is deposed to by Ms. Lindelwa Magwaza, a candidate attorney in the employ of the applicant and a member of the legal team handling the matter. Ms. Magwaza states that she was personally involved in drafting the summons and that the facts contained in her affidavit are within her personal

knowledge. A resolution by the partners of the applicant firm, authorising her to depose to the affidavit, is attached in her founding affidavit.

[13] In his affidavit resisting summary judgment, the second respondent reiterates his plea. The second respondent admits signing the fee agreement on behalf of the first respondent but contends that he did not read it and he was unaware it contained a suretyship. The second respondent contends that he was never informed that he would become a personal surety and that had he known, he would not have signed. The second respondent further submits that the claim for legal fees is not a liquidated amount and falls outside the scope of Rule 32.

The issues for Determination:

[14] The crisp issues for determination by this court are:

[14.1] Whether the verifying affidavit deposed to by Ms. Magwaza meets the requirements of Uniform Rule 32(2) (the point *in limine*);

[14.2] Whether the applicant has satisfied the requirements under Rule 32 for summary judgment to be granted;

[14.3] Whether the second defendant has disclosed a *bona fide* defence to the action which is good in law; and

[14.4] The appropriate order as to costs.

The evaluation of Point in Limine: The verifying Affidavit; Substance Form and the Rise of Institutional Knowledge:

[15] The second respondent's point *in limine* invites this court to engage with one of the most persistently litigated aspects of Rule 32: the requisite quality of knowledge that a deponent must possess to *"swear positively to the facts."*

[16] Mr. Bhima, counsel on behalf the second respondent, submitted with vigour that the application is fatally defective. He argued that Ms. Magwaza, a candidate attorney, cannot *"swear positively to the facts"* as required by Rule 32(2). Mr. Bhima contended that she lacks personal knowledge of the facts, particularly those occurring before her employment, and that her affidavit fails to verify the cause of action properly. Mr. Bhima relied heavily on the principles enunciated in *Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A)*[1] and *FirstRand Bank Ltd v Beyer 2011 (1) SA 196 (GNP)*[2] the court held:

> Rule 32(2)(a) and (b) require that the affidavit be made by the plaintiff or "by any other person who can swear positively to the facts verifying the cause of action and the amount, if any, claimed…".

[17] The locus classicus on this point remains *Maharaj v Barclays National Bank* Ltd, where the court held that while the deponent need not be the plaintiff themselves, they must have personal knowledge of the facts. The court held that the mere assertion that one can swear positively is insufficient; the affidavit must contain facts from which the court can conclude that the deponent has the requisite knowledge.

[18] However, the jurisprudence has developed to adopt a practical, substance-over-form approach. *In Barclays Western Bank Ltd v Bill Jonker Factory Services (Pty) Ltd and Another 1980 (1) SA 929 (SE)*[3], Addleson J held that the rule does not require the deponent to have personal knowledge of every fact that makes up the cause of action, such as historical negotiations. The knowledge must relate to the facts upon which the cause of action is based, which are primarily those contained in the plaintiff's own documents and records.

[1] Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A).
[2] FirstRand Bank Ltd v Beyer 2011 (1) SA 196 (GNP) at para 7
[3] Barclays Western Bank Ltd v Bill Jonker Factory Services (Pty) Ltd and Another 1980 SA 929(SE)

[19] More recently, in *Stamford Sales & Distribution (Pty) Ltd v Metraclark (Pty) Ltd 2014 JDR 1125 (SCA)*[4], the Supreme Court of Appeal confirmed that:

> "…as long as there is direct knowledge of the material facts underlying the cause of action, which may be gained by a person who has possession of all of the documentation, that is sufficient". The enquiry is fact-based and considers the contents of the verifying affidavit together with the other documents properly before the court."

[20] Applying these principles to the present matter, I find the second respondent's point *in limine* to be without merit. Ms. Magwaza's affidavit must be read in its entirety and in context. She states the following:

[21.1] She is a member of the applicant's legal team working on the matter.

