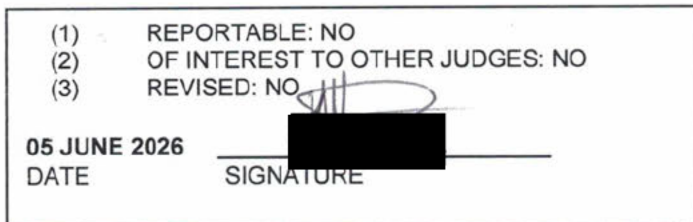
REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-106040



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

05 JUNE 2026
DATE SIGNATURE

In the matter between:

GLOBAL BUSINESS ADMINISTRATORS (PTY) LTD Plaintiff

And

MONT BLANC FINANACIAL SERVICES (PTY) LTD Defendant

JUDGMENT

MVUBU, AJ

Introduction

[1] When is it the right time to keep the door open?

[2] What we know is that 'the summary judgment procedure was not intended to "shut" (a defendant) out from defending, unless it was very clear indeed that he has no case in the action.[1] That is not shutting the door but exercising a judicious decision in balancing the interests of the plaintiff (who must get their relief where a clear and unanswerable case has been made), the interests of the defendant (who will be afforded an opportunity to defend when they demonstrate that they have a case in the action) and the interests of preserving scarce judicial resources for those matters that warrant the attention of a judge.

[3] I do not, then, see summary judgment proceedings as a coin toss between keeping the door shut or open. Where the plea sets out a bona fide defence and does so within the meaning of Rule 32(3)(b), a court will afford the defendant an opportunity to defend. Where the defendant simply has no case, the plaintiff must succeed at summary judgment stage, there is no need to delay the plaintiff's destiny with justice. Justice delayed is justice denied, after all. All this falling snugly within the ambit and demands of section 34 of the Constitution of the Republic of South Africa, 1996. It is justice; the ethical and moral principle of ensuring fairness, impartiality, and giving every person their due, when it is due and including at summary judgment stage if it is called for at that stage.

[4] In my view, there can be no mention of shutting the door on a defendant. Demonstrate a bona fide defence, with full disclosure of the nature and grounds underpinning the defence, the matter goes to trial. That is the assessment and each defendant is well knowing of this fact or ought to be. What is more, there is a "lighter" option, give security to the plaintiff to the satisfaction of the court for any judgment including costs which may be given and the matter would go to trial.

Pleadings and pleaded case

[5] In its particulars of claim, the Plaintiff pleads:

---

[1] ***Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*** [2009] ZASCA 23; 2009 (5) SA 1 (SCA).

"[4] In and during December 2019, and at Johannesburg, the Plaintiff, duly represented, and the Defendant, duly represented, entered into an oral agreement.

[5] The express material (sic), alternatively tacit, further alternatively implied terms of the oral agreement are the following:

5.1. The Plaintiff would provide IT infrastructure, IT Technical Support Services and related services to the Defendant ("the Services");

5.2. The Defendant will pay the Plaintiff a monthly fee of R500 000.00 (five hundred thousand rand) for the Services;

5.3. The Defendant will pay adhoc (sic) fees, above the R500 000.00, associated with the Services upon presentation of an invoice;

5.4. The Plaintiff shall render monthly invoices in respect of the Services and adhoc (sic) fees;

5.5. The agreement shall continue indefinitely."

[6] That is the agreement, pleaded by the Plaintiff. The Defendant admits this agreement as follows:

"3. The allegations contained in the paragraphs under reply are denied.

4. Without derogating the (sic) from the generality of the aforesaid denial, the defendant specifically pleads that:

4.1. it entered into an oral agreement with the plaintiff during December 2019 on terms as set out in the plaintiff's particulars of claim;

4.2. The defendant admits that the plaintiff at some stage provided IT infrastructure, technical support and related services to the defendant;

4.3. The defendant and the plaintiff amended the terms of the agreement as a result of the plaintiff's failure to provide the technical support and related services it agreed to provide;

4.4. To this end, the parties agreed that the Defendant would make payment of a reduced fee in the amount of around R150 000.00 (One Hundred and Fifty Thousand Rands)

monthly, for the IT Infrastructure provided by the plaintiff to the defendant, which agreement was reached between Werner Roets and Nicola Iozzo.

