

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2024-062336

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

DATE: 29 APRIL 2026.....SIGNATURE..

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In the matter between:

REEF INSURANCE BROKERS (PTY) LTD

Applicant

and

MS THANUSHA HARICHAND

Respondent

JUDGMENT

MAUNATLALA AJ:

[1] This is an opposed application for summary judgment. The Applicant, Reef Insurance Brokers (Pty) Ltd ("Reef Insurance"), seeks final judgment against the Respondent, Ms Thanusha Harichand, for payment of R53,460,762.00, together with interest and costs on

an attorney-and-client scale. The amount claimed is staggering, and so too is the alleged misconduct that underpins it.

[2] The Applicant alleges that the Respondent, while employed as a Claims Administrator, systematically defrauded it of more than R53 million over a period of nine years by creating fictitious third-party claims and directing the payments into her own bank accounts. The Respondent does not meaningfully dispute the factual mechanics of fraud. Instead, she raises a series of special pleas and defences, arguing that they can only be properly ventilated at trial. The Applicant, in its heads of argument, contends that these defences are legally untenable, factually unsupported, and raised solely for the purpose of delay. The Respondent, in her heads of argument, submits that she has valid and *bona fide* defences that require a trial.

[3] Having carefully considered the founding affidavit of Mr Charl Ferreira, the Applicant's Financial Director, the answering affidavit of the Respondent, the pleadings, and the comprehensive heads of argument filed by both parties, I find that the Respondent has failed to disclose any genuine triable issue. Summary judgment must therefore be granted. I set out my reasons below.

The factual background: the Applicant's uncontested case

[4] The material facts of this matter are comprehensively set out at pages 2 to 16 of the founding affidavit deposed to by Mr Charl Ferreira on behalf of the Applicant. Mr Ferreira, who has served as the Financial Director of the Applicant since 2005, confirms that he has personal knowledge of the Respondent's duties and the Applicant's financial records. He

accordingly verifies the cause of action and the quantum of the claim, as required by Rule 32(2)(b).

[5] The Respondent was employed by the Applicant as a Claims Administrator from 1 November 2010 until her resignation on 31 May 2024. In that role, she was entrusted with the third-party payments and recoveries. As explained by Mr Ferreira, once a claims administrator negotiated a settlement with a third party, a written payment requisition would be submitted to a Claims Supervisor, together with a third-party release document duly signed by the claimant (founding affidavit, para 16.3).

[6] Between 1 January 2016 and 28 February 2024, the Respondent submitted fictitious and fraudulent third-party claims. She fabricated the supporting documentation, including third-party release forms bearing forged signatures, and, crucially, inserted her own bank account details as the designated payee (founding affidavit, para 16.4). Relying on these submissions, the Applicant's Claims Supervisors authorised payments totalling R53,460,762.00 into three bank accounts controlled by the Respondent: a Standard Bank account, a Nedbank account, and a Capitec account (founding affidavit, para 16.4.8).

[7] In support of its claim, the Applicant has annexed to the founding affidavit copies of the forged emails and payment requisitions (Annexures "FA1.1" to "FA1.81"), the proofs of payment (Annexures "FA2.1" to "FA2.68"), an Xpert Account Verification Report confirming that the bank accounts belong to the Respondent (Annexure "FA3"), and bank statements retrieved from the Respondent's work computer confirming the same (Annexures "FA4.1" to "FA5.7").

[8] Significantly, the Respondent does not dispute these factual allegations. She fails to deny that she submitted the fictitious claims. She does not deny that the bank accounts are hers. She does not deny that she received the funds. Her answering affidavit is conspicuous in its failure to engage directly with the detailed documentary evidence presented by the Applicant.

The legal framework for summary judgment

[9] The legal principles governing summary judgment are trite, but they bear repeating. In its heads of argument, the Applicant correctly cites *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) for the proposition that a defendant resisting summary judgment must disclose a defence that is both *bona fide* and good in law. The test is not whether the defendant will succeed at trial, but whether the facts disclosed show a reasonable possibility that the defence may succeed.

[10] The Respondent, in her heads of argument, relies on the same authorities, emphasizing that summary judgment is an extraordinary remedy and that a defendant is not required to prove her defence at this stage – only to disclose it with sufficient particularity. That is correct in principle. However, as the Applicant points out, citing *NPGS Protection & Security Services CC and Another v FirstRand Bank Ltd* 2020 (1) SA 494 (SCA), at paragraph 14, the "ever-increasing perception that bald averments and sketchy propositions are sufficient to stave off summary judgment is misplaced".

