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

Case 2024-104181
(1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED: Yes
Date: 03 June 2026

In the matter between:

**FINTECH UNDERWRITING (PTY) LTD** Plaintiff

and

**AFROFROCS (PTY) LTD** First Defendant

**OWINO, MILLICENT AKINYI** Second Defendant

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**JUDGMENT**

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DU PLESSIS J

*Introduction*

[1] The plaintiff seeks summary judgment against the defendants jointly and severally for payment of outstanding rentals, return of a photocopier, interest, and costs on the attorney-and-client scale. The defendants oppose the application on both procedural and substantive grounds.

[2] The plaintiff's case is that the first defendant concluded a written Master Agreement of Hire with Sunlyn Rentals (the cedent) for the rental of a photocopier. The agreement was ceded to the plaintiff under a master cession agreement. The second defendant bound herself jointly and severally as surety and co-principal debtor under a written guarantee. The cedent purchased the photocopier from Document Excellence (Pty) Ltd, the supplier and vendor, at the first defendant’s

instance and request, and caused delivery thereof to the first defendant. The cedent thereafter ceded the rental agreement to the plaintiff.

[3] The first defendant fell into arrears, and the plaintiff accordingly seeks payment of the outstanding and future rental instalments. The second defendant is sued as guarantor.

[4] The defendants deny that any valid agreement was concluded with Sunlyn. Their case is that they contracted with Document Excellence (Pty) Ltd, and that this agreement was cancelled by agreement in March 2022, alternatively June 2022, a cancellation that was accepted by Document Excellence. They further deny that any valid cession was concluded in favour of the plaintiff.

[5] In the affidavit resisting summary judgment, the defendants raise both procedural points, and set out their defences.

*Procedural objections: defective application*

[6] The defendants submit that the summary judgment application is a nullity because, when it was served on 5 June 2025, it did not contain a stated hearing date as required by the Rules. A subsequent notice of set-down allegedly does not cure the defect. They also state that the time limit for a complaint application expired on 9 June 2025.

[7] Rule 32(2)(c) mandates that the notice of application for summary judgment must state that "the application will be set down for hearing on a stated day not being less than 15 days from the date of the delivery thereof". This is a formal requirement designed to give the defendant adequate notice to prepare opposition. Although strict adherence to Rule 32 is usually necessary due to the serious consequences of the remedy, courts do condone technical irregularities that do not prejudice any party, as undue formalism should be avoided. The question is rather whether there was substantive compliance with the requirements.

[8] In this case, the defendants did not seek to have the irregularity set aside and instead participated in the proceedings, thereby implicitly waiving, or at least condoning, any procedural defect. They have not shown any real prejudice because of this omission, which they would struggle to, as they have received adequate notice of the application and had an opportunity to oppose on the merits. There was further substantive compliance with the purpose of the Rule, namely to give the defendant fair notice and an opportunity to defend, which they did. The procedural point is accordingly dismissed.

*The merits*

[9] Summary judgment exists to prevent defendants with no genuine defence from using the court process as an instrument of delay, thereby causing loss to plaintiffs with clear and enforceable rights. The procedure does not shut out a defendant with a real, triable defence.[1] Courts have always been trusted to protect such a defendant. But where the defence is hollow or a sham, the plaintiff is entitled to swift, final relief without the expense of a full trial. The test, as formulated in *Maharaj v Barclays National Bank Ltd*,[2] is simply whether the defendant has sufficiently disclosed a defence that is both bona fide and good in law: if yes, summary judgment must be refused; if no, it must be granted.

*Defence: denial of the agreement*

[10] The defendants dispute the validity of the rental agreement, contending that its terms do not reflect what was agreed between the first defendant and Document Excellence, with whom they say all initial negotiations took place and from whom a financial proposal was received and the goods delivered. However, they place no signed agreement with Document Excellence before the court. They instead rely on a proposal, which is not a binding contract between them and the financier. By contrast, the signed Master Agreement of Hire sets out the machine, the monthly rental, the term, and the escalation mechanism, as per the proposal. The defendants do not allege that this document was not signed on their behalf.

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[1] See *Joob Joob Invetments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* [2009] ZASCA 23; 2009 (5) SA 1 (SCA) ; [2009] 3 All SA 407 (SCA) para 30 onwards.
[2] 1976 (1) SA 418.

[11] The contract provides that only its written terms bind the financier, and that any prior or collateral understandings are of no force unless recorded in the agreement. It further records that the defendants were referred to the financier by the vendor, that the financier purchased the goods from the vendor at the defendants' special instance and request, and that the financier assumes no responsibility for the suitability or quality of the goods. The defendants in turn guarantee the vendor's title, indemnify the financier against any claims or losses arising from defects in title, delivery or the goods themselves (even after cancellation of the agreement), and undertake, in the event of any cession, sale or transfer of ownership, to hold the goods on behalf of any cessionary or purchaser and to comply with that party's instructions.

[12] The denial of the agreement is not a bona fide defence. There is no denial that the document was signed. There is thus no denying that the agreement exists. The terms are clear that only the terms of that agreement bind the plaintiff, which leads to the next defence: that what is in the agreement is not what they agreed upon with Document Excellence.

*Defences: misrepresentation, cancellation, and breach*

[13] The defendants allege that a representative of Document Excellence misrepresented that the rental agreement would be linked to a service and printing agreement with specific printing costs, and that the defendants would have an option to acquire ownership of the goods. On the strength of this alleged misrepresentation, the defendants purported to cancel the "Document Excellence Agreement" in 2022.

[14] These are not bona fide defences. The rental agreement is clear and explicit: it covers only the rental of the equipment, which remains the ownership of the supplier at all times. It represents the entire agreement between the parties. Any statements not explicitly included in the agreement are not binding. The agreement also excludes any claims arising from the supplier's alleged representations regarding a separate printing contract or a purchase option.

[15] Vanessa Burger, whom the defendants themselves identified as their contact, appears in the attached emails to be an accounts executive for the cedent, not for Document Excellence. Her email address and electronic signature support this. Thus, the defendants' own documents conflict with the claim that all interactions were solely with Document Excellence.

[16] The description of the goods, agreed rentals, and rental period in the 'authority to pay' letter are identical to those in the rental agreement. Importantly, the defendants have not attached the supposed printing agreement. No document is presented to the court that shows the terms of the alleged printing contract, the representations made, or the specific printing costs claimed to have been misrepresented. Their pleading on this point lacks detail. So, too, is there no proof of the cancellation of the alleged agreement.

[17] Even if I accept that there was a separate printing agreement with Document Excellence that was legitimately cancelled, this does not affect the rental agreement.[3] The two agreements are separate. Cancelling a printing service arrangement does not cancel the rental obligation owed to Sunlyn and its cessionary for the equipment financing.

[18] The misrepresentation, cancellation, and breach defences do not constitute bona fide triable issues.

*Defence: guarantee*

[19] The second defendant denies that a valid guarantee was concluded. However, like the denial of the rental agreement, she does not deny signing the guarantee undertaking. The plea states the nature of the defence, namely invalidity, without disclosing any grounds upon which invalidity is said to rest. A bare denial of validity, unsupported by any factual basis,[4] does not constitute a bona fide defence.

[3] *Slip Knot Investments 777 (Pty) Ltd v Du Toit* 2011 (4) SA 72 (SCA) para 8.
[4] *Breitenbach v Fiat SA* 1976 (1) SA 418 (A) at 426.

*Defence: cession*

[20] The defendants deny that the rental agreement was validly ceded to the plaintiff. As outsiders to the cession agreement between the cedent and the plaintiff, the defendants have no standing to challenge the terms or the plaintiff's compliance with them as between cedent and cessionary.[5] Future rights can be ceded *in anticipando,*[6] and third parties cannot interfere in a cession arrangement that does not affect their position. The cession does not alter the first defendant's obligations; it merely changes to whom payment must be made. This defence is without merit.

*Defence: Deponent's personal knowledge*

[21] The defendants challenge the deponent's authority and personal knowledge, as a Senior Legal Coordinator at Sasfin. The relationship between Sasfin and the plaintiff, as the administrator of its portfolio, is explained in the founding affidavit. The DocuSign completion certificate reflects Sasfin's administrative function in relation to the plaintiff's book. Authority to depose to an affidavit in motion proceedings does not require separate authorisation. It is the institution and prosecution of the proceedings that must be authorised. [7] Furthermore, if the defendants wished to challenge the deponent's authority, the proper mechanism was Rule 7. They did not avail themselves of it. This point fails.

