IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

Case Number: 113122/2025

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED. **NO**

24/4/2026 [redacted]
DATE SIGNATURE

NEDBANK LIMITED	APPLICANT
AND	
PROVIDENCE PROPERTY INVESTMENTS (PROPERIETARY) LIMITED (Reg No: 2021/495523/07)	FIRST RESPONDENT
MARK VAN HOUTEN	SECOND RESPONDENT
VERACITY INVESTMENT (PTY) LTD (Reg No: 2019/365380/07)	THIRD RESPONDENT

JUDGMENT

MAKUME, J:

Introduction.

1. In this matter, the applicant seeks an order against all three respondents for payment of an amount of money set out in the notice of motion as well as in the founding affidavit and the heads of argument.
2. In particular, that liability of the second and third respondents be limited to an amount of R15 million plus costs. The liability of the first respondent is fixed at an amount of R36 million in terms of a written loan agreement.
3. The liability of the second and third respondents arises out of written guarantees in terms of which they each bound themselves irrevocably and unconditionally jointly and severally as principal obligors for the punctual performance by the first respondent of all its obligations under the written loan agreement.

Background facts.

4. It is common cause and not in dispute that on or about the 22nd day of September 2023 and in Johannesburg the applicant and

the first respondent concluded a written loan agreement in terms of which the applicant advanced an amount of R36 million to the first respondent for purposes of acquiring certain shares held by Nedbank in a company called Manappu Investments.

5. On the same day, the second and third respondents executed guarantee agreements binding themselves as guarantors irrevocably and unconditionally jointly and severally as principal obligors and not merely as sureties for the indebtedness of the first respondent to the applicant.
6. In terms of the agreement, the amount loaned was repayable in monthly instalments. The first respondent breached the agreement and as on 16 January 2025 was in arrears, this resulted in the applicant sending a letter of demand in which it was indicated that failure to pay the instalments of R8 million within 7 days, the applicant will institute action to claim the balance due in the amount of R36 356 007,58.
7. The respondent did not make good on their default. As a result, the applicant attorneys addressed a second letter of demand to the respondents on 19 March 2025 claiming payment of the balance stated above.
8. On 15 July 2025 the applicant instituted these proceedings and is claiming payment of the sum of R34 821 309,71 save that the second and third respondent's liability is limited to an amount of R15 million.
9. On 22 October 2025 the respondents filed an answering affidavit

deposed to by the second respondent, Mr Mark Van Holden duly authorized and he raised the following defenses.

9.1. Firstly, that the application is premature.

9.2. Secondly, that the claim is unenforceable as against the second respondent for want of compliance with the National Credit Act 34 of 2005.

9.3. That the matter should be mediated as prescribed by Rule 41(A) of the Uniform Rules.

9.4. That enforcement of the agreement by Nedbank is unfair and unreasonable in the given circumstances and thus offends public policy and should not be countenanced.

10. Clearly the defenses raised firstly do not dispute the existence of the loan agreement nor the guarantee. Secondly, the respondents do not dispute the quantum of the amount lent and advanced. I now deal hereunder with the purported defenses.

<u>The premature defense</u>.

11. The respondents say that the value of the ceded shares in Manappu is approximately R260 million which amount is more than the loan agreement, therefore the applicant should first sell the ceded shares and not proceed with this action. This defense is negated by the provisions of clause 14.5 of the loan agreement which reads as follows: "Variation, no addition to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing in paper-based form and signed by all the parties or their duly authorized representatives".

12. By bringing up this defense of premature the respondents clearly seek to avoid the provisions of the loan agreement. The absurdity of this defense is exposed for what it is by what Van Houten alleges in paragraphs 5 to 10 of his answering affidavit in which he says the following:

> "The property market was however significantly impacted by the Coronavirus pandemic in 2020. The shareholders including the applicant thus agreed to retain the units until the market improved. This necessarily meant that repayment to the applicant was deferred or postponed."

13. The anomaly about this unfounded allegation is that the loan agreement was concluded in the year 2023 by which time the COVID-19 was history. Therefore it is surprising why would the applicant agree to defer payment of a non-existent loan agreement.