[11] I am also mindful of the 2019 amendment to Rule 32. As this Court held in *Guardrisk v Life Limited FML Life (Pty) Ltd and Another* (9859/2020) [2023] ZAGPJHC 137, at para 12

(cited in the Applicant's heads), a defence that is "obviously unsustainable on the facts that are alleged to underpin it, or that is bad in law, cannot be genuinely advanced". The Applicant has engaged squarely with the Respondent's pleaded defences, as required. I now turn to those defences.

First defence: non-joinder of Hollard Insurance Company

[12] The Respondent's first special plea, set out in her plea (pages 55 to 59 of the record) and reiterated in her answering affidavit (paras 14 to 29), is that Hollard Insurance Company (Pty) Ltd ("**Hollard**") has a direct and substantial interest in the outcome of this matter and ought to have been joined. The Respondent argues that Hollard is the underwriter of the Applicant, that it replenishes the Applicant's operational accounts, and that it is "the actual party that may have lost money".

[13] The Applicant, in its heads of argument (paras 28 to 47), submits that this plea is misconceived. I agree.

[14] The test for joinder is well established. In *Judicial Service Commission and Another v Cape Bar Council and Another* 2013 (1) SA 170 (SCA) at paragraph 12, the Supreme Court of Appeal held that joinder is only required if a party has a "direct and substantial interest which may be affected prejudicially by the judgment of the court". A mere financial or commercial interest – or an interest in the facts of the matter – is insufficient.

[15] The relief sought in this action is an order for payment against the Respondent personally. No order is sought against Hollard. No order that this court could grant would bind Hollard or adversely affect any legal interest of Hollard. As the Applicant correctly

argues in its heads (para 41), once funds were paid into the Applicant's bank account, they became the property of the bank, and only the Applicant had a right to draw on them. Hollard was neither the owner nor had any right to draw on those funds.

[16] Furthermore, the relationship between the Applicant and Hollard is governed by a Binder Agreement (Annexure "FA6"). Under that agreement, the Applicant operates the claims account independently and accepts full liability for any fraudulent or unauthorised payments (founding affidavit, para 23). The Applicant has also concluded an Acknowledgement of Liability with Hollard (Annexure "FA7"), acknowledging its indebtedness to Hollard for the misappropriated funds. That the Applicant may be liable to Hollard does not give Hollard a direct and substantial interest in this action against the Respondent.

[17] Most significantly, Hollard itself has waived any right to be joined. On 19 July 2024, Mr Danny Joffe, Head of Legal at Hollard Insure, wrote to the Applicant's attorneys stating: *"Insofar as Holland may have an interest in the matter (we do not believe that Holland does) we waive our rights to be joined"* (Annexure "FA8"). The Respondent, in her answering affidavit (para 28), criticises this email on the basis that Mr Joffe did not depose to a confirmatory affidavit. That criticism is without substance. An email from the legal head of a major insurer, on its face, constitutes a clear and unequivocal waiver. No further formality is required. The Respondent's bald assertion that the Acknowledgement of Liability was "backdated" (answering affidavit, para 23) is speculative and unsupported by any evidence.

[18] The non-joinder defence is therefore dismissed. As the Applicant submits in its heads (para 38), persisting with this baseless plea wastes the court's time.

Second defence: breach of contract by the Applicant

[19] The Respondent's second special plea (plea, pages 60 to 62) is that the Applicant breached its own contractual obligations under the employment contract by failing to refer her for a medical examination (clause 16) and by failing to provide her with adequate assistance. She argues that this breach was the primary cause of the loss and that the Applicant is contributorily negligent.

[20] The Applicant, in its heads of argument (paras 49 to 61), submits that this defence is legally untenable and amounts to an "astonishing attempt" to shift responsibility onto the victim of the misconduct. I agree.

[21] Clause 16 of the employment contract (Annexure "POC2", page 52) provides: "*You will, whenever the Company deems it necessary ... undergo a medical examination at the expense of the Company*". The language is permissive and confers a discretion on the Applicant. It does not impose an absolute obligation on the Applicant to initiate an examination.

[22] Our courts have consistently held that contractual provisions must be interpreted in accordance with their ordinary grammatical meaning, read in context and in light of their purpose (see *Natal Joint Municipal Pension Fund v Endumeni Municipality ZASCA 13 (SCA)* at para 18). On any proper interpretation, Clause 16 does not create the obligation contended for by the Respondent.

[23] Even if it were assumed that the Applicant was negligent in failing to take steps available to it under Clause 16, that omission cannot in law be regarded as a cause of the loss. The enquiry into causation is twofold. The first stage concerns factual causation, determined by the “but-for” test as reaffirmed in *Minister of Finance and Others V Gore* [2007] (1) SA 111 (SCA) at para 32. On that approach, the question is whether the loss would, on a balance of probabilities, have occurred but for the alleged omission. On a proper application of that test to the facts, the Respondent has failed to establish factual causation. The evidence shows that she was able to, and did in fact, deliberately conceal and perpetrate repeated acts of misappropriation over a prolonged period of approximately nine years. There is no factual basis on which it can be concluded that, on a balance of probabilities, that the loss would have been prevented had the Applicant referred her for a medical examination. The alleged omission is therefore not a factual cause of the loss but merely background circumstances.

[24] In any event, where factual causation is assumed in favour of the Respondent, the enquiry proceeds to legal causation, which is concerned with whether there is a sufficiently close connection between the conduct and the loss to justify attribution of liability, having regard to reasonableness, fairness, and policy. Applying that standard, the Respondent’s own conduct was the direct, dominant and operative cause of the loss. Her actions were deliberate, sustained, and fraudulent. Even if some level of employee dishonesty may be generally foreseeable in the abstract, it would be contrary to principle and policy to treat the Applicant’s alleged failure to refer the Respondent for a medical examination as a legally effective cause of the loss. The loss was brought about by the Respondent’s own intentional wrongdoing and cannot in law be attributed to the absence of such referral.

[25] The Respondent's conduct accordingly constitutes a *novus actus interveniens* which breaks any chain of legal causation between the Applicant's omission and the loss. Although foreseeability may in certain cases inform the enquiry, intentional and independent fraud of this nature is treated as a new and decisive cause in law, particularly where it is the immediate and effective cause of the harm.

[26] Accordingly, the Respondent's reliance on the Apportionment of Damages Act 34 of 1956 is misplaced. As the Applicant correctly argues in its heads (paras 52 to 61), the Supreme Court of Appeal held in *Thoroughbred Breeders' Association v Price Waterhouse* 2001 (4) SA 551 (SCA) at para 11 that "*dolus is a form of fault in the wide sense but it is obviously not included*" in the Act. An intentional wrongdoer cannot claim a contribution from a third party who allegedly acted negligently. The Respondent's conduct was not negligent – it was deliberate, planned, and sustained over nearly a decade.

[27] Accordingly, neither factual nor legal causation has been established between the Applicant's alleged failure to refer the Respondent for a medical examination and the loss suffered, and there is no legal basis for apportionment.

[23] Accordingly, the Respondent's vague and unsubstantiated allegation of depression does not raise a genuine dispute of fact, nor does it disclose a *bona fide* defence capable of resisting summary judgment.

Third defence: diminished mental capacity

[24] In her plea (para 10 to 15, pages 60 to 62) and in her answering affidavit (paras 33.1 to 33.6), the Respondent pleads that from 2015 she suffered from severe depression, which

deteriorated to the extent that she was "unable to appreciate the wrongfulness or unlawfulness of any of her actions". She submits that this defence requires a trial to determine the strength of her mental illness.

[25] The Applicant, in its heads of argument (paras 62 to 66), submits that this defence is vague, unsubstantiated, and irreconcilable with the nature of the Respondent's conduct. Again, I agree.

[26] Every person over the age of 14 years is rebuttably presumed to have capacity. The onus rests on the Respondent to establish incapacity. In motion proceedings, it is not sufficient to raise bare or speculative allegations. In resisting summary judgment, she need not prove the defence, but she must disclose facts that, if proved at trial, would constitute a valid defence. She has not done so.

[27] The Respondent provides no supporting medical reports, no psychiatric diagnosis, no expert evidence, no details of any treatment, and no explanation of how her alleged depression would have rendered her unable to distinguish right from wrong. She does not say that she cannot remember the fraudulent conduct. She does not explain what she did with the R53 million. She does not say when she regained capacity (if ever) to be able to depose to an affidavit in these proceedings. As the Applicant points out in its heads (para 66.3), the answering affidavit is devoid of any medical evidence. The bare allegation of depression, without more, is insufficient to raise a triable issue.

[28] Moreover, the nature of the conduct itself is fundamentally inconsistent with a person who lacked the capacity to appreciate wrongfulness. The fraud consisted of hundreds of individual transactions over nine years. The Respondent forged documents, created

fictitious claim numbers, forged signatures, and repeatedly substituted her own bank account details. As Mr Ferreira states in his founding affidavit (para 36): "Her theft from the applicant took place over a period of 9 years. Her deception was goal-oriented and clearly premeditated." This is not the conduct of a person who could not distinguish right from wrong.

