



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 2024-140472

DELETE WHICHEVER IS NOT APPLICABLE	
1. REPORTABLE: YES/ NO	
2. OF INTEREST TO OTHER JUDGES: YES/NO	
3. REVISED 30 April 2026	[Redacted Signature]
DATE	SIGNATURE
GAUTENG DIVISION, PRETORIA	

In the matter between:

BAHLALOGA PROPERTY MANAGEMENT (PTY) LTD
(Registration No: 2018/197903/07)

Plaintiff

and

ERF 2681 PIET RETIEF (PTY) LTD
(Registration No: 2022/765355/07)

Defendant

JUDGMENT

INTRODUCTION

[1] This is an opposed application for provisional sentence. The Plaintiff, Bahlaloga Property Management (Pty) Ltd (Plaintiff), seeks provisional sentence against the Defendant, Erf 2681 Piet Retief (Pty) Ltd (Defendant), in

the sum of R 9 450 000.00 (Nine Million Four Hundred and Fifty Thousand Rand), together with interest thereon at the rate of 11.75% per annum calculated from the date of demand to the date of final payment, and costs. The claim is founded upon a certificate of balance issued pursuant to clause 12.3 of a written Loan Agreement concluded between the parties on 1 December 2023.

- [2] The Defendant opposes the grant of provisional sentence on two principal grounds: first, that the Provisional Sentence Summons is fatally defective for non-compliance with Uniform Rule 8(3) in that the Loan Agreement annexed thereto was incomplete; and second, that the Loan Agreement is a simulated transaction and a sham, and that no monies were ever advanced by the Plaintiff to the Defendant.

BACKGROUND FACTS

- [3] On 1 December 2023, the Plaintiff (as lender), the Defendant (as borrower), and one Suleman Mahmood (as surety) concluded a written Loan Agreement. In terms of the Agreement, the Plaintiff agreed to lend and advance to the Defendant the sum of R 31 400 000.00 (Thirty-One Million Four Hundred Thousand Rand) ("the Loan Amount"). The Loan Amount, together with interest thereon, was to be repaid by the Defendant to the Plaintiff in accordance with a repayment schedule set out in clause 7 of the Agreement, commencing on 15 December 2023.

- [4] Clause 2.1 of the Loan Agreement records that the Plaintiff agreed to lend the Loan Amount to the Defendant "for fulfilment of the signed agreements attached as annexure 'A' and 'B'". Clause 4.1 further records that the Loan

Amount was advanced to enable the Defendant to meet its contractual obligations in terms of those two agreements. The two agreements (Annexures A and B) were not attached to the Provisional Sentence Summons but were subsequently placed before this Court by the Defendant in its Opposing Affidavit.

[5] Annexure A is a term sheet for the acquisition of shares in various UAE-registered franchise companies operating Famous Brands franchise stores in the United Arab Emirates. The parties to Annexure A are Bilal Suleman and Mahmood Suleman (as buyers) and Mamouba Rahab Kganyago and Mohammed Essa Hassan Aladhab Almatrooshi (as sellers). Neither the Plaintiff nor the Defendant is a party to Annexure A. Annexure B is a purchase agreement between Bahlaloga Properties LLC (as seller) and Capital Platinum Car Rental LLC (as purchaser), both UAE-registered entities. Again, neither the Plaintiff nor the Defendant is a party to Annexure B.

[6] The Plaintiff avers that it duly complied with all its obligations under the Loan Agreement. The Defendant, however, failed to make payment of the monthly instalment of R 1 181 250.00 due on 1 November 2024. On 1 November 2024, the Plaintiff's attorneys addressed a Notice of Breach to the Defendant. On 7 November 2024, a Letter of Demand was addressed to the Defendant invoking the special remedy for breach contained in clause 12.2.1 of the Agreement, entitling the Plaintiff to claim immediate payment of the full outstanding balance. The Defendant failed to remedy the breach.

[7] On 29 November 2024, the Plaintiff issued a Certificate of Balance pursuant to clause 12.3 of the Loan Agreement, signed by Ms Mamouba Rahab Kganyago, a director of the Plaintiff, certifying that the amount of R 9 450

000.00 was due, owing and payable by the Defendant to the Plaintiff. The Provisional Sentence Summons was issued on 2 December 2024. The Defendant filed a Notice of Intention to Defend on 29 January 2025 and delivered its Opposing Affidavit on 25 February 2025. The Plaintiff filed a Replying Affidavit on 7 April 2025.

THE LAW APPLICABLE TO PROVISIONAL SENTENCE

- [8] The institution of provisional sentence is a well-established remedy in our law. Its underlying rationale is that, pending the determination of the issues in the principal case, a plaintiff who holds a liquid document receives payment of the amount due on a provisional basis, subject to the provision of adequate security by the defendant for restitution should the provisional sentence subsequently be reversed.
- [9] The principles governing provisional sentence were authoritatively stated in *Inter-Union Finance Ltd v Franskraalstrand (Edms) Bpk and Others*¹ and confirmed on appeal, that: a document is liquid if it demonstrates, by its terms, an unconditional acknowledgement of indebtedness in a fixed or ascertainable amount of money due to the plaintiff. The document must be sufficient in itself and must not require extrinsic evidence to prove that the debt is due.
- [10] The Constitutional Court in *Twee Jonge Gezellen (Pty) Ltd and Another v Land and Agricultural Development Bank of SA t/a the Land Bank and Another*² comprehensively restated the principles applicable to provisional sentence. The Court confirmed that provisional sentence is only available to a plaintiff armed with a liquid document, and that the order is provisional or

¹ 1965 (4) SA 180 (W) at p-181

² 2011 (3) SA 1 (CC) (22 February 2011)

interlocutory in nature — final judgment remains to be determined in the principal case. The Court further held that a court has a residual discretion to refuse provisional sentence where: (a) the defendant is unable to satisfy the debt; (b) there is an even balance of prospects of success in the main case; and (c) there is a reasonable prospect that oral evidence may tip the balance of prospective success in the defendant's favour.

[11] In *Trust Bank van Suid-Afrika Beperk v Eastview Chalet Estates (Pty) Ltd*³, the Court held that where a defendant alleges that the agreement sued upon is a simulated transaction, the onus rests upon the defendant to establish on a balance of probabilities that it will succeed in the principal case in establishing that the money was not received.

[12] It is trite that our law infers that a signed contract is what it purports to be. A party who alleges that a transaction is simulated must allege and prove simulation and rebut the prima facie inference that it is not simulated. Simulations are detected by considering the facts leading up to the contract and by taking into account any unusual provisions.

[13] The *caveat subscriptor* rule further provides that when a person affixes their signature to a document, they are taken to have assented to the contents thereof. A signatory who seeks to resile from the terms of a signed document bears a heavy onus to explain why the document does not reflect the true agreement between the parties.

ISSUES FOR DETERMINATION

[14] The following issues arise for determination in these proceedings:

³ 1971 (2) SA 361 (R) at 933 D-F

- (a) Whether the Provisional Sentence Summons is fatally defective for non-compliance with Uniform Rule 8(3) by reason of the failure to attach Annexures A and B to the Loan Agreement;
- (b) Whether the Loan Agreement constitutes a valid liquid document for purposes of provisional sentence;
- (c) Whether the Defendant has discharged the onus of proving, on a balance of probabilities, that the Loan Agreement is a simulated transaction; and
- (d) Whether provisional sentence should be granted.

DISCUSSION

Issue (a): Alleged Fatal Defect — Non-compliance with Uniform Rule 8(3)

[15] The Defendant contends that the Provisional Sentence Summons is fatally defective because the Loan Agreement annexed thereto (Annexure PSS1) did not include Annexures A and B, which are referred to in clauses 2.1 and 4.1 of the Loan Agreement. The Defendant submits that this constitutes non-compliance with Uniform Rule 8(3), which requires that a complete copy of the document on which the plaintiff's claim is founded be annexed to the summons.

[16] I am not persuaded by this submission. Annexures A and B are agreements between entirely different parties — neither the Plaintiff nor the Defendant is a party to either of those agreements. They are referred to in the Loan Agreement merely to record the purpose for which the Loan Amount was required. They do not form part of the contractual obligations between the Plaintiff and the Defendant, nor do they constitute conditions precedent to the Defendant's obligation to repay the loan. The Loan Agreement is

complete in itself as between the Plaintiff and the Defendant. The failure to attach Annexures A and B does not render the Provisional Sentence Summons fatally defective.

[17] Moreover, the Defendant itself placed Annexures A and B before this Court in its Opposing Affidavit. No prejudice has been suffered by the Defendant as a result of their non-attachment to the summons. This ground of opposition accordingly fails.

Issue (b): Whether the Loan Agreement Constitutes a Valid Liquid Document

[18] Clause 12.3 of the Loan Agreement provides that a certificate issued by the Plaintiff, signed by any director or manager of the Plaintiff (whose appointment need not be proven), reflecting the amount owing by the Defendant, shall constitute prima facie proof of the Defendant's indebtedness for purposes of any action by way of provisional sentence, and shall constitute a valid liquid document for such purposes.

[19] The Certificate of Balance (Annexure PSS4) was issued on 29 November 2024 and signed by Ms Mamouba Rahab Kganyago, a director of the Plaintiff. It certifies that the amount of R 9 450 000.00 is due, owing and payable by the Defendant to the Plaintiff in terms of the Loan Agreement. The certificate is unconditional, identifies the debtor and creditor, and specifies a fixed and determinate sum. It does not require extrinsic evidence to establish the indebtedness. I am satisfied that the certificate constitutes a valid liquid document for purposes of provisional sentence.

Issue (c): Whether the Defendant has Discharged the Onus of Proving Simulation

[20] The Defendant's primary defence is that the Loan Agreement is a simulated transaction and a sham. Mr Suleman, the sole director of the Defendant, deposes in the Opposing Affidavit that no monies were ever advanced by the Plaintiff to the Defendant, and that the Loan Agreement was designed merely to facilitate payment of purchase prices by buyers to sellers under the UAE franchise agreements.

[21] The difficulty with the Defendant's case is that Mr Suleman admits that the Loan Agreement was duly signed on behalf of the Defendant. He further admits that clauses 2.1 and 4.1 of the Loan Agreement record that the Plaintiff advanced the Loan Amount to the Defendant to enable the Defendant to meet its contractual obligations in terms of Annexures A and B. Yet, conspicuously absent from the Opposing Affidavit is any explanation as to why Mr Suleman caused the Defendant's signature to be appended to the Loan Agreement if the terms thereof did not reflect the true agreement between the parties.

[22] The *caveat subscriptor* rule is well-established in our law. A party who signs a document is taken to have assented to its contents. The Defendant bears the onus of rebutting the *prima facie* inference that the signed Loan Agreement is what it purports to be. A bare denial of indebtedness, unsupported by a cogent explanation for the signature, is insufficient to discharge that onus.

[23] Furthermore, the Defendant's reliance on the alleged non-performance of the parties to Annexures A and B is misplaced. Those agreements are *res inter alios acta* — they are agreements between third parties to which neither the Plaintiff nor the Defendant is a party. The Defendant's obligation to repay the

Loan Amount is not conditional upon the performance of the parties to those agreements. Clause 4.6 of the Loan Agreement expressly provides that the Defendant shall under no circumstances be entitled to withhold payment, notwithstanding the existence of any claim which the Defendant may have against the Plaintiff, howsoever arising.

[24] The Defendant has also failed to disprove the *prima facie* inference arising from the Certificate of Balance that the amount of R 9 450 000.00 is due and owing. Apart from a bare denial, the Defendant has adduced no evidence — whether documentary or otherwise — to demonstrate that the Loan Amount was not advanced, or that the amount certified is incorrect. The onus to disprove the certified liability rested on the Defendant, and it has not been discharged.

[25] I am accordingly not satisfied that the Defendant has established, on a balance of probabilities, that the Loan Agreement is a simulated transaction, or that it will succeed in the principal case. The Defendant's failure to play open cards with this Court — particularly its failure to explain why it signed the Loan Agreement if the terms thereof were not intended — detracts materially from the veracity of its evidence.

Issue (d): Whether Provisional Sentence Should be Granted

[26] Having found that the Certificate of Balance constitutes a valid liquid document, and that the Defendant has failed to discharge the onus of proving simulation or establishing a reasonable prospect of success in the principal case, the question arises whether this Court should exercise its residual discretion to refuse provisional sentence.

[27] The Constitutional Court in *Twee Jonge Gezellen*⁴ confirmed that the discretion to refuse provisional sentence is narrow and exceptional. It arises only where the defendant is unable to satisfy the debt, there is an even balance of prospects of success in the main case, and there is a reasonable prospect that oral evidence may tip the balance in the defendant's favour. None of these conditions are present in this matter. The Defendant has not placed any evidence before this Court regarding its inability to satisfy the debt, and the balance of prospects of success in the principal case does not favour the Defendant on the papers.

[28] In the premises, I am satisfied that provisional sentence ought to be granted in favour of the Plaintiff.

COSTS

[29] The Plaintiff has been substantially successful and is entitled to its costs. There is no reason to depart from the general rule that costs follow the result.

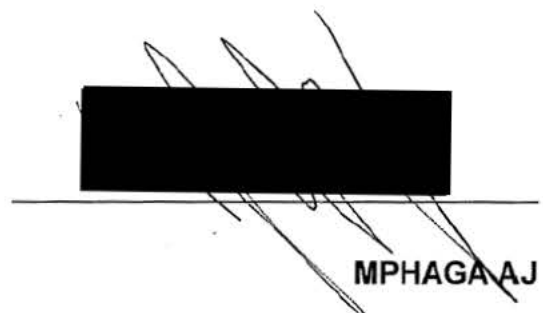
ORDER

[30] In the result, the following order is made:

1. Provisional sentence is granted against the Defendant in favour of the Plaintiff in the amount of R 9 450 000.00 (Nine Million Four Hundred and Fifty Thousand Rand);
2. The Defendant is ordered to pay interest on the aforesaid amount at the rate of 11.75% per annum calculated from the date of demand to the date of final payment;

⁴2011 (3) SA 1 (CC) (22 February 2011)

3. Costs of suit.



MPHAGA AJ

Acting Judge of the High Court

Gauteng Division, Pretoria

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