IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

Case Number: 127755/2024

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

24/4/2026 [redacted]

DATE SIGNATURE

FIRSTRAND BANK LIMITED APPLICANT

AND

CHRISTIAAN LOURENS BEZUIDEHOUT FIRST RESPONDENT

KWALALITE (PTY) LTD SECOND RESPONDENT

JUDGMENT

MAKUME, J:

1. In this matter, the applicant, Firstrand, seeks a money judgment against the second respondents in their capacities as sureties and co-principal debtors to the indebtedness of Pure Lube Limited (in liquidation) to Firstrand, the applicant.

2. The respondents oppose the application on various grounds enumerated here under as follows:

2.1. Firstly, that the suretyship executed by them, as per Annexure FA10 and FA11 are invalid for the following reasons:

2.1.1. That Annexure FA10 was not executed in compliance with Section 6 of the General Laws Amendment Act of 1955, as the document has material alterations which were made after signing them without their consent.

2.1.2. That there is no resolution by the board of second respondent authorizing the execution of the suretyship in favor of the applicant.

2.1.3. That the respondents unilaterally escalated the risk exposure of the respondents by extending the additional amount of R5 million without ensuring the anticipated securities in the form of a bond over Pure Lube's property.

2.2. First respondent contends that undue pressure was brought to bear on him to sign the suretyship, Annexure FA10,

2.3. that the agreement was varied without their consent,

2.4. that there has been no compliance with the provisions of the National Credit Act 34 of 2005,

2.5. that Pure Lube (in liquidation) should have been joined in the application,

2.6. that the respondents should have first obtained judgment or proved claims against Pure Lube prior to proceeding against them based on the contested suretyship.

Background facts.

3. On 30 December 2022 Pure Lube (Pt)y Limited concluded a facility agreement with the applicant. On the same day, the first respondent executed an unlimited suretyship in favor of the applicant for the indebtedness of Pure Lube to the applicant.

4. On 10 March 2023 the second respondent executed a limited suretyship in favor of the applicant for the indebtedness of Pure Lube to the applicant. On 17 August 2023 the applicant and Pure Lube concluded a further facility agreement.

5. On 27 February 2024, 6 March 2024, the applicant addressed letters to Pure Lube and to the respondents to make payment of the balance due as a result of Pure Lube's breach of the various facilities as well as the instalment sale agreement.

6. On 18 March 2024 Pure Lube was placed in provisional liquidation at the instance of a third party unbeknown to the applicant.

7. On 24 May 2024 the applicant applied for and was granted leave to intervene in the liquidation application of Pure Lube. On 20 September 2024 Pure Lube was placed in final liquidation.

8. On 6 November 2024 this application was launched which elicited

the responses and defenses listed above.

Nature of the application.

9. This application is for recovery of an amount of money advanced to Pure Lube now in liquidation to which the respondents bound themselves as sureties and
co-principal debtors. At the hearing of this application, the applicants indicated that they only seek judgment against the second respondent whose liability is limited to an amount of R3 million. The claim against the first respondent is to be postpone *sine die*.

10. It is not in dispute that firstly, the applicant complied with the agreement by advancing the amount stipulated to Pure Lube before liquidation. It is also not in dispute that the respondent executed the deeds of suretyship. What is in dispute is the validity of the agreements on various spurious grounds which I now deal with hereunder.

Grounds of opposition.

11. The respondents maintained that the suretyship agreement executed by them are invalid because after execution thereof, the applicant made material alterations to the deeds of suretyship without their knowledge. Secondly, that there was no resolution by the second respondents board authorizing the signing of the suretyship. Lastly, that the applicant unilaterally escalated the

risk exposure of the respondent by extending the additional facility of R5 million without ensuring that the anticipated security in the form of a bond over Pure Lube's property was in place.

12. The first respondent arguing on behalf of the second respondent says that there was no board resolution authorizing the second respondent to sign a surety. It is argued that this is in conflict with the provisions of Section 75 of the Companies Act 71 of 2008 in that the first respondent as a sole director stood to incur personal liability under his own suretyship and therefore had a conflicting personal interest when purporting to sign and bind the second respondent for R3 million.This argument is bad in law. The respondent has not applied his mind to the provisions of Section 57(1) and 57(3) of the Companies Act. Both sections clearly deal with the situation where a company has only one shareholder and one director. This is the case in this matter. Van Houten is not only a single shareholder but is a single director. Section 57(3) reads as follows:

> "If a profit company other than a state-owned company has only one director-
>
> a) that director may exercise any power or perform any function of the board at any time without notice or compliance with any other internal formalities except to the extent that the company's memorandum of incorporation provides otherwise."

13. Annexure F11 is a recordal of the minutes of the board of directors of Kwalalite (Pty) Limited held on 10 March 2023 at Witbank at which meeting it was resolved that Mr Christiaan Bezuidenhout signs a surety on behalf of the company limited to an amount of R3 million. Peculiarly in paragraph 5 of that resolution, the following is recorded:

> "The board of directors declare and state that any condition and all restrictions set out in the company's memorandum of incorporation have been satisfied."

14. Bezuidenhout does not contend that Kwalalite's memorandum of incorporation provides otherwise. The resolution clearly authorized the single director to pass the resolution.

15. The second defense raised on behalf of Kwalalite is that the applicant unilaterally escalated the risk exposure without ensuring that a bond is registered as secured over Pure Lube's property. Mr Bezuidenhout is in this regard disingenuous and shifty. Bezuidenhout himself agreed on behalf of Kwalalite that the latter would execute a first mortgage bond over the property. He however breached that obligation when he executed a power of attorney and authorized the registration of a first mortgage bond over the same property in favor of Standard Bank.

16. The next defense raised is one of economic duress. The first respondent's evidence is that he signed Annexure FA10 under threat of immediate withdrawal of essential credit facilities. A

close scrutiny of both suretyship documents indicates that both were signed in the presence of witnesses. Significantly on both documents right at the end just above the signature appears the following sentence:

> "The obligations imposed upon the surety pursuant to this suretyship may be very burdensome. Should the surety harbor any doubt regarding the exact meaning and effect of these obligations, we advise that independent legal advice should be taken prior to signature hereof."

17. This, in my view, puts paid to the duress defense if there was any. The two witnesses who signed below the signature of Bezuidenhout should have filed affidavits supporting the version of Bezuidenhout. They did not as there was no duress or pressure put on Bezuidenhout to sign. This defense is once again an afterthought and falls to be dismissed.
18. The next defense raised by the respondent is that after signing the suretyship document, albeit under duress, is that the applicant went ahead to vary the contents without their knowledge or consent. This appears in paragraph 6 of the respondent's answering affidavit. The two sureties are annexed to the founding affidavit. They clearly do not contain any alteration. The respondent, Mr Bezuidenhout, does not say precisely where the alterations are. In fact, in his answering affidavit at paragraph 6,

he only mentions annexure FA10, which is a suretyship signed in his personal capacity as the one which was unilaterally altered. He does not say the same about annexure FA11, which relates to Kwatalite. The only objection he raises about FA11 is that there was no Board authority. As a result, the suretyship agreement, according to him, should be declared invalid and *ultra vires*.

19. Bezuidenhout has failed to set out and articulate facts that support his conclusion that the suretyships were altered. It is trite law that in motion proceedings the affidavits constitute both pleadings and evidence.

20. The court in Circle Construction (Pty) Limited versus Smithfield Construction 1982 (4) SA 726 held as follows.

    "A defense must be pleaded as well as proved for the court sits to try the issues raised by the pleadings."

21. The next defense raised is that there was no compliance with the provisions of National Credit Act in that so says the respondent that Firstrand Bank failed to conduct an affordability assessment prior to the suretyship being signed. As a result, the agreements are unenforceable as reckless trading.

22. The respondents are conveniently avoiding to refer to Section 9(4) of the NCA which refer to large transactions. A credit agreement is a large transaction if the principal debt in terms of the credit transaction or guarantee equals or exceeds R250 000.

23. Secondly, in terms of Section 4(1)(A)(i) of the NCA, the Act does not apply to the facility granted to Pure Lube because its asset

value exceeded R1 million. See in this regard Firstrand Limited versus Carl Beck Estates (Pty) Limited and another 2009(3) SA385T at paragraph 18.

24. In the result, the contention that Firstrand had a duty to conduct an affordability assessment in respect of the main debtor and the respondents a sureties is misplaced and the defense must fail.

25. The last two defenses raised and which go together is the issue that Firstrand should have sued Pure Lube before resorting to the a sureties. Secondly, that Pure Lube should have been joined in the proceedings. The respondents go on to say that Firstrand must first prove their claim with the liquidators of Pure Lube.

26. This defense needs not detain this court for long. A perusal of clause 31 of the suretyship agreement indicates that the respondents waive the benefit of division as well as the benefit of excursion.

27. In the matter of Gerber versus Wolson 1955 (1) SA page 158(A) the court held that a defense of excursion and division must be specifically pleaded and is not available if it was renounced. Someone who signs as surety and co-principal debtor renounces that defense.

28. There was in my view no need to first file a claim against the liquidators of Pure Lube and to join the liquidators' company in these proceedings. I have come to the conclusion that this application against the second respondent should succeed and I make the following order.

Order

1. Judgment is granted in favor of the applicant against the second respondent for payment of the amount of R3 million, together with interest thereon at the rate of 15.5% per annum, compounded monthly, calculated from 31 March 2024 until date of payment, both days inclusive.
2. The second respondent shall pay the applicant's costs on the attorney and client scale.
3. The application as against the first respondent is postponed *sine die*.

[redacted]

MAKUME J

JUDGE OF THE HIGH COURT

JOHANNESBURG

Appearance

For the Applicant:	Adv NJ Horn
Instructed by:	Werksmans Inc
For the Respondent :	Mr Gerhard Dreyer
Instructed by:	Dreyer & Dreyer Attorneys