[21.2] She was personally involved in the drafting of the summons.

[21.3] She has been involved in all legal transactions subsequent to the summons.

[21.4] She attests that the facts in her affidavit are within her personal knowledge and are true and correct.

[21] Critically, her verification is not based on a distant memory of events, but on the comprehensive documentary record that forms the backbone of the applicant's case. Ms. Magwaza references and attaches the fee agreement, the invoices, the demand, and the certificate of balance. The cause of action is a written contract. Ms. Magwaza's knowledge is derived from a thorough perusal of these documents, which are within her custody as part of the legal team.

[4] Stamford Sales & Distribution (Pty) Ltd v Metraclark (Pty) Ltd 2014 JDR 1125 (SCA).

[22] The nature of a law firm's claim for fees is particularly suited to verification by a legal practitioner involved in the matter, even if they are a candidate attorney. The facts are primarily documentary. To require a partner who personally interacted with the client in 2022 to depose to the affidavit would be to elevate form over substance, a result our courts have consistently sought to avoid. Ms. Magwaza has a direct and professional knowledge of the files and the history of the matter. She is, in the words of the *Stamford Sales* case, a person who has *"possession of all of the documentation"* and can thus verify the cause of action.

[23] Ms. Magwaza's affidavit must be evaluated against this evolved standard. Ms. Magwaza is not a mere conduit for hearsay. She is a legal professional engaged in the active management of the litigation. She has possession of the fee agreement, the invoices, the certificate of balance, and the correspondence. Ms. Magwaza attests to facts that are, in their essence, documentary. The creation of the contract in 2022, the rendering of services, the failure to pay - these are not events requiring eyewitness testimony. They are facts evidenced by documents, and a deponent who has studied those documents and can attest to their authenticity and meaning is properly described as one who can *"swear positively."*

[24] The second respondent's criticism that Ms. Magwaza *"practises as an attorney"* while being a candidate attorney is an unfortunate and pedantic attack on her professional standing. It does not go to the heart of her ability to verify the facts. The resolution passed by the partners of the firm authorising her to act confirms her authority to depose to the affidavit on behalf of the firm

[25] The second respondent's submission that a candidate attorney cannot possess such knowledge is not only legally unsustainable but reflects a misunderstanding of the hierarchical structure of a modern law firm. Candidate attorneys are often the front-line custodians of litigation files, possessing a granular familiarity with the documentation that partners, burdened with broader

managerial responsibilities, may lack. To disqualify their evidence would be to privilege status over substance, a result our courts have consistently eschewed.

[26] In *Standard Bank of South Africa Ltd v Secatsa Investments (Pty) Ltd and Others 1999 (4) SA 229 (C) at 234B-C*[5], the court held that "the court must be satisfied, prima facie, that the deponent is such a person"- that is, a person who can swear positively. The court is entitled to draw inferences from the deponent's position and the nature of the facts deposed to. Ms. Magwaza's position as a member of the legal team, her involvement in drafting the summons, and her detailed knowledge of the documentary record collectively establish, *prima facie,* that she possesses the requisite knowledge.

[27] Consequently, the second respondent's point *in limine* is dismissed. The verifying affidavit complies substantially, if not strictly, with the requirements of Rule 32(2). The deponent is a person who can, and does, swear positively to the facts of the applicant's cause of action.

The Liquidated Amount Debate; Reconciling Tredoux and Fee Agreement:

[28] The second respondent's contention that a claim for professional fees falls outside Rule 32 because it requires taxation raises profound questions about the nature of liquidated claims and the intersection between contractual freedom and regulatory oversight of the legal profession.

[29] In *Tredoux v Kellerman 2010 (1) SA 160 (C)*[6] *at para [15],* Griesel J (as he then was) held that claims for professional fees,

> *"Involve an enquiry into the nature and extent of the professional services rendered, the reasonableness of fees charged, and so on. These are not mere matters of* calculation*; they are matters for taxation."*

---

[5] Standard Bank of South Africa Ltd v Secatsa Investments (Pty) Ltd and Others 1999 (4) SA 229 (C) at 234B-C.
[6] Tredoux v Kellerman 2010 (1) SA 160 (C) at para 15.

