**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

(1) REPORTABLE: YES
(2) OF INTEREST TO THE JUDGES: YES
(3) REVISED:NO

DATE: 29 APRIL 2026…………SIGNATURE…………………

**CASE NO: 2024-046126**

In the matter between:

**ABSA BANK LIMITED**
(Registration No: 1986/004794/06) Applicant/Plaintiff

and

**GTL PETROLEUM (PTY) LTD**
(Registration No: 2005/011127/07)
(In Liquidation) First Defendant

**RAMTAL INVESTMENTS CC**
(Registration No: 1999/039214/23) Second Defendant

**BHAVANISHA PILLAY**
(ID No: 6[…]) Third Defendant

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**JUDGMENT ON APPLICATION FOR SUMMARY JUDGMENT**

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**MAUNATLALA AJ:**

**INTRODUCTION**

[1] This is an application for summary judgment brought by the Plaintiff, ABSA Bank Limited

("the Bank"), against the Second and Third Defendants, Ramtal Investments CC ("Ramtal") and Ms Bhavanisha Pillay ("Ms Pillay") (collectively, "the Sureties"). The First Defendant, GTL Petroleum (Pty) Ltd ("GTL" or "the Principal Debtor"), is in final liquidation and is not opposing the relief sought.

[2] The Bank seeks judgment for:

[2.1] R8,184,591.60 (Claim A) plus interest at 16.75% per annum from 18 November 2023; and

[2.2] R383,133.76 (Claim B) plus interest at 8.00% per annum from date of summons.

These amounts arise from two overdraft facilities extended by the Bank to GTL. The Bank's claim against the Sureties is founded on unlimited deeds of suretyship executed by each of them on or about 27 March 2006.

[3] The Sureties have filed a plea and oppose the summary judgment application. The central question for this Court is whether the Sureties have disclosed a *bona fide* defence that is triable at trial. For the reasons that follow, I find that they have not.

**BACKGROUND AND UNDISPUTED FACTS**

[4] The following material facts are undisputed or clearly established on the papers:

[4.1] On 3 January 2023, the Bank extended an overdraft facility of R7,500,000 (account 4[…]) to GTL. On 29 September 2020, the Bank extended a further overdraft facility of R5,000,000 (account 4[…]) to GTL. The facility letters are annexed to the founding affidavit as "A" and "B".

[4.2] On 27 March 2006, both Ramtal and Ms Pillay executed deeds of suretyship in favour of the Bank, binding themselves as sureties and co-principal debtors for the obligations of GTL (then named GTL Resources Marketing (Pty) Ltd). The suretyship agreements are annexed as "D" and "E".

[4.3] GTL was placed under final liquidation on 18 April 2024. The liquidation order is annexed as "C".

[4.4] The Sureties do not dispute the existence or validity of the overdraft facilities or the suretyship agreements. Their plea admits the facility agreements and does not challenge the execution of the suretyships.

[4.5] On 22 November 2023, the Bank sent letters of demand to GTL, Ramtal, and Ms Pillay. The Sureties do not dispute receipt of these demands.

**THE SURETIES' DEFENCE AS ARTICULATED IN THEIR HEADS OF ARGUMENT**

[5] The Sureties' defence is set out in their "First and Second Defendants' Concise Heads of Argument" filed on 23 September 2025. Their argument is remarkably narrow and can be distilled to a single proposition: because the principal debtor, GTL, is in liquidation, the quantum of the Bank's claim against the Sureties "has not been quantified" and cannot be ascertained until the Liquidator files a Liquidation and Distribution Account.

[6] Specifically, the Sureties argue:

[6.1] At paragraph 6.6 of their Opposing Affidavit (record p. 5), Ms Pillay states: "The effect of GTL Petroleum having been wound up, and being the principal debtor is that the quantum of the Plaintiff's claim against me has not been quantified."

[6.2] At paragraph 6.7, she states: "The same applies to Ramtal Investments. Until such time as the Liquidation and Distribution Account has been filed, it is not possible to ascertain the amount owing by myself and Ramtal as Sureties."

[6.3] At paragraph 6.9, she states: "I deny the correctness of the Certificates of Balance, and I deny the quantum claimed by the Plaintiff."