[29] As the Supreme Court of Appeal held in *S v Eadie* 2002 (1) SACR 663 (SCA) at para 42-43, emphasised that the law proceeds on the basis of "natural inference" that individuals act consciously and freely, and that this inference is not displaced without cogent and reliable evidence. Although *Eadie* arises in the criminal context, the principle that incapacity cannot be inferred lightly applies with equal force where a party seeks to avoid legal responsibility on the basis of alleged mental incapacity.

Fourth defence: liability of other employees

[30] In her answering affidavit (paras 35.2 to 35.5 and 47), the Respondent argues that other senior employees – the Claims Manager, the Finance Department, and a Director – approved the payments and failed in their supervisory duties. She contends that they should be held jointly and severally liable or that they were contributorily negligent.

[31] The Applicant, in its heads of argument (paras 67 to 72), submits that this is not a defence to liability. I agree. It is trite that a plaintiff is entitled to choose whom to sue. Concurrent wrongdoers are liable in *solidum*, and a plaintiff may recover the full amount of the loss from any one of them. As the Supreme Court of Appeal held in *Absa Bank Ltd v Bond Equipment (Pretoria) (Pty) Ltd*, at para 11, (cited in the Applicant's heads at para 70),

the fact that one wrongdoer acted with intent while another acted negligently does not prevent the plaintiff from holding either liable in full.

[32] The Applicant is not obliged to pursue other employees before or at the same time as it pursues the Respondent. The fact that others may have failed to detect the fraud does not absolve the Respondent of her own deliberate wrongdoing.

[33] Accordingly, the Respondent's attempt to rely on the alleged negligence or supervisory failures of other employees is misconceived. The fact that other employees may have failed to detect or prevent the fraud does not break the causal link between the Respondent's deliberate misappropriation and the loss, nor does it operate as a defence to liability.

[34] The proper remedy, if any, lies in contribution proceedings between concurrent wrongdoers in terms of the Apportionment of Damages Act 34 of 1956, and not in the reduction or avoidance of the Respondent's liability to the Applicant.

[35] This defence is accordingly dismissed.

The absence of a genuine dispute on the merits

[36] Having considered all the defences raised, I return to the fundamental point. The Respondent does not actually deny the core factual allegations. Her plea denies the allegations "vehemently" (para 18.1 of the plea), but her answering affidavit does not meaningfully engage with the detailed documentary evidence. As the Applicant submits in its heads (para 26), the Respondent does not seriously dispute that she forged the release

forms, that she induced the Applicant to make payments into her own bank accounts, or that she appropriated the funds for her own use.

[37] In summary judgment proceedings, a bare denial is not enough. A defendant must set out a defence with sufficient particularity and must do so in a manner that is not inherently unconvincing (*Breitenbach v Fiat SA (Edms) Bpk* 1976 (2) SA 227 (T)). Also in *NPGS Protection and Security Services CC & another v FirstRand Bank Ltd* (314/2018) [2019] ZASCA 94, at para 11, the Supreme Court of Appeal confirmed again that summary judgment applications require an opposing affidavit to disclose fully the nature and grounds of the defence, and the material facts relied upon therefor. To stave off summary judgment, a defendant cannot content him or herself with bald denials. In this case, The Respondent has failed to do so. Her defences are legally untenable, factually unsupported, and appear to have been raised for the purpose of delay – exactly the kind of case that the summary judgment procedure is designed to address.

Conclusion

[38] The Applicant has established a clear cause of action for theft (the *condictio furtiva*) and, in the alternative, for breach of contract. It has verified the claim and the amount, as required by Rule 32(2)(b). It has demonstrated, by reference to the Respondent's own pleadings and answering affidavit, that the defences raised do not constitute a genuine triable issue.

[39] The application for summary judgment must therefore succeed.

Costs

[40] The Applicant seeks costs on the scale as between attorney and client. The Applicant's heads of argument (paras 78 to 81) submit that such an award is justified where there is fraudulent, dishonest, or vexatious conduct that amounts to an abuse of court process.

[41] I agree. The Respondent misappropriated more than R53 million over a period of nine years. She has raised speculative, baseless, and contradictory defences in an attempt to avoid accountability. Her conduct, both in the underlying fraud and in these proceedings, demonstrates a flagrant disregard for the legal process and for the serious financial prejudice caused to the Applicant. A punitive costs order is appropriate.

Order

[42] In the result, I make the following order:

1. Condonation is granted for the applicant's failure to serve the notice of set down for the hearing of this application timeously.
2. Summary judgment is granted against the defendant, and the defendant is ordered to pay:
 - 2.1. The sum of R53 460 762.00 to the plaintiff, together with interest on that amount at the prescribed rate, from 6 June 2024 until date of payment; and
 - 2.2. The plaintiff's costs, on the scale between attorney and client.



**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