4.5. The defendant denies that it paid or was required to pay the plaintiff an amount of R500 000.00 (five hundred thousand rands) and ad hoc fees, monthly;

4.6. The technical support and related services which the plaintiff had to provide to the defendant was not provided to the defendant in accordance with the arrangements between the parties, and as such a reduced fee was payable in respect of the limited IT Infrastructure. Which agreement the defendant complied with as evidenced by the proof of payments attached to the plaintiff's particulars of claim.

4.7. Such reduced fee was depended on the services rendered by the plaintiff from time to time;

4.8. The defendant built it's own internal structure to the technical support and related services due to the failure of the plaintiff in providing the services it promised to deliver, and such internal structure attended to the execution of the duties and services the plaintiff was deliver, but failed to do;

4.9. At no stage during the reduced fee agreement and the payment thereof, did the plaintiff dispute the amounts paid or notify the defendant of an alleged breach of the purported terms set out in plaintiff's particulars of claim;

4.10. The defendant denies the alleged indefinite operation of the agreement and pleads that the (sic)"

[7] Paragraph 6.1 of the Defendant's plea is worthy of reproduction, it says:

> *"6.1. It denies that the plaintiff complied with the terms of the agreement between the parties, in that the plaintiff failed to provide the defendant with the technical and related services as originally agreed, subsequently resulting in the reduced fee agreement between the parties."*

[8] In the affidavit resisting summary judgment the following version is provided:

"19. In terms of the amended agreement, the monthly fee payable by the responded was reduced to approximately R150 000.00 per month (at a maximum), which amount was variable and dependent on the limited infrastructure actually provided by the applicant from time to time.

20. No obligation existed for the respondent to pay a monthly amount of R500 000.00, nor any ad hoc fees, as alleged by the applicant.

21. The respondent complied with the amended agreement and made payment in accordance therewith. The respondent paid for the services rendered by the applicant. Such payments are reflected in the applicant's own annexures."

[9] From the Defendant's plea and affidavit resisting summary judgment, one notices a few contradictions and I set them out below.

Applicable principles

[10] It is trite that the Defendant need not prove his defence but merely comply with Rule 32(3)(b), that being so I am not persuaded that the Defendant crossed the Rubicon. It was required of the Defendant that the affidavit resisting summary judgment demonstrate merits in the defence[2] and he has failed to do so.

[11] The legal position, as we know, is that it will be sufficient if the defendant swears to a defence, valid in law, in a manner which is not inherently or seriously unconvincing.[3] As was held in ***South African Securitisation Programme (RF) LTD and Others v Cellsecure Monitoring and Response (PTY) Ltd and Others***

"[33] I am mindful that a bona fide defence is assessed upon a consideration of the extent to which the nature and grounds of the defence and the material facts relied upon have been canvassed. Bona fides does not mean that the defendant has

---

[2] ***He & She Investments (Pty) Ltd v Brand NO*** 2019 (5) SA 492 (WCC).

[3] ***NBS Boland Bank v One Berg River Drive and Others, Deeb and Another v ABSA Bank Ltd; Friedman v Standard Bank of South Africa Ltd*** (291/98, 428/98, 85/99) [1999] ZASCA 60; [1999] 4 All SA 183 (A); 1999 (4) SA 928 (SCA) (10 September 1999) paragraphs 33-35.

to satisfy the court that his version is believed to be true. All the defendant is required to do is to swear to a defence valid in law, in a manner which is not seriously unconvincing. Put differently, he should show that there is a reasonable possibility that the defence he advances may succeed on trial."[4]

Lack of bona fide defence and contradiction in defence

[12] The defence is clearly not bona fide, in my view. I also find that the said defence's nature and grounds have not been fully disclosed, as accompanied by the material facts relied upon therefor, being non-compliance with Rule 32(3)(b) requirements.[5]

[13] It is alleged by the Defendant that there was a variation to the agreement. The Plaintiff does not know about any such alleged variation and avers that as proof that no variation occurred, it continued to render monthly invoices in the amount of R500 000.00 per month and no complaint was ever raised by the Defendant that it being invoiced an incorrect amount. The Defendant does not even disclose when this variation took place.

[14] In argument, it was submitted that the variation contended for by the Defendant happened in July 2023. That must mean that from December 2019 to June 2023, the terms of the agreement set out in paragraph 5 of the particulars of claim and admitted in paragraph 4.1 of the plea were undisturbed. Yet, on some months prior this alleged change, there are non-payments in some months and part payments in others, in line with the version put forward by the Plaintiff. The fact that the Defendant decided to make part payments, in the amount of R150 000.00 plus *ad hoc* fees, does not mean (without more) that there was variation of the agreement.

[15] I must then accept that from December 2019 to June 2023, the Plaintiff provided the Services (as defined) and at a fee of R500 000.00 plus an *ad hoc*

---

[4] ***South African Securitisation Programme (RF) LTD and Others v Cellsecure Monitoring and Response (PTY) Ltd and Others*** (21647/2021) [2022] ZAGPPHC 925 (25 November 2022) paragraph 33.

[5] ***Maharaj v Barclays National Bank Ltd*** 1976 (1) SA 418(A).

fee. This position persisted until the alleged variation and which happened because:

15.1. *monthly fee payable by the responded was reduced to approximately R150 000.00 per month (at a maximum), which amount was variable and dependent on the limited infrastructure actually provided by the applicant from time to time.* Paragraph 19 of the affidavit resisting summary judgment.

15.2. *No obligation existed for the respondent to pay a monthly amount of R500 000.00, nor any ad hoc fees, as alleged by the applicant.* Paragraph 20 of the affidavit resisting summary judgment.

15.3. *The technical support and related services which the plaintiff had to provide to the defendant was not provided to the defendant in accordance with the arrangements between the parties, and as such a reduced fee was payable in respect of the limited IT Infrastructure.* Paragraph 4.6 of the plea.

15.4. *the parties agreed that the Defendant would make payment of a reduced fee in the amount of around R150 000.00 (One Hundred and Fifty Thousand Rands) monthly, for the IT Infrastructure provided by the plaintiff to the defendant.* Paragraph 4.4 of the plea.

[16] No complainant of limited IT infrastructure existed from December 2019 until June 2023. What changed in 2023 – one does not know and the Defendant is silent about it, when one would expect him to have said something.

[17] I must also accept that the Plaintiff rendered the technical support and related services between December 2019 and June 2023 (at least). Put differently, when did the Defendant realise that it was not being provided technical support and related services, as agreed? Again, the Defendant is silent about this when an expectation exists that an explanation would be provided. The explanation is demanded especially given what is stated in paragraph 4.2 of the plea:

> *"The defendant admits that the plaintiff at some stage provided IT infrastructure, technical support and related services to the defendant"*

[18] When did the provision of the services stop? We know that the services were provided "*at some stage*" and we know that the variation is caused by the failure of the Plaintiff, allegedly, to provide the services. We are left in the dark when the alleged breach (failure by the Plaintiff to provide the services) occurred. Yet, we are expected to accept that there was a breach by Plaintiff and that resulted in the variation. There is a contractual defence fitting these type of scenario – at least on the Defendant's version – it is the *exceptio non adimpletti contractus*. The Defendant does not even invoke this defence.

[19] There is simply no build up to this variation, as one would expect. It is sudden, neither unexplained nor explainable. That is telling of itself.

[20] Add to that, even the variation of the amount is cast in some doubt – it is "*approximately R150 000.00 per month*", it is R150 000.00 "*at a maximum which amount was variable and dependent on the limited infrastructure actually provided by the applicant from time to time*" and "*in the amount of around R150 000.00*". We are not told about this limited infrastructure and when the Plaintiff first started providing the alleged limited infrastructure. The Plaintiff says it did provide the services (as defined). A firmer position would thus be expected from the Defendant and this makes the Defendant's version seriously and inherently unconvincing.

[21] There is a blanket denial of the liability for *ad hoc* fees and yet, the Defendant has been paying *ad hoc* fees until March 2025.

[22] Without any evidence to the contrary, I must accept that the Plaintiff's case – as admitted by the Defendant – is unanswerable. That is, at least from December 2019 until about June 2023, the parties carried themselves in terms of their agreement. That there was a variation, the Defendant bears the onus, and the version is unconvincing to say the least. This is because:

22.1. The details of the said variation are unknown to the Defendant. In argument Ms Marx (for the Defendant) submitted that the variation may have been around July 2023. That is, the Defendant is not even sure when this alleged variation took place.

22.2. I have already mentioned the unconvincing version relating to the self-same R150 000.00. It becomes harder to accept this alleged change

when one has regard to the unspecified alleged breach committed by the Plaintiff. Also, it is unclear why the Plaintiff in the absence of a clear breach that the Plaintiff was itself aware of, would agree to change the fee after the agreement had been agreed to in 2019 and the Plaintiff had performed and on its version, continuing to perform. This is more curious when we know the value of money has depreciated. Why would the Plaintiff value its services at R500 000.00 in 2019 and "only" to R150 000.00 in 2023, four (4) years later.

22.3. The payment schedule – which the Defendant accepts when it suits it and denies it when it suits it – reflects shortfall payments in March 2023 (R50 000.00 was paid); April 2023 (R50 000.00 was paid), May 2023 (R100 000.00 was paid) and June 2023 (R100 000.00 was paid). When invited the Defendants to "tender" payment and/or agree an order for the payment of the shortfall that is glaringly common cause, this invitation was declined. This renders the defence not "bona fide". This is so because of paragraph 7 of the plea which states that: "*The (…) admits that Annexure "A" to the particulars of claim demonstrates a payment schedule but denies that the payment schedule was agreed between the parties*" as read with paragraph 21 of the affidavit resisting summary judgment and which states "

> *"21. The respondent complied with the amended agreement and made payment in accordance therewith. The respondent paid for the services rendered by the applicant. Such payments are reflected in the applicant's own annexures."*

22.4. The Defendant cannot blow hot and cold, "*no person can be allowed to take up two positions inconsistent with one another, or as is commonly expressed, to blow hot and cold, to approbate and reprobate*".[6] That is exactly what this Defendant has done in these proceedings – blow hot

[6] ***Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others*** (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (17 September 2021) para 101.

and cold, approbate and reprobate. It is this inconsistency that make the Defendant's version inherently and seriously unconvincing.

[23] While the Defendant intimated that it intends amending its plea, without pre-empting any said intended amendment(s) it will be difficult to reconcile any later version with the present inconsistencies. Be that as it may, I am not making a pronouncement on events that are at present unknown. What is known at present, the plea as well as the affidavit resisting summary judgment do not disclose a bona fide defence.

[24] In the result, I am inclined to grant summary judgment.

Costs

[25] The Plaintiff seeks costs on Scale C, as set out in both the combined summons and application for summary judgment.

[26] But for the belated suggestion of a variation, everything else was common cause and thus there can hardly be any complexity to speak of. Nor were the papers voluminous. The value of the claim is R12 million but that does not, in my view, elevate it to a level justifying costs on scale C.

[27] The liability lies from a commercial agreement, the existence of which is common cause, and which the Plaintiff could have been more diligent in enforcing and perhaps the value of the claim may have been lesser.

[28] In the result, costs on Scale B would be justified.

Conclusion

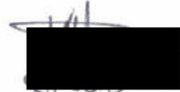
[29] I thus find that the Plaintiff is entitled to summary judgment and with costs on Scale B.

Order

[30] I make the following order:

1. The Defendant is ordered to pay the Plaintiff an amount of **R 12 100 000.00** with interest, calculated at the prescribed rate of interest from the date of service of the summons until date of final payment.

2. The Defendant is to pay the Plaintiff's costs of the action (including summary judgment proceedings) on scale B



K. MVUBU
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Court Online. The date for hand-down is deemed to be 05 June 2026.

Date of Hearing :02 June 2026
Date of Judgement :05 June 2026

For the Plaintiff :Adv. Van Niekerk
Instructed by :Rogers Kruger Smith Inc.

For the Defendant :Adv. Marx
Instructed by :Classen & Associates Inc.