[30] The Supreme Court of Appeal in *Blakes Maphanga Inc v Outsurance Insurance Co Ltd 2010 (4) SA 232 (SCA)*[7] endorsed this proposition, holding that "a client is entitled to taxation of his or her attorney's account." These authorities establish a default rule: in the absence of agreement, an attorney's claim for fees is unliquidated and must be taxed.

[31] However, these authorities do not, and cannot, displace the foundational principle of freedom of contract. Where parties have *agreed* upon the fees, whether by reference to hourly rates or a fixed fee, the claim becomes liquidated. The enquiry shifts from an objective assessment of reasonableness to a contractual determination of compliance with the agreed terms

[32] The fee agreement *in casu* is a paradigm of contractual specificity. It sets forth hourly rates, the basis of charging (six-minute increments), and the obligation to pay disbursements. The invoices rendered pursuant to this agreement reflect these contractual parameters. The first respondent, represented by the second respondent received these invoices monthly and raised no objection. The debt is therefore not only quantified but contractually admitted by conduct.

[33] The certificate of balance, annexed as *"POC12"* and signed by a partner of the applicant, operates as a contractual mechanism for evidencing the debt. In terms of clause 32.6 of the fee agreement, such certificate constitutes *"prima facie proof of the obligation or amount of the indebtedness."* The second respondent's plea admits that the certificate is annexed but does not challenge its contents. This admission, coupled with the absence of any timely objection to the invoices, renders the amount liquidated for the purposes of Rule 32.

[34] In the instant case, the amount claimed is neither unascertained nor unliquidated. The parties entered into a written fee agreement which set out the rates at which the applicant would charge for its services. The applicant

[7] Blakes Maphanga Inc v Outsurance Insurance Co Ltd 2010 (4) SA 232 (SCA) at para 12.

rendered invoices on a monthly basis in accordance with that agreement. Critically, the second respondent admits, and the papers confirm, that the first respondent never disputed any of the invoices at the time they were rendered. The debt is quantified and based on an agreement. It is only now, in an attempt to resist summary judgment, that the second respondent vaguely alleges the fees were not reasonable.

[35] The certificate of balance, signed by a partner of the applicant in terms of the agreement, constitutes *prima facie* proof of the amount owed. The amount is therefore liquid, as it is capable of prompt ascertainment from the agreement and the invoices.

[36] The cases cited by the second respondent are distinguishable. In *Tredoux*, the claim was for professional fees where there was no agreement as to the amount. The court was at pains to point out that "a client is entitled to taxation of his or her attorney's account" *in the absence of an agreement*. Where, as here, there is a written fee agreement and a series of rendered and undisputed invoices, the amount is liquidated. To hold otherwise would be to render Rule 32 impotent in every attorney-client fee dispute, a result never intended by the rule-makers.

The Bona Fides of the Respondent's Case:

[37] The central question is whether the second respondent has satisfied the court that he has a *bona fide* defence to the action. The amended Rule 32 requires the defendant to disclose fully the nature and grounds of the defence, and the material facts relied upon therefor. The court must consider the plea together with the affidavit resisting summary judgment. A defendant is not required to prove their defence, but they must set out facts which, if proved at trial, would constitute a good defence in law. Bald denials and sketchy propositions are insufficient.

[38] The second respondent's defence can be distilled into two main propositions. Firstly, that he was unaware of the suretyship clause and was misled, rendering the obligation void *ab initio* on the basis of *iustus error*. Secondly, that he never waived the benefits of excussion and division. I deal with these in turn.

The Defence of Iustus Error:

[39] Mr. Bhima, counsel on behalf of the second respondent, placed heavy reliance on the Supreme Court of Appeal decision of *Brink v Humphries & Jewell (Pty) Ltd 2005 (2) SA 419 (SCA)*[8]. In that matter, the appellant signed a credit application form on behalf of his company. At the bottom of the form, above the signature, were densely printed paragraphs which included a suretyship. The court found that the furnishing of a misleading document, without more, could constitute a misrepresentation. The form was described as "*a trap for the unwary,*" and the appellant's mistake was held to be *iustus*, rendering the suretyship void.

[40] Counsel on behalf for the applicant, Mr. Uys SC, argued that *Brink* is distinguishable and that the second respondent, as a sophisticated businessman, cannot rely on such a defence. He invoked the *caveat subscriptor* principle, citing *George v Fairmead (Pty) Ltd 1958 (2) SA 465 (A)*[9] and *Afrox Healthcare Beperk v Strydom 2002 (6) SA 21 (SCA)*[10], for the proposition that a person who signs a contract is bound, even if they failed to read it, unless they can show fraud or misrepresentation.

[41] The facts of *Brink* bear close scrutiny. The appellant, a farmer, signed a credit application form on behalf of his company. The form was presented to him as a standard credit application. At the foot of the document, in dense print, were

[8] Brink v Humphries & Jewell (Pty) Ltd 2005 (2) SA 419 (SCA).
[9] George v Fairmead (Pty) Ltd 1958 (2) SA 465 (A).
[10] Afrox Healthcare Beperk v Strydom 2002 (6) SA 21 (SCA).

paragraphs containing a suretyship. There was no indication on the face of the document that signing would entail personal liability. The Supreme Court of Appeal held that the respondent's conduct in furnishing a misleading form, without drawing attention to the suretyship, induced a fundamental mistake. Cloete JA stated at paragraph 15: *"The form was a trap for the unwary and the appellant was caught by it."*

[42] I am of the view that the second respondent's reliance on *Brink* is misplaced, and the facts of this case are poles apart from those in *Brink*. A comparison of the documentation is instructive. In *Brink*, the suretyship clause was buried at the bottom of a page, in a block of dense text, and there was no indication on the face of the document that signing it would entail a personal suretyship. The document was presented as a simple credit application.

[43] In *casu,* the position is markedly different. The very first page of the fee agreement contains a plain-language warning: *"which incorporates a suretyship."* This is not a *"trap for the unwary"*; it is a neon sign for the wary. Any person of ordinary intelligence, let alone a sole director of a company developing a multi-million-rand sectional title scheme, would be put on notice that their personal liability might be engaged.

[44] Furthermore, the suretyship clause itself is contained under its own bold, capitalised heading: "SURETYSHIP". It is not hidden in fine print. It is a standalone provision of the contract.

[45] The second respondent's evidence that he did not read the agreement is fatal to his defence. In *George v Fairmead (Pty) Ltd 1958 (2) SA 465 (A)*[11], the court held that an error is not *iustus* if it is caused by the party's own failure to exercise reasonable care. The second respondent was given a document that clearly stated it contained a suretyship. The second respondent chose not to

[11] George v Fairmead (Pty) Ltd 1958 (2) SA 465 (A) at 472A.

read it. The second respondent cannot now complain that he was misled. The *caveat subscriptor* rule applies with full force.

[46] Moreover, the second respondent's assertion that he is a "*sophisticated businessman*" undermines his defence. The second respondent admitted under oath that he has signed *"dozens, if not hundreds"* of documents as a director. The second respondent knew that if he was to stand surety, he would normally sign a separate deed. This very knowledge should have prompted him to enquire why the fee agreement contained a reference to a suretyship. The second respondent's failure to do so was a negligent omission. A mistake induced by one's own negligence is not *iustus*.

[47] The second respondent's statement that "*I was misled by the applicant in signing the fee agreement"* is a bare allegation, devoid of any supporting facts. There is no suggestion that anyone from the applicant firm made any representation to him, innocent or fraudulent, about the nature of the document. The only *"misleading"* conduct he points to is the content of the document itself. But as I have found, the document was not misleading. It was transparent. In *George v Fairmead (Pty) Ltd*[12], the Appellate Division held that an error is not *iustus* if it is due to the party's own failure to exercise reasonable care. The second respondent's failure to read a document that plainly warned him of its contents constitutes precisely such a failure. He cannot invoke his own negligence to avoid his obligations.

[48] The Constitutional Court in *Beadica 231 CC and Others v Trustees, Oregon Trust and Others 2020 (5) SA 247 (CC)*[13] reaffirmed the centrality of *pacta sunt servanda* to our legal order. While acknowledging that public policy may, in extreme cases, justify a departure from this principle, the court emphasised that such cases are exceptional. This is not such a case. To hold the suretyship

[12] Ibid at 471B.
[13] Beadica 231 CC and Others v Trustees, Oregon Trust and Others 2020 (5) SA 247 (CC) at paragraph 87.

unenforceable would be to sanction the second defendant's negligence and to undermine the reliability of written agreements.

[49] I therefore find that the second respondent has failed to establish a defence of *iustus error*. The second respondent is bound by the terms of the agreement that he signed. The second respondent's purported mistake was not justifiable in the circumstances.

The Defence Regarding Waiver of Benefits:

[50] The second respondent's plea denies that he waived the benefits of excussion and division. This issue need not detain us long.

[51] The second respondent bound himself as a "*surety and co-principal debtor* in solidum." In *Neon & Cold Cathode Illuminations (Pty) Ltd v Ephron 1978 (1) SA 463 (A)*[14], the Appellate Division held that the consequence of a surety undertaking liability as a co-principal debtor is that they tacitly renounce the ordinary benefits available to a surety, such as excussion and division, and become liable jointly and severally with the principal debtor.

[52] By agreeing to be a co-principal debtor, the second respondent effectively waived these benefits. The express renunciation in the agreement merely confirms the legal position. This defence, even if it had not been abandoned in the opposing affidavit, is bad in law.

The Overall Assessment of the Defence:

[53] The second respondent's plea and resisting affidavit are replete with bald denials and unsubstantiated allegations. The second respondent denies binding himself as surety yet admits signing the agreement. The second respondent

---

[14] Neon & Cold Cathode Illuminations (Pty) Ltd v Ephron 1978 (1) SA 463 (A).

claims the agreement was illegible yet makes no attempt to obtain a legible copy and admits he did not read it anyway. The second respondent disputes the reasonableness of the fees yet provides not a single particular of why they are unreasonable. The second respondent raises a defence of *iustus error* yet cannot point to a single representation made to him.

[54] In *NPGS Protection and Security Services CC and Another v FirstRand Bank Ltd 2020 (1) SA 494 (SCA)*[15], "the court held that a defendant cannot content themselves with bald denials; something more is required." The second respondent has failed to clear this hurdle. The second respondent has not disclosed a defence which is both *bona fide* and good in law.

[55] The applicant has made out a clear and unanswerable case. The second respondent's appearance to defend, in the face of such clear contractual provisions and his own admissions, can only be interpreted as a tactic to delay the inevitable.

The Suretyship Clause: Interpretation and Renunciation of Benefits:

[56] The proper interpretation of clause 35 of the fee agreement requires this Court to apply the established canons of contractual interpretation. In *Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)*[16], Wallis JA held that interpretation is a unitary exercise, requiring the court to consider the language of the provision in the light of the contract as a whole and the factual matrix.

[57] Clause 35.1 is unequivocal: "*the Representative (the 'Surety') hereby binds himself/herself as surety and co-principal debtor in solidum with the Client.*" The

[15] NPGS Protection and Security Services CC and Another v FirstRand Bank Ltd 2020 (1) SA 494 (SCA) at para 11.
[16] Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA0 at para 18.

second respondent is the representative. The second respondent signed the agreement. The language admits of no ambiguity.

[58] The consequences of this undertaking are well-established. In *Neon & Cold Cathode Illuminations (Pty) Ltd v Ephron 1978 (1) SA 463 (A)*[17], Trollip JA held:

> "...generally, the only consequence ...that flows from the surety also undertaking liability as a co-principal debtor is vis-à-vis the creditor he thereby tacitly renounces the ordinary benefits available to a surety such as those of excussion and division and becomes jointly and severally liable with the principal debtor.'.".

[59] The express renunciation in clauses 35.2.1 to 35.2.5 merely codifies the legal position. The second respondent's denial that he waived these benefits is, with respect, legally irrelevant. The waiver is effected by operation of law upon his agreement to be a co-principal debtor. No separate or conscious waiver is required.

[60] I pause to note that clause 35.2.5 places the onus on the surety, should they dispute the existence of the debt, to prove that the amount is not owing. The second respondent has made no attempt to discharge this onus. The second respondent's vague assertion that the fees are *"not reasonable"* is precisely the type of bald denial that Rule 32 is designed to expose.

The Resting Affidavit: The Study in Inadequate Disclosure:

[61] The second respondent's affidavit resisting summary judgment provides this Court with an opportunity to reflect on the quality of disclosure required by Rule 32(3)(b). The rule requires the defendant to "*disclose fully the nature and grounds of the defence and the material facts relied upon therefor.*"

---

[17] Neon & Cold Cathode Illuminations (Pty) Ltd v Ephron 1978 (1) SA 463 (A) at 470A-C.

[62] In *Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T)*[18], Colman J held that the defendant must set out facts which, if proved at trial, would constitute a defence, the court held that:

"The relation to the affidavit "... no more is called for than this: that the statement of material facts be sufficiently full to persuade the Court that what the defendant has alleged, if it is proved at the trial, will constitute a defence to the plaintiff's claim."

[63] The second respondent's affidavit falls woefully short of this standard. The second respondent's defence that he was *"misled"* is advanced without a single particular of who misled him, what was said, or when it was said. The second respondent's defence that the fees are unreasonable is advanced without a single example of an excessive charge or a comparison to any benchmark. The second respondent's defence that he was unaware of the suretyship is contradicted by his admission that he signed the agreement without reading it, despite the clear warning on the first page.

[64] In *NPGS Protection and Security Services CC and Another v FirstRand Bank Ltd*[19], the Supreme Court of Appeal held that:

"a defendant cannot content him- or herself with bald denials... Something more is required." The second respondent has offered nothing more. The second respondent's affidavit is a tapestry of bald denials, woven together with threads of self-serving statements that are contradicted by the documentary record".

[65] The court retains a discretion to refuse summary judgment even where the defendant's affidavit is deficient, if there is a reasonable possibility that a defence exists. However, this residual discretion is not a licence to speculate. It must be exercised on the basis of the facts before the court. In this matter, there are no basis, factual or legal, to support the existence of a defence.

[18] Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T) at 228B-C.
[19] Supra note 8 at para 11.

Analysis:

The Broader Reflections: Contract, Commerce and the Role of Court:

[66] Before concluding, I consider it appropriate to reflect on the broader implications of this judgment. South Africa is a constitutional democracy committed to the rule of law and the protection of fundamental rights. Among these rights is the right to access to courts in terms of section 34 of the Constitution. However, this right must be exercised responsibly. It is not a licence to abuse the court's process through the pursuit of meritless defences.

[67] The law of contract is the bedrock of commercial life. It enables parties to plan their affairs with confidence, secure in the knowledge that agreements seriously entered into will be seriously enforced. The *caveat subscriptor* rule, properly applied, serves this purpose. It holds signatories to their bargains and prevents them from escaping liability through their own carelessness.

[68] The doctrine of *iustus error* serves as an important, but limited, exception to this rule. It protects those who are genuinely misled, not those who choose not to read. It shields the unwary, not the wilfully ignorant. The second respondent, a sophisticated businessman who chose not to read a document that plainly warned him of its contents, falls outside the protective ambit of this doctrine.

[69] This judgment should not be read as discouraging respondents' from pursuing legitimate defences. The doors of the court remain open to those with genuine triable issues. But those doors are not revolving doors, designed to admit defendants who enter an appearance solely to delay. Rule 32 exists to identify and expel such defendants at an early stage, thereby preserving judicial resources for matters that genuinely require adjudication.

Epilogue:

[79] I close with the words of Innes CJ in *Burger v Central South African Railways 1903 TS 571 at 578*[20], a passage that has echoed through our jurisprudence for over a century:

"A man who signs a written agreement without reading it does so at his own risk, and he is bound by the terms of the agreement as though he were aware of them."

[70] These words retain their force today. They remind us that contractual liability flows from the act of signature, not from subjective understanding. They caution us against allowing negligence to defeat agreement. And they anchor our law in the certainty and predictability that commerce requires.

Conclusion:

[71] For all the reasons set forth above, I am satisfied that the applicant has made out a clear case for summary judgment. The second respondent's point *in limine* is without merit. The second respondent's substantive defences are unsustainable in law and unsupported by the facts. The second respondent has failed to disclose a *bona fide* defence, and his opposition to this application can only be interpreted as a delaying tactic.

[72] The orders I have made give effect to the parties' contractual obligations, uphold the principle of *pacta sunt servanda*, and serve the interests of justice by bringing finality to this dispute.

Costs:

---

[20] Burger v Central South African Railways 1903 TS 571 at 578.

[73] The applicant's prayer for costs on the attorney and client scale, including the costs of senior counsel to be taxed on Scale C, requires this court to articulate the principles governing such awards.

[74] Attorney and client costs are not punitive in the sense of punishing a litigant for moral blameworthiness. Rather, they are awarded in circumstances where a litigant's conduct has been such as to warrant a mark of the court's disapproval, or where the contract between the parties provides for such an award. The fee agreement in *casu* provides for costs on the attorney and client scale. This contractual entitlement, standing alone, would justify such an award.

[75] However, even absent the contractual provision, I would have awarded costs on this scale. The second respondent's defence was, from its inception, devoid of merit. The second respondent signed a clear contract. The second responded received the services. The second respondent did not pay. The second respondent's, attempt to avoid liability by claiming he did not read the document is the very type of stratagem that brings the administration of justice into disrepute.

[76] The introduction of scale C represents a significant development in our cost's jurisprudence. The scale is intended for matters of substance and complexity, where the issues warrant the engagement of senior practitioners and the preparation of comprehensive heads of argument. This matter, involving as it does the interplay between summary judgment, suretyship, and *iustus error*, falls squarely within that category.

[77] The employment of senior counsel was reasonable and necessary. The second respondent was represented by counsel of equal seniority. The heads of argument filed by both sides were comprehensive and engaged with the relevant authorities. The matter was argued over approximately two hours. In

these circumstances, it is just and equitable that the applicant recovers the costs consequent upon the employment of senior counsel.

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

1. The second respondent's point *in limine* is dismissed.

2. The application for summary judgment is granted against the second respondent.

3. The second respondent is ordered to pay the applicant the sum of R 800 190.39.

4. Interest on the aforesaid amount at a rate of 2% per month, compounded from date of first demand to date of payment

5. The second respondent is ordered to pay the costs of this application on the scale as between the attorney and client scale, including costs consequent upon employment of senior counsel, such costs to be taxed on scale C.

[redacted]

KHABA AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Appearances:

Counsel for the Applicant:	Adv. J C Uys SC
Instructed by:	HBG Schindlers Attorneys
Ref:	Lauren Squire
Tel:	011 568 8500
Email:	**squier@hbgschindlers.com**
Email:	**gladwin-wood@hbgschindlers.com**
Emal:	**magwaza@hbgschindlers.com**
Counsel for the Second Respondent:	Adv. R Bhima
Instructed by:	Swanepoel van Zyl Inc
Ref:	J van Zyl/adl/JZ2615
Tel:	010 010 0108
Email:	**johan@swanepoelvanzyl.co.za**
Email:	**litigation@swanepoelvanzyl.co.za**
Date of Hearing:	10 February 2026
Date of Judgment:	19 March 2026