[6.4] In their Heads of Argument (p. 4), the Sureties submit that "until ABSA place the final Liquidation and Distribution Account in the wound up estate of GTL Petroleum before the Trial Court, the quantum of the claim against the Sureties cannot be determined."

[7] The Sureties also rely on the legal principles set out in *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) and *Tesven CC and Another v South African Bank of Athens* 2000 (1) SA 268 (SCA), correctly noting that the court retains a discretion to refuse summary judgment where there is doubt as to whether the plaintiff's case is unanswerable.

**THE PLAINTIFF’S RESPONSE IN ITS HEADS OF ARGUMENT**

[8] The Bank, in its "Plaintiff/Applicant's Heads of Argument" filed on 9 September 2025, makes the following counter-arguments:

[8.1] The Sureties do not dispute the underlying causa (the overdraft facilities) or the suretyship agreements themselves. The only dispute is quantum.

[8.2] The suretyship agreements contain a certificate of balance clause (clause 14) which provides that a certificate signed by a manager of the Bank "shall be sufficient proof of any applicable rate of interest and of the amount owing" and that if the surety disputes the correctness of such certificate, "the onus of proving the contrary shall rest on me/us."

[8.3] The suretyship agreements also contain a waiver of benefits and a reverse onus clause (clause 10.2): "if, in any legal proceedings which are instituted by the Bank in terms of this suretyship against me/us, I/we dispute the existence of the amount owing by the Debtor, the onus of proving this shall rest on me/us."

[8.4] The Bank relies on the principle in Rossouw and Another v First Rand Bank Ltd t/a FNB Home Loans that a certificate of balance is sufficient proof of indebtedness in the absence of contrary evidence from the defendant.

[8.5] The Sureties have failed to adduce any evidence to disturb the prima facie proof established by the certificates of balance. Their bare denial of quantum, without any supporting facts, does not constitute a *bona fide* defence.

**THE LEGAL FRAMEWORK FOR SUMMARY JUDGMENT**

[9] The principles governing summary judgment are well-established and were correctly cited by both parties. I restate them briefly:

[9.1] As held in *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 425E-F, the court must determine (a) whether the defendant has disclosed the nature and grounds of their defence, and (b) whether on the facts so disclosed, the defendant appears to have a defence which is *bona fide* and good in law.

[9.2] In *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009 (5) SA 1 (SCA) at para 32, the Supreme Court of Appeal reaffirmed that summary judgment is "not intended to deprive a defendant with a triable issue or a sustainable defence of her/his day in court."

[9.3] However, as stated in *Breitenbach v Fiat SA (Edms) Bpk* 1976 (2) SA 226 (T) at 228D-E, a defendant seeking to avoid summary judgment must set out facts that, if proved at trial, will constitute a defence. A bare denial or a defence that is "so unconvincing that it can be characterised as fictitious or so inherently implausible that it can be rejected out of hand" will not suffice.

[9.4] The court retains a discretion to refuse summary judgment even where the formal requirements of Rule 32 are not met, as held in *Tesven CC v South African Bank of Athens* 2000 (1) SA 268 (SCA) at 274C-D. However, this discretion is exercised only where there is a "reasonable possibility that the defendant's defence is a good one."

**EVALUATION OF THE SURETIES' DEFENCE**

[10] I now turn to evaluate the Sureties' defence against these legal principles. For the following reasons, I find that the Sureties have failed to disclose a bona fide defence, and that their opposition is without merit.

**The Sureties' defence is a point of law that is manifestly unsound**

[11] The Sureties' central argument—that the liquidation of the principal debtor renders the quantum of the claim unquantifiable until a Liquidation and Distribution Account is filed—is legally untenable. I reach this conclusion for several reasons.

[12] First, the suretyship agreements signed by the Sureties contain express clauses that directly contradict their argument. Clause 9.1.1 of the suretyship deed (record p. 34, also p. 41) provides:

> "If the estate of the Debtor or any person who has bound himself as surety for the Debtor is sequestrated, liquidated, surrendered or placed under judicial management... the Bank may, in its discretion, decide to institute a claim against such estate and to calculate the extent of such claim**, without affecting or diminishing my/our liability in terms hereof**." (Emphasis added)

This clause makes it pellucidly clear that the liquidation of the principal debtor does not affect the surety's liability. The Bank may pursue its claim against the liquidator *and* simultaneously pursue the sureties. The filing of a liquidation account is entirely irrelevant to the Sureties' liability.

[13] Second, the Sureties have waived the benefits of excussion and division. Clause 10 of the suretyship deed (record p. 34) contains a renunciation of "cession of actions" and other benefits. The Sureties are liable as "co-principal debtors" (clause 1 of the suretyship deed). The legal consequence is that the Bank is entitled to proceed directly against the Sureties without first demanding payment from the principal debtor or its liquidator. This principle is confirmed by the case of *Van Zyl v Auto Commodities (Pty) Ltd* 2021 (5) SA 171 (SCA) at para 11, the SCA provides that "Where the surety signs as co-principal debtor, as Mr van Zyl did the addition of those words shows that the surety is assuming the same obligations

as the principal debtor. In other words, the obligation of the surety is the same as that of the principal debtor." It is for this reason that I submit that the Sureties cannot now argue that the quantum is uncertain when they have contractually agreed to be treated as principal debtors.

[14] Third, the argument that the Liquidation and Distribution Account is necessary to quantify the claim fundamentally misunderstands the nature of a liquidation account. The purpose of such an account is to distribute the assets of the insolvent estate to creditors. It does not *create* or *quantify* the underlying debt; it merely records the claims proved against the estate. The debt owed by GTL to the Bank was fixed and quantified when GTL drew down on the overdraft facilities and failed to repay them. The liquidation account does not and cannot alter the amount owed to the Bank.

[15] Fourth, the Sureties' argument, if accepted, would lead to an absurd result. It would mean that a surety could avoid liability indefinitely simply by pointing to the liquidation of the principal debtor, no matter how clear the suretyship agreement or how well-documented the debt is. Such a result would render suretyship agreements largely meaningless and would be contrary to established principle. A surety's obligation is accessory to that of the principal debtor, but the liquidation of the principal debtor does not extinguish the surety's liability; it merely suspends the creditor's right to prove against the principal estate pending the finalisation of the liquidation process.

**The Certificates of Balance are prima facie proof of the debt**

[16] The Bank has produced two Certificates of Balance signed by Ms Maria Eugenia Camacho, Manager: Relationship Banking Recoveries at ABSA. These certificates (record

pp. 45-46) certify the indebtedness of GTL and the Sureties as at 17 November 2023:

[16.1] Account 4[…]: R8,184,591.60

[16.2] Account 4[…]: R383,133.76

[17] Clause 14 of the suretyship deed (record p. 35, also p. 42) provides:

> "A certificate signed by any manager of the Bank shall be sufficient proof of any applicable rate of interest and of the amount owing in terms hereof or of any other fact relating to the suretyship for the purposes of judgment, including provisional sentence and summary judgment, proof of claims against insolvent and deceased estates or otherwise and if I/we dispute the correctness of such certificate, I/we shall bear the onus of proving the contrary."

[18] In *Rossouw and Another v First Rand Bank Ltd t/a FNB Home Loans (formerly First Rand Bank of SA Ltd)* [2011] 2 All SA 56 (SCA) ,the court held at para 47:

> "To the extent that the certificate reflects the balance due at the date of hearing, it is merely an arithmetical calculation based on the facts already before the court which the court would otherwise have to perform itself."

[19] The legal effect of clause 14 is that the certificate constitutes *prima facie* proof of the indebtedness. The onus then shifts to the Sureties to adduce evidence to rebut that *prima facie* proof. The Sureties have not done so. They have not pointed to a single payment that was omitted, a single interest calculation that is incorrect, or a single fee that was improperly charged. They have not produced any bank statements, reconciliations, or other documentary evidence to challenge the certificates.

[20] A bare denial, unsupported by any facts, does not discharge the onus placed on the Sureties by clause 14. A defendant who disputes a certificate of balance must set out the

basis upon which the correctness of the certificate is disputed. The Sureties have failed to do so. Their denial is merely a bald assertion, which is insufficient to raise a triable issue.

**The Sureties have not raised a triable issue of fact**

[21] A careful reading of the Sureties' Opposing Affidavit reveals no factual dispute whatsoever. The Sureties do not allege:

[21.1] That they did not sign the suretyship agreements;

[21.2] That the suretyship agreements are invalid or void;

[21.3] That GTL did not receive the overdraft facilities;

[21.4] That GTL repaid the facilities in full;

[21.5] That the interest rates applied are incorrect;

[21.6] That any specific payment made by GTL or the Sureties was not credited;

[21.7] That the Bank breached any duty owed to them; or

[21.8] That the Bank acted in bad faith.

[22] The only "defence" raised is a legal argument about the effect of the liquidation. As I have found, that argument is without merit. In *Maharaj* (supra), the court held that a defence that is "bad in law" cannot defeat summary judgment. That is precisely the case here. The Sureties’ defence is not a triable issue of fact; it is an erroneous point of law.

[23] In their Heads of Argument, the Sureties rely on *Tesven* CC for the proposition that the court retains a discretion to refuse summary judgment. That is correct, but the discretion

must be exercised judicially. Where, as in this case, the defence is manifestly unfounded and the plaintiff's case is unanswerable, the discretion must be exercised in favour of granting summary judgment. To do otherwise would be to countenance a purely dilatory opposition.

**The Sureties' opposition is for the purpose of delay**

[24] The Bank submits that the Sureties' opposition is not *bona fide* and is raised "solely for the purposes of delay" (founding affidavit, para 27). I am inclined to agree.

[25] The Sureties have admitted the existence of the overdraft facilities and the suretyship agreements. They have not challenged the Bank's right to recover the amounts advanced. They have not offered any alternative calculation of the debt. Their sole argument—that the quantum cannot be determined until a liquidation account is filed—is not only legally incorrect but also has the practical effect of delaying the Bank's recovery indefinitely. Liquidation proceedings can take years to finalise. During that time, interest continues to accrue, and the Bank's security (the suretyship) remains unenforced.

[26] The Sureties have not tendered any payment, proposed any repayment plan, or offered any alternative to judgment. Their approach is consistent only with an intention to postpone the inevitable for as long as possible.

**THE RELIEF SOUGHT**

[27] The Bank seeks summary judgment for the full amounts claimed, together with interest and costs on the attorney and client scale. Clause 15 of the suretyship deed (record p. 35) provides that the surety is liable for "all costs which may be incurred in the enforcement of

this suretyship, including collection costs and legal costs on the scale as between an attorney and his own client."

[28] The Bank has also sought condonation for the late filing of the summary judgment application. The delay was of a few days, and the explanation (that the Bank was unaware of GTL's liquidation and had to revise its papers) is reasonable. The Sureties have not opposed the condonation application. Condonation is hereby granted.

**CONCLUSION**

[29] The Sureties have failed to disclose a *bona fide* defence. The defence raised is not a triable issue but a legally unsustainable argument that is contradicted by the express terms of the suretyship agreements. The Certificates of Balance constitute *prima facie* proof of the indebtedness, and the Sureties have adduced no evidence to disturb that proof.

[30] The application for summary judgment is unanswerable. To refuse it would be to deprive the Bank of the very remedy that Rule 32 was designed to provide: a speedy judgment against a defendant who has no genuine defence.

**ORDER**

[31] In the premises, the following order is granted:

1. Summary Judgment is granted against the first and the second defendants, jointly and severally, the one paying the other to be absolved for:

    1.1. **In respect of Claim A** - (Overdraft Facility Account No: 4[…]):

1.1.1. payment of R8 184 591.60 (eight million hundred and eighty thousand five hundred and ninety one and sixty cents); and

1.1.2. interest on the above-mentioned amount from the date of issue of the summons to the date of final payment at the rate of 16.75% in terms of the overdraft facility.

1.2. **In respect of Claim B** - (Overdraft Facility Account No: 4[…]):

1.2.1. payment of R383 133.76 ((three hundred and eighty three thousand one hundred and thirty); and

1.2.2. interest of the above-mentioned amount from the date of issue of the summons to the date of final payment at the rate of 8.00 % in terms of the overdraft facility agreement.

2. The lateness of the summary judgment application is hereby condoned.

3. Pursuant to the orders above, the respondents are ordered to pay the applicant's costs of suit on an attorney and client scale.

**MI MAUNATLALA**
**ACTING JUDGE OF THE HIGH COURT,**
**JOHANNESBURG, GAUTENG DIVISION**

**DATE OF HEARING: 29 January 2026**

**DATE OF ORDER: 29 January 2026**

**DATE OF REASONS FOR JUDGMENT: 29 April 2026**