REPUBLIC OF SOUTH AFRICA

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

Case Number: 2025-005350

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

[redacted]

DATE SIGNATURE

In the matter between:

APOLLO TYRES AFRICA (PTY) LTD Plaintiff/Applicant

and

BAHWITI INVESTMENTS CC
t/a PERFECT DRIVE TYRE AND
FITMENT CENTRE First Defendant/Respondent

DAVID MOGASHOA Second Defendant/Respondent

JUDGMENT

WENTZEL-THOMPSON J

Introduction

[1] This is an opposed application for summary judgment in terms of Rule 32 of the Uniform Rules of Court. The plaintiff seeks payment of the sum of R416 993.28, interest thereon at 24% per annum from 31 December 2023, and costs on the attorney and client scale, jointly and severally from the first and second defendants, arising from a written credit agreement and an incorporated suretyship.

Background

[2] On 2 December 2018 the plaintiff and the first defendant concluded a written agreement in terms of which the plaintiff would supply tyres and related goods to the first defendant on credit. The agreement is annexed to the particulars of claim. The plaintiff pleads, and in its founding affidavit verifies, that pursuant to that agreement it supplied goods to the first defendant between 2 December 2018 and 31 December 2023 at the first defendant's special instance and request, on 30-day terms.

[3] The plaintiff further alleges that, simultaneously with the conclusion of that agreement, the second defendant bound himself as surety, guarantor and co-principal debtor in solidum with the first defendant, for all amounts owing by the first defendant to the plaintiff. The suretyship is incorporated into and forms part of the written agreement and bears the second defendant's details and signature.

[4] The plaintiff annexed a statement of account reflecting that, as at 31 December 2023, the first defendant was in arrears in the sum of R611 796.24, and a series of unpaid invoices and delivery notes supporting that statement. Subsequent payments reduced the outstanding capital to R416 993.28, as confirmed by a certificate of balance issued in terms of the agreement.

[5] On 9 December 2024 the plaintiff addressed a letter of demand to the defendants calling upon them to pay the arrears, failing which the agreement would be cancelled and legal proceedings instituted. When no payment was forthcoming, combined summons was

issued. The summons, with particulars of claim and annexures, was duly served on both defendants at 23 Dakota Crescent, Rand Airport Business Park, Germiston, as evidenced by the deputy sheriff's returns of service.

[6] The defendants entered an appearance to defend, and, after being placed under bar, delivered a plea on 13 March 2025. Thereafter, within the 15-day period prescribed by Rule 32(2)(a), the plaintiff delivered its notice of application for summary judgment together with the founding affidavit of Ms Desree Moodley, the plaintiff's credit control manager.

[7] The application was initially set down for 11 August 2025 but was removed from the roll for administrative reasons. It was subsequently re-enrolled for 8 September 2025. The defendants delivered an affidavit purporting to resist summary judgment on 2 September 2025, one court day out of time and without an accompanying application for condonation or any explanation for the delay.

The pleadings

[8] In paragraphs 1–6 of their plea, the defendants admit the identity and legal status of the parties, the conclusion of the written agreement on 2 December 2018 and the plaintiff's performance of its obligations thereunder. The existence of the agreement, its core terms, and the plaintiff's delivery of goods are thus common cause.

[9] In paragraphs 7–16 of the plea the defendants then issue bare denials of almost all remaining material allegations: they deny the arrears, deny the correctness of the statement, invoices and certificate of balance, deny the plaintiff's entitlement to attorney-and-client costs, and deny the plaintiff's allegation that the National Credit Act 34 of 2005 ("the NCA") is inapplicable. These denials are unaccompanied by any factual averments as to what was actually paid, why particular invoices would be incorrect, on what basis the account or the certificate is impugned, or why the NCA would apply in the light of the pleaded facts.

[10] The only "*reason*" offered in the plea is that the defendants' attorneys allegedly did not receive certain documents and that no "*proper*" letter of demand was sent to them. The defendants do not dispute the returns of service of the summons, they do not deny physical receipt of the agreement or invoices, and they do not allege that they were unaware of the account or its balance at any material time.

The resisting affidavit

[11] The answering affidavit resisting summary judgment is deposed to by the second defendant, Mr Mogashoa. In that affidavit the deponent first notes or professes ignorance of certain introductory factual allegations in the founding affidavit. He then proceeds, in formulaic fashion, to deny virtually every substantive allegation, often in a single sentence.

[12] Of particular importance are the following passages:

12.1 In response to the plaintiff's contention that the plea constitutes a bare denial, he states: "*The respondent denies the applicant's claims and denies that he is indebted to the applicant for any amount*", without more.

12.2 He denies the existence of the agreement and the suretyship and denies that he is indebted in the sum of R416 893.28 but advances no positive factual explanation for these denials.

12.3 He asserts that neither he nor his attorneys have received certain documents referred to by the plaintiff but does not identify those documents by date or description, nor does he explain how non-receipt would impact the existence or enforceability of the debt.

[13] The resisting affidavit does not allege that the goods were not delivered, that the prices charged are incorrect, tender any schedule of payments that would extinguish or reduce the balance, allege fraud, duress, mistake or lack of authority in relation to the suretyship, or attach a single document in support of any defence.

[14] Moreover, the defendants do not engage at all with the plaintiff's detailed allegations as to why the NCA does not apply- that the first defendant is a juristic person, that the size of the facility and the turnover place the transaction outside the ambit of section 4, and that the agreement does not constitute a "*credit agreement*" as defined in section 8. None of these pleaded facts is challenged with counter-facts.

Respondents' arguments

[15] The respondent raise essentially two contentions: first, that the summons does not disclose a cause of action because the plaintiff does not allege that the defendants failed to make regular instalment payments under an "*instalment*" agreement; and second, that

the plaintiff failed to give proper notice of default or breach before issuing summons, with reliance placed on *Investec Bank Ltd v ZJ Gumbi and Others*.[1]

[16] As to the first contention, it is plain from the particulars of claim and the founding affidavit that the plaintiff sues on a written agreement of sale and credit, that goods were sold and delivered to the first defendant between specified dates, that payment was due within 30 days, that arrears accumulated, and that a quantified balance of R416 993.28 remained unpaid as at 31 December 2023. That discloses a conventional cause of an action for goods sold and delivered and money due on account, supported by a statement of account, unpaid invoices, and a certificate of balance.

[17] As to the second contention, the plaintiff pleads and proves the despatch of a written demand on 9 December 2024, annexes proof of such despatch, and pleads that, upon continued default, it elected to cancel the agreement and claim the full balance. The defendants do not deny that demand was sent; they only complain that it was not addressed to their attorneys. They do not allege that the contract required notice to be sent to attorneys, they do not deny receipt at the *domicilium* address, and they do not allege any prejudice flowing from the manner of notification.

[18] The reliance on *Investec v Gumbi* is misplaced. In that matter the exception succeeded because the particulars of claim did not contain proper allegations regarding the contractual preconditions and statutory notice; here, by contrast, the plaintiff has pleaded both the contractual demand and the basis upon which the NCA does not apply and has attached the supporting documentation. No exception has been taken to the particulars of claim, and, more fundamentally, the defendants have not set out any facts which, if proved, would support a defence founded on defective notice.

The legal framework

[19] Rule 32, as amended with effect from 1 July 2019, permits a plaintiff, after delivery of the defendant's plea, to apply for summary judgment on a claim for a liquidated amount in money, together with interest and costs. The plaintiff must deliver a notice of application supported by an affidavit made by a person who can swear positively to the facts, in which the deponent verifies the cause of action, the amount claimed, identifies the legal points relied upon and explains briefly why the defence as pleaded does not raise any issue for trial.

[1] 2022 ZAGPPHC 414

[20] In turn, Rule 32(3)(b) requires that a defendant who wishes to resist summary judgment must "*disclose fully the nature and grounds of the defence and the material facts relied upon therefor*". A mere bare denial is insufficient. The defendant must set out a defence which is bona fide and, if proved at trial, would constitute an answer to the plaintiff's claim.

[21] These principles have been repeatedly affirmed in our courts. In *Maharaj v Barclays National Bank Ltd*,[2] the Appellate Division held that the defendant must satisfy the court by affidavit that he has a *bona fide* defence to the action and disclose fully the nature and grounds of the defence and the material facts relied upon therefor. The Full Court in *Cellsecure Monitoring and Response (Pty) Ltd and Others v South African Securitisation Programme RF Ltd*[3] held that bald or bare denials do not meet the requirements of Rule 32(3)(b) and that defendants must provide sufficient particularity to disclose a bona fide defence and a reasonable prospect of success at trial.

[22] In *Bragan Chemicals (Pty) Ltd v Devland Cash and Carry (Pty) Ltd and Another* [4] the court similarly held that a defendant is bound by a bare denial in its plea and that a failure to provide a version which can constitute a possible defence renders the plea ineffective to resist summary judgment. In *Tumileng Trading CC v National Security and Fire (Pty) Ltd* [5] the court explained the plaintiff's obligation under the amended Rule 32 to engage with the pleaded defence in the founding affidavit but recognised that this task is difficult where the plea consists only of bare denials.

[23] The 2019 amendments to Rule 32 were intended to require closer alignment between the plea and the resisting affidavit. As explained in *Nogoduka-Ngumbela Consortium (Pty) Ltd v Rage Distribution (Pty) Ltd*,[6] a defendant may not use the resisting affidavit to introduce an entirely new defence inconsistent with the plea, without explanation. Unexplained inconsistency between the plea and the resisting affidavit points against the bona fides of the defence.

[24] The Supreme Court of Appeal in *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*[7] emphasised that summary judgment is intended to prevent sham defences from defeating the rights of a plaintiff with a clear case, and that it is no longer

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[2] 1976 (1) SA 418 (A) at 426B-E
[3] [2025] ZAGPPHC 98
[4] [2020] ZAGPPHC 397
[5] 2020 (6) SA 624 (WCC)
[6] [2021] ZAGPJHC 568
[7] 2009 (5) SA 1 (SCA)

to be approached as an extraordinary remedy in the pejorative sense sometimes attributed to it.

Application of the law to the facts

[25] The plaintiff has complied with both the procedural and substantive requirements of Rule 32. The application was launched within 15 days of delivery of the plea. The deponent to the founding affidavit, Ms Moodley, is the plaintiff's credit control manager, responsible for and in charge of the first defendant's account, and in possession of the relevant files and documents. She therefore swears positively to the facts and verifies the cause of action and the amount claimed.

[26] The founding affidavit identifies the basis relied upon in support of the application for summary judgment - the contractual claim for goods sold and delivered and the suretyship; the liquidated indebtedness; the exclusion of the NCA; and the entitlement to attorney-and-client costs - and explains why the defendants' plea, being a bare denial, does not raise any triable issue. The plaintiff has annexed all key supporting documents: the written agreement, the suretyship, the statement of account, the invoices, the certificate of balance, the letter of demand, and the returns of service.

[27] On this basis alone, the plaintiff has made out a *prima facie* case for summary judgment as contemplated in the authorities already cited.

[28] Against this, the defendants have not put up a defence that satisfies the Rule 32(3)(b) standard. Both the plea and the resisting affidavit consist almost entirely of bare denials, with no coherent factual foundation. This is the quintessential case in which leave to defend should not be granted.

[29] In their plea the defendants admit the existence of the agreement and the plaintiff's performance but deny the breach, the indebtedness, the correctness of the account and the inapplicability of the NCA, without stating that they made payment of any specific amounts on any dates, that the plaintiff incorrectly allocated payments, that any of the goods were not delivered or were returned, that there was any credit or set-off agreement in place, or that the first defendant's turnover or asset value is such that the NCA applies.

[30] The defendants' complaint that their attorneys did not receive copies of documents, or a letter of demand is, at best, a procedural complaint without substance. It does not amount to a factual defence to the indebtedness. The returns of service and proof of

despatch of the demand letter are unchallenged. No prejudice is alleged which could transform that complaint into a substantive defence.

[31] The position is no better in the resisting affidavit. On the contrary, the affidavit introduces inconsistency of a kind that militates strongly against the *bona fides* of the defendants. The second defendant denies that there was any agreement and any suretyship between the parties, notwithstanding that the plea expressly admits the agreement and the plaintiff's compliance. No explanation is offered for this *volte-face*. He does not allege forgery, misrepresentation, mistake, or lack of authority in relation to his signature on the agreement or suretyship.

[32] The core statement in the answering affidavit that: *"The respondent denies the applicant's claims and denies that he is indebted to the applicant for any amount"* - is the paradigm of a bare denial. It engages with none of the detailed documentary evidence tendered by the plaintiff and supplies no alternative version of events.As noted in *Cellsecure* and other cases, such an approach does not raise a triable issue and is inadequate to resist summary judgment.

[33] The NCA-based argument likewise does not rise above assertion. The plaintiff has specifically pleaded that the first defendant is a juristic person, that its asset value or turnover and the scale of the facility place the agreement outside the ambit of the NCA, and that the agreement is not a credit agreement as defined. The defendants do not challenge these factual averments at all; they simply say, in effect, that the NCA applies, without more. That is insufficient; it does not disclose any factual basis which, if proved, would render the agreement subject to the NCA or show non-compliance with its provisions.

[34] The same applies to the attack on the cause of action. The particulars of claim and founding affidavit plainly allege an outstanding balance on a running account for goods sold and delivered under a written agreement, which is a recognised cause of action. The respondents' suggestion that the plaintiff was obliged to plead missed "*instalments*" as if the transaction were necessarily an NCA instalment agreement is misconceived and, in any event, unsupported by the pleaded facts.

[35] Additionally, the defendants' resisting affidavit was filed out of time, contrary to Rule 32(3), with no condonation sought and no explanation offered. While non-compliance with the time-limit is not in itself determinative, it contributes to the overall picture of a

defence that is not being prosecuted with candour or diligence and reinforces the inference that the opposition is simply a delaying tactic.

Triable issue and bona fides

[36] The decisive question is whether, looking at the totality of the papers, the defendants have disclosed a defence that is both bona fide and legally tenable, such that it would be unjust to grant summary judgment.

[37] I am satisfied that they have not. There is no positive factual defence to the indebtedness, no factual defence to the suretyship, no factual basis for the alleged application of the NCA and no factual foundation for any complaint about notice that could conceivably defeat the plaintiff's claim. The inconsistent stance taken in the plea and resisting affidavit is unexplained and undermines any claim to *bona fides*.

[38] In these circumstances, the defendants' opposition amounts to what the authorities have repeatedly condemned as a sham or technical defence, put up solely to delay the inevitable. To send this matter to trial would be to permit the abuse of process which the summary judgment procedure is designed to prevent.

[39] Summary judgment remains a legitimate mechanism where a plaintiff with a clear case is met by a defence which, on proper scrutiny, is neither *bona fide* nor capable of success. This is such a case.

Order

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

1. Summary judgment is granted in favour of the plaintiff against the first and second defendants, jointly and severally, the one paying the other to be absolved.

2. Payment of the amount of R416 993.28 (four hundred and sixteen thousand nine hundred and ninety-three rand and twenty-eight cents).]

3. Interest on the aforesaid amount at the rate of 24% per annum from 31 December 2023 to date of final payment, as provided for in the written agreement.

4. Costs of suit on the scale as between attorney and client, such costs to include the costs of the application for summary judgment.

5. The defendants are refused leave to defend.

[redacted]

WENTZEL-THOMPSON J

JUDGE OF THE HIGH COURT

JOHANNESBURG