*Defence: Certificate of Balance and quantum*

[22] The defendants deny the certificate of balance on the basis that it was signed by a Sasfin representative rather than a director of the plaintiff. For the reasons set out above regarding the Sasfin-Fintech relationship, this objection is without merit. Clause 13 of the agreement provides that a certificate signed by any manager or other authorised person shall be proof of indebtedness. Nothing turns on the description in the DocuSign certificate.

[23] The defendants correctly point out, however, that the certificate includes charges not provided for in the rental agreement, specifically, untaxed legal fees and

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[5] *Absa Bank Bpk v C L von Abo Farms BK en Andere 1999 (3) SA 262 (O); 274E-G.*
[6] *First National Bank of SA Ltd v Lynn NO* 1996 (2) SA 339 (A) at 358 to 359.
[7] *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA);624G-H.

NSF/process fees. The plaintiff conceded as much. Certificates of balance may be handed up at the hearing and adjusted,[8] which confirms the court's power to grant summary judgment for a reduced amount where certain components of the claim are not supportable. The appropriate course is to deduct these impermissible charges rather than to refuse summary judgment altogether.

[24] The defendants raise a further point relating to the rental escalation schedule, contending that the statement of account increases monthly rentals before the anniversary date stipulated in the agreement. The plaintiff's counsel addressed this by pointing to clause 7 of the rental agreement, which provides for fluctuations in the rental amount with the prime interest rate. It is not the anniversary date that drives escalation but the movement in the prime rate. The defendants have not engaged with clause 7 in their opposition. This aspect of the quantum defence is not established.

[25] However, as conceded by the plaintiff, the claim amount must be reduced to exclude the following:

a. Untaxed legal charges: R10,246.50
b. NSF/process fees and other charges: R632.50
c. Once these impermissible items are deducted, the supportable claim for rental instalments and VAT thereon, as reflected in the detailed annexure to the particulars of claim, is R79,516.00.

*Defences: Demand and NCA*

[26] The defence that no demand was made for the relief is without merit as the summons constitutes a demand.[9]

[27] The NCA defence is equally unsustainable. The first defendant is a juristic person whose asset value or turnover exceeded the statutory threshold. The defendants themselves admit this in the plea. A rental agreement under which

[8] *Rossouw and Another v First Rand Bank Ltd t/a FNB Homeloans (Formerly First Rand Bank of South Africa Ltd)* [2010] ZASCA 130 par 47.
[9] *Middelburgse Stadsraad v Trans-Natal Steenkoolkorporasie Bpk* 1987 (2) SA 244 (T) at 249B to G

ownership never passes to the user is furthermore not a lease for purposes of the NCA.

*Conclusion*

[28] The plaintiff has verified the cause of action and the amount, supported by a defensible rental figure, and has shown that the defences raised present no genuine triable issues. This is because the core of the defendants' opposition is a misconceived reliance on a separate arrangement with the supplier, Document Excellence, which is not supported by the defendants' own annexures. There is no bona fide defence that is good in law. Summary judgment should accordingly be granted, at the reduced quantum to exclude impermissible charges.

*Costs*

[29] The rental agreement provides for costs on an attorney-and-own-client scale. The respondents' defences on liability were plainly without merit and disclosed no reasonable prospect of success. The applicant is entitled to costs on the contractual scale, but only on Magistrate's Court scale, due to the amount claimed.

*Order*

[30] Accordingly, the following order is made:

1. Summary judgment is granted as follows:
    a. The First Defendant must return 1 x W[...] with serial number 3[...] forthwith to the Plaintiff.
    b. The Defendants are to pay the Plaintiff, jointly and severally, the one paying the other to be absolved, the sum of R79 516,00.
    c. The amount in 1(b) shall bear interest at the prime interest rate plus 6% per annum from 13 August 2024 to the date of payment.
    d. The Defendants are to pay the Plaintiff's costs on the scale as between attorney and client, such costs to be taxed on the Magistrates' Court scale.

**WJ du Plessis**
Judge of the High Court, Gauteng Division, Johannesburg

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| Date of hearing: | 17 March 2026 |
| Date of judgment: | 3 June 2026 |
| For the applicant: | JG Botha instructed by ODBB |
| For the respondent: | RJN Brits (attorney) instructed by VR Law |