14. Besides what I have alluded to above this alleged agreement to defer payment is just thrown in. There are no details as to when, where or by whom representing the parties was the alleged deferment agreement concluded.

<u>Non-compliance with the National Credit Act.</u>

15. This is a defense raised by Van Houten, the second respondent, who maintains that Nedbank failed to conduct a proper credit assessment on him in contravention of Section 81 of the NCA Act and thus entered into a reckless agreement with Van Houten, besides failing to comply with Section 129 of the NCA before issuing the present application.

16. Once more, there is no merit in this defense. Firstly because the loan agreement was concluded with a juristic person whose net asset value at that time exceeded the threshold value determined by the minister in terms of Section 7(1) of the NCA which makes it a large agreement as described in Section 9(4) of the NCA.

17. Secondly the guarantee signed by Van Houten is not a credit guarantee as defined in Section 1 of the NCA read with Section 18(5) thereof. In terms of the loan agreement no loan or credit was granted to Van Houten. His reliance on letters credit granting is an afterthought and falls to be dismissed.

The mediation defense Rule 41(A).

18. It is indeed correct that on receipt of the application the respondent requested mediation which was declined by the applicant. There is in the rules nothing that compels Nedbank to subject this claim to mediation. The respondent failed and breached a commercial transaction.

The non-fulfillment of conditions precedent.

19. In paragraph 55 of the answering affidavit the respondent says this is so far as applicant contends that a condition precedent was not fulfilled then the sale agreement in respect of the shares did not come into effect. The respondent did not set out precisely which condition precedent was never fulfilled. Paragraph 30 of the founding affidavit refers to the sale agreement in which is set out a number of conditions precedent. In any case whether any of the condition's precedent was fulfilled or not it is immaterial because applicants delivered and the respondent accepted the benefits arising of their loan agreement. In any case clause 3.4 of the sale agreement reads that non-fulfillment of any condition precedent does not cause the sale agreement to lapse.

The public policy defense.

20. This defense is raised for the first time in the heads of argument as a result applicant never had an opportunity to deal with it in its replying affidavit. However it seems to be a defense aligned to and piggybacks on the NCA defense of reckless credit granting.
21. Van Houten argues that Nedbank enforcement of payment of fifteen (15) million personal liability under the circumstances is contrary to public policy.
22. There is once more no merits in this argument. It was not necessary for Nedbank to do a credit check on a person signing a guarantee. It was sufficient for Nedbank to satisfy itself in

respect of the company Providence. Money was lent to Providence, not to Van Houten.

23. Van Houten's argument that Nedbank's relief is disproportionate to legitimate commercial objectives seeks indirectly to attack the principle of *pacta sunt servanda*, which means agreements must be kept.

24. In the matter of Beadica 231cc and others versus Trustees Oregon Trust 2020 (5) SA 247 CC the Constitutional Court concluded that

> "the protection of the sanctity of contracts is thus essential for the achievement of the constitutional vision of our society. Indeed, our constitutional project will be imperiled if courts denude the principle of *pacta sunt servanda*."

25. The applicant has made out a case and deserves to be granted an order as prayed for. In the result, I make the following order.

<u>Order</u>.

1. Judgment is granted in favor of the applicant against the first, second and third respondents jointly and severally, the one paying the others to be absolved, subject to the liability of each of the second and third respondents being limited to the sum of 15 million plus costs in terms of 1.3 as follows:
2. Payment of the amount of R34 821 309,71 cents.

3. Interest on the amount referred to in 1.1 above calculated at the rate of 16.75% per annum from 1 June 2025 to date of payment calculated daily on the capital balance outstanding from time to time compounded monthly in arrears.
4. Cost of the application on the attorney and client scale.

[redacted]

MAKUME J

JUDGE OF THE HIGH COURT

JOHANNESBURG

Appearance

For the Applicants:	Adv PT Rood SC
Instructed by:	Lowndes Dlamini Inc
For the Respondent :	Adv R Bhima
Instructed by:	Swanepoel Van Zyl Inc