REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: 106000 / 2024

In the matter between:

M[…] D[…] T[…] **APPLICANT**

(Identity Number: 8[…])

and

N[…] P[…] T[…] **RESPONDENT**

(Identity Number: 9[…])

JUDGMENT

NTHAMBELENI AJ

Introduction

[1] This is an application for summary judgment brought by the applicant (plaintiff in the main action) against the respondent (defendant in the main action) in terms of Rule 32 of the Uniform Rules of Court. The applicant seeks judgment based on an alleged oral agreement concluded between the parties during December 2017.

Background

[2] The parties in this matter were married to each other out of community of property without an accrual system and divorce in Polokwane Regional Court

and however the relationship between the parties ended via the divorce. It is alleged that they then entered into a business agreement in relation to a property referred to in the papers as an "investment property".

[3] The background facts, as gleaned from the papers, are briefly as follows. During June 2017, the parties purchased an immovable property (the property) as an investment. The purchase price was R990,000.00. The applicant made a cash payment of R540,000.00 towards the purchase price on or about 17 June 2017. The respondent obtained a home loan of R450,000.00 on 17 November 2017, which loan was registered in her name. The property was registered in the respondent's name on 20 December 2017.

[4] The applicant alleges that the parties entered into an oral agreement in December 2017, the terms of which were that upon the sale of the property, the proceeds would be shared between them in proportion to their respective financial contributions. Accordingly, the applicant claims he is entitled to 56% of the proceeds (being R540,000.00 out of the total R990,000.00 purchase price) and the respondent to 44%. On 20 September 2018, the property was sold to a third party for R1,600,000.00, with final payment made during June 2023. The applicant now claims R896,000.00, being 56% of the sale proceeds.

[5] The respondent denies the existence of any such oral agreement. She admits receiving the applicant's contribution of R540,000.00 but contends that no agreement was ever reached regarding the sharing of sale proceeds on a 56%/44% basis. The respondent further disputes the applicant's alleged renovation costs, contending that the applicant paid only R28,000.00 (not R101,668.91). An amount of R330,000.00 was paid by the respondent to the applicant as reimbursement for certain payments made by the applicant, which the respondent says is not an acknowledgment of any oral agreement.

Issue for determination

[6] Two principal issues arise for determination. First, whether the respondent has raised triable issues to be referred to trial. Second, whether the respondent's denial of the existence of the alleged oral agreement suffices for the summary judgment application to be denied.

Legal principles governing summary judgment

[7] The principles applicable to summary judgment applications under Rule 32 are trite. Summary judgment is an extraordinary and drastic remedy, which closes the doors of the court to the defendant without a trial. It should only be granted where the plaintiff's case is clear and the defendant's defence is plainly unmeritorious, bad in law, or fictitious.[1]

[8] Where the defendant raises a genuine and *bona fide* dispute of fact, summary judgment must be refused. The defendant is not required to prove her defence on a balance of probabilities; she need only disclose facts which, if proved at trial would constitute a good defence. A mere bare denial is insufficient, but a denial that is coherent, plausible, and raises a triable issue is enough.[2]

[9] Critically for present purposes, where the agreement relied upon is oral, a dispute as to its existence is inherently foreseeable. The plaintiff who chooses to proceed by way of summary judgment in such circumstances does so at his own peril. The court will not grant summary judgment where the defendant's denial of the oral agreement is not far-fetched or implausible. In *Bottcher and Another v City of Tshwane Metropolitan Municipality*[3] the court refused summary judgment where the defendant raised a *bona fine defence* about the true lender in an oral agreement.

[10] The next question which this court must answer in this matter is whether the question of a liquid document. Dealing with the meaning of a liquidated

[1] *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zulu Joint Venture* 2009 (5) SA 1 (SCA)
[2] *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A).
[3] [2025] ZAGPPHC 768

amount for purposes of summary judgment, Griesel J in *Tredoux v Kellerman*[4] held at paragraph 18 as follows:

> "…A liquidated amount of money is an amount which is either agreed upon or which is capable of 'speedy and prompt ascertainment' or, put differently, where ascertainment of the amount in issue is 'a mere matter of calculation'."

[11] Furthermore, it has been held that the court is entitled to have regard to the defence raised by a defendant in opposition to a claim for summary judgment in deciding whether or not the claim is liquidated. If from the defence as disclosed, it appears to the Judge that proof of the claim may be protracted and difficult rather than prompt, then it seems to me that that is a matter which he may take into account in deciding whether or not the claim is liquidated.

Application of the principle to this case

[12] The respondent's resisting affidavit is clear and unequivocal. She states under oath that there was no oral agreement entered into between the parties during December 2017 as alleged. The parties did not agree to split the proceeds of the sale on a 56%/44% basis. The applicant's payment of R540,000.00 was a contribution towards the purchase price, but no agreement was ever made regarding the division of future sale proceeds.

[13] These denials are not vague or bald. They are specific, coherent, and directly traverse the very foundation of the applicant's claim. If the respondent can prove at trial that no such oral agreement existed, the case will fail. This is plainly a triable issue which require *viva voce* evidence in a trial and cannot be dealt with through a summary judgment application.

[14] The applicant contends that the respondent's denial is implausible given the financial arrangements between the parties. However, that is precisely the kind of dispute that must be resolved by oral evidence at trial, not on affidavit in summary judgment proceedings. The court cannot assess credibility or weigh probabilities in this truncated procedure.

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[4] *Tredoux v Kellerman* 2010 (1) SA 160 (C)

[15] Moreover, the alleged agreement is purely oral. There is no written memorandum, no contemporaneous note, no independent witness, and no corroborating document. In such circumstances, a defendant's denial of the existence of the agreement is not only foreseeable but almost inevitable. The applicant ought to have anticipated that the respondent might deny the alleged oral terms. He should have proceeded by way of ordinary action and trial, not summary judgment.

[16] The respondent has also raised a dispute regarding the quantum of renovation costs (R101,668.91 claimed by the applicant versus R28,000.00 admitted by the respondent). This further dispute of fact reinforces the conclusion that this matter is unsuitable for summary judgment.

[17] Having considered the pleadings and the arguments advanced by the parties' respective counsel, it seems to me that the claim against the respondent is from the allege oral agreement. An enquiry into the nature and extent of the oral agreement is needed to determine the claim and or counter-claims. In this matter is clear that there is a need for viva voce evidence to determine the true nature, terms and the extent of the oral agreement between the parties. This court as a summary judgment court is not suited for such an enquiry.

[18] I am satisfied that the respondent has demonstrated a *bona fide* defence and has disclosed triable issues. The defence is not put up for purposes of delay. On the contrary, the applicant's pursuit of summary judgment in the face of a clear dispute of fact is difficult to comprehend.

Costs

[19] The respondent seeks costs on an attorney-and-client scale. The applicant, for his part, has persisted with this application despite the foreseeable dispute of fact. The matter previously came before Windell J on 2 February 2026 but was not allocated due to the applicant's non-compliance with the practice directives of this Division. That non-compliance caused unnecessary costs to be incurred on that date.

[19] However, during argument this issue was contested by Mr Borman for the applicant and he directed the court to the Revised Consolidated Practice Directive 1 of 2024 and 2025 practice directive of this court in relation to a joint practice note, stating that the joint practice note must be filed on Court Online and emailed to the senior judge no later than 12 court days prior to the week in which the matter has been set down. Further that in the case of the non-cooperation of the applicant as submitted by Mr Patel for the respondent, the respondent should have filed a unilateral practice note and declare the applicant to be in default. Therefore, if this Court is not with him the issue all the costs including the costs of the 22 April 2026 should be in the case.

[20] Mr Patel for the respondent holds an opposite view to Mr Borman for the applicant. He submitted that the applicant are *dominus litis* and should take responsibility in the filing of the practice note. However, his submission was not supported by any authority or any practice directives and as such this court will algin with the submission made by Mr Borman for the applicant.

[21] Therefore, all costs including the costs incurred on 2 February 2026 and the costs of the 22 April 2026 before me will be determined by the trial court ceased with the matter.

Order

[22] In the premises, the following order is made:

1. The application for summary judgment is dismissed.
2. The Defendant is granted leave to defend the Plaintiff's claim.
3. The cost shall be the cost in the cause.

NTHAMBELENI AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG