



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

- (1) REPORTABLE: Yes  / No   
(2) OF INTEREST TO OTHER JUDGES: Yes  / No   
(3) REVISED: Yes  / No

Case 2023-093527

Date: 05 June 2026

In the matter between:

**SASFIN BANK LIMITED**

Plaintiff

and

**MECS CONTRACT FILLING AND  
MANUFACTURING SEBENZA (PTY) LTD**

First Defendant

**RUGHEIMER HANS WINFRED**

Second Defendant

**RUGHEIMER HANS WINFRED N.O**

Third Defendant

**RUGHEIMER COLINNE MATHILDE N.O**

Fourth Defendant

**RUGHEIMER HANS WINFRED N.O**

Fifth Defendant

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**JUDGMENT**

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DU PLESSIS J

## *Introduction*

[1] This is an application for summary judgment. The plaintiff, Sasfin Bank Limited, seeks summary judgment against the second defendant, Mr Rugheimer, only, on two money claims (Claims B and C) arising from credit agreements entered into with the first defendant, MECS Contract Filling and Manufacturing Sebenza (Pty) Ltd (“MECS”).

[2] The second defendant opposes the application on two grounds: first, that the plaintiff has failed to establish a valid cession of the underlying agreements and therefore lacks locus standi (“the invalid cession-defence”); and second, that the amounts claimed are incorrect because certain payments, including a payment of R280 000, have not been taken into account (“the quantification-defence”).

[3] The central question is whether the second defendant, who bound himself as guarantor and co-principal debtor, has raised a bona fide defence to summary judgment by alleging defects in a cession agreement to which he was not a party and by disputing the quantum only to the extent of a payment of R280 000 made after the summons was issued.

[4] For the reasons that follow, I am satisfied that the plaintiff has established a proper cause of action, that neither defence meets the threshold for resisting summary judgment, and that summary judgment should be granted in respect of the reduced balances as reflected in the updated certificates of balance, with leave to defend confined to a limited residual amount of R280 000 and interest.

## *Background*

[5] MECS, as principal debtor, entered into three credit agreements with Sunlyn (Pty) Ltd, the plaintiff’s predecessor in title: one instalment sale agreement (Claim A) and two master lease agreements (Claims B and C) in respect of certain industrial machinery used in its factory plant. The instalment sale agreement had terminated by effluxion of time before MECS entered business rescue, and Claim A is not pursued in the present application.

[6] The second and third agreements, both master lease agreements, are the subject of Claims B and C, respectively. These leases were terminated upon service of the combined summons on 16 October 2023, prior to the commencement of business rescue proceedings in respect of MECS.

[7] The second defendant gave a written guarantee undertaking in favour of Sunlyn "or its successors in title". Under that agreement, he undertook, unconditionally and irrevocably, as principal debtor and not merely as surety, to pay all amounts of whatsoever nature which were then due or might in future become due and payable by MECS to the plaintiff. The guarantee contains clauses dispensing with excussion, recognising cession, and indemnifying the creditor even where the underlying debts may be void, voidable, unenforceable or ineffective. It is common cause that MECS was placed under business rescue on 1 November 2023 and was subsequently finally wound up on 2 June 2025.

[8] Concerning Claims B and C, the plaintiff relies on certificates of balance. In his supplementary affidavit opposing the summary judgment, the second defendant claims that a payment of R280 000, being the sale of leased assets "in respect of the relevant lease agreements and the goods," was made to the plaintiff after the summons was served and should be considered. The plaintiff does not deny this payment and has agreed to provide updated balance certificates at the hearing, reflecting this credit.

### *Summary judgment*

[9] The court must enquire whether the defendant has: (a) fully disclosed the nature and grounds of his defence and the material facts upon which it is founded, and (b) on the facts so disclosed, appears to have a defence which is both bona fide and good in law. If satisfied on these requirements, the court must refuse summary judgment, wholly or in part.<sup>1</sup> The defendant's affidavit is not required to meet the standard of a plea or evidence at trial, but the material facts must be "sufficiently full" to persuade the court that, if proved at trial, they will constitute a defence. Conversely,

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<sup>1</sup> *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A).

mere conjecture, speculation or legal argument unsupported by primary facts will not suffice.<sup>2</sup>

[10] As was held in *Gulf Steel (Pty) Ltd v Rack-Rite Bop (Pty) Ltd*,<sup>3</sup> even if the defendant tenders no defence, summary judgment must be refused if the particulars of claim do not disclose a proper and complete cause of action

[11] It is against this framework that the defences advanced by the second defendant fall to be assessed.

*Defence: invalid cession*

[12] The second defendant's primary defence is that the plaintiff has not proven that the claims from the instalment sale and lease agreements were validly ceded by Sunlyn to Sasfin. He submits that the Main Cession Agreement made in 2006 between Sunlyn and Sasfin, along with its addendum, is subject to suspensive conditions, and that the fulfilment of these conditions has not been properly pleaded in the particulars of claim nor confirmed in the plaintiff's founding affidavit.

[13] Relying on *Dolphin Whisper Trading (Pty) Ltd v Born Free Investments 568 (Pty) Ltd*<sup>4</sup> and *Kates Hope Game Farm (Pty) Ltd v Terblanchhoek Game Farm (Pty) Ltd*,<sup>5</sup> he submits that a party relying on a cession must allege and prove the contract of cession and, where that cession is subject to suspensive conditions, must plead and prove the fulfilment of such conditions.

[14] The second defendant further submits that his reliance on these omissions does not amount to an impermissible "exception in disguise". He relies on *Gulf Steel (Pty) Ltd v Rack-Rite Bop (Pty) Ltd*,<sup>6</sup> contending that the court must first be satisfied that the plaintiff's cause of action is complete and technically in order; the fact that he did not except on this precise ground does not cure any defect.

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<sup>2</sup> *Breitenbach v Fiat SA. (Edms) Bpk 1976 (2) SA 226 (T).*

<sup>3</sup> 1998 (1) SA 679.

<sup>4</sup> [2016] ZAGPPHC 224.

<sup>5</sup> [1997] ZASCA 69.

<sup>6</sup> 1998 (1) SA 679.

[15] The plaintiff does not dispute the general proposition that a litigant relying on an agreement subject to a suspensive condition must, in an appropriate case, plead and prove fulfilment of that condition.

[16] The plaintiff submits that its particulars of claim, read as a whole, do adequately plead the cession and fulfilment of the necessary preconditions, in conformity with Rule 18(4) and the approach endorsed by the Supreme Court of Appeal in *Deltamune (Pty) Ltd v Tiger Brands*.<sup>7</sup> It further submits that its particulars and the founding affidavit for summary judgment set out that Sunlyn and Sasfin “fulfilled their obligations” in terms of the Main Cession Agreement and that, as a result, the rights, title and interest in the first, second and third agreements (including the leases underpinning Claims B and C) were ceded and transferred to the plaintiff. Those allegations, they submit, are supported by annexing the cession documents themselves and the relevant credit agreements.

[17] This all means, according to the plaintiff, that they have complied with Rule 18(4), as they are only required to set out the material facts (*facta probanda*) and not the evidentiary detail (*facta probantia*) of the contract. The essential material proposition, they submit, namely that the parties to the cession performed their obligations with the result that the agreements were ceded, is squarely pleaded and verified.

[18] It is so that the plaintiff must establish a proper and complete cause of action, and that the court is not constrained by the absence or weakness of the defendant’s defences if the pleading is itself deficient. In my view, however, the second defendant’s complaint about the pleading of the cession is not correct and does not justify the refusal of summary judgment.

[19] The particulars of claim identify the Main Cession Agreement and its addendum, describe the credit agreements, allege that Sunlyn and Sasfin fulfilled their obligations thereunder, and plead that, as a result, the rights, title and interest in the

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<sup>7</sup> [2022] ZASCA 15 para 25.

agreements were ceded to the plaintiff. The cession documents and agreements are annexed. Those are the material facts upon which Sasfin's standing is based.

[20] *Deltamune* states that a pleader need not specify every underlying transaction that demonstrates the material fact of performance; it suffices to allege that performance occurred, with detailed evidence to be provided at trial if required. The plaintiff's pleading satisfies this standard.

[21] The cases relied upon by the second defendant also do not assist. *Dolphin Whisper* involved motion proceedings in which the debtor put up the applicant-creditor's own letters and agreements evidencing a cession of the claim to a third party, and asked on that basis why the applicant remained the creditor. In that context, the court held that a bare denial by the applicant was insufficient to discharge the evidentiary burden created by the apparently regular cession. This case is different. It is a summary-judgment application in which the plaintiff's particulars and founding affidavit set out a cause of action and allege performance of the cession agreement, and the second defendant does not contend for a rival cession in favour of someone else, but only for more granular pleading of the internal mechanics of the same cession.

[22] In *Kates Hope*, the appellant sought to rely on particular terms of a contract, and the court held that a litigant who invokes a contract subject to a condition must prove both the agreement and the fulfilment of the condition. That is uncontroversial. But it does not assist the second defendant here. The plaintiff expressly pleads that the cedent and the plaintiff performed their obligations under the Main Cession Agreement, and that, as a result, the rights, title and interest in the relevant agreements were ceded and transferred to it. As will be shown below, in terms of Rule 18, this is sufficient.

[23] The plaintiff also submits that the second defendant, as a stranger to the cession contracts, lacks standing to challenge the validity of the cession on the ground that an internal procedural step between the cedent and the cessionary was not followed, particularly where both parties to the cession insist that it is valid and have acted upon it.

[24] The plaintiff relies in this regard on *Corporate Finance (Pty) Ltd v Schwarz North*<sup>8</sup> where the court stated

“[20] It is trite law that a cession is a bilateral juristic act whereby a right, a contractual right is transferred by agreement between the cedent and the cessionary. This can be compared to the sale of the goodwill in the business. In *Botha & another v Carapax Shadeports (Pty) Ltd* [1991] ZASCA 134; 1992 (1) SA 202 (A) pg 214. Botha JA stated ‘When he sells the goodwill of the business, the merx embraces that contractual right.’

[21] The cession therefore embraces the contractual right to sue. It is common cause that a cession, to be effective, does not require the prior consent, knowledge, concurrence or cooperation of the debtor. The debtor has no right of refusal/veto or to intervene in the cession agreement unless there is prejudice. It is effective irrespective of the debtor’s attitude as the debtor is not actively engaged in the process.”

[25] A third party cannot claim that a cession is invalid just because the agreed procedure between cedent and cessionary was not followed when both parties accept the validity of the cession.

[26] The plaintiff further points out that the second defendant’s own conduct undermines his stance: his quantification-defence, which asserts that the claims against him must be reduced by subsequent payments made “in respect of the relevant lease agreements and the goods”, necessarily implies that Sasfin is indeed the party entitled to account for and receive the payments.

[27] This is correct. A third party cannot challenge alleged non-compliance with an internal arrangement between the cedent and cessionary as a reason to deny the existence of the cession, especially when both parties to the agreement assert its validity and have acted on it. In this case, neither Sunlyn nor Sasfin has contested the validity or operation of the Main Cession Agreement. On the contrary, the plaintiff states that both parties have performed and acted based on the understanding that the agreements were duly ceded. Additionally, the second defendant provides no

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<sup>8</sup> [2017] ZAGPJHC 369.

primary facts to support an alternative view; he does not claim, for example, that Sunlyn denied the cession of the leases, that any payments were withheld, or that he suffered prejudice because Sasfin, rather than Sunlyn, was the cessionary.

[28] In that context, the second defendant, who was not involved in the cession, cannot claim that the cession did not occur merely because certain internal procedures may not have been followed, especially given his lack of direct knowledge of those procedures. His objection is based solely on speculation.

[29] It is for these reasons that I find that the invalid-cession defence does not disclose a defence which is good in law.

*Defence: quantification*

[30] Initially, the quantification defence was that the plaintiff's claims were not yet determinable because, on a proper interpretation of the lease agreements, damages "have yet to be established by the deduction of the value of the goods". That contention is largely overtaken by the common cause fact that the leased goods have been sold and that at least one payment of R280 000 was made to the plaintiff after the summons was issued.

[31] In his supplementary affidavit, the second defendant accepts that the sale proceeds of R280 000 must be deducted from the claim amounts, but speculates that further payments might have been made by the business rescue practitioner during the business rescue period which have not yet been brought into account. He indicates that he has been unable to obtain details from the practitioner and wishes the matter to be referred to trial to investigate these potential additional payments.

[32] The plaintiff does not dispute the R280 000 payment and accepts that it must be credited, and that leave to defend must be granted for the R280 000.<sup>9</sup> It has undertaken to furnish updated certificates of balance at the hearing, reflecting the reduced balances due under the leases. There is thus no longer a dispute regarding this.

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<sup>9</sup> [2008] ZAGPHC 423.

[33] *FirstRand Bank Ltd v Carl Beck Estates (Pty) Ltd*<sup>10</sup> confirms that courts may grant summary judgment for the admitted or undisputed portion of a liquidated money claim, while allowing leave to defend only in respect of any genuinely contested balance, and that banks may place before the court updated certificates of balance even at the hearing stage to reflect further payments or adjustments. *Rossouw and Another v FirstRand Bank Ltd*<sup>11</sup> provides that certificates are not inadmissible “new evidence” but amount to an arithmetical calculation based on facts already before the court and, to the extent they reduce the claim, to an admission against interest which the plaintiff is entitled to make.

[34] As for the remaining defence, defendants in summary judgment proceedings must not only state the nature of their defence but also set out the factual grounds “sufficiently full” to persuade the court that, if proved, they will constitute a defence. In the context of a quantum challenge, this usually requires more than a bare allegation that the amount is “incorrect”.<sup>12</sup>

[35] Moreover, a certificate of balance, where contractually agreed upon, constitutes prima facie proof of the indebtedness. To displace it, a defendant must adduce evidence sufficient to destroy a prima facie case. Mere suspicion, hypothetical possibilities or speculation will not suffice. The decision in *Trust Bank of Africa Ltd v Seneka*<sup>13</sup> makes plain that the defendant’s answer must rest on a substantial foundation of fact. Casting mere doubt does not meet the standard.

[36] The second defendant does not make out a defensible case. He does not claim that any specific extra payment was made, nor does he provide evidence of such payments. His argument is based on the belief that it is 'probable' the business rescue practitioner may have made additional payments during trading, and he requests a trial to explore this possibility.

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<sup>10</sup> [2008] ZAGPHC 423.

<sup>11</sup> [2010] ZASCA 130.

<sup>12</sup> *NPGS Protection and Security Services CC v FirstRand Bank Ltd* (314/2018) [2019] ZASCA 94.

<sup>13</sup> 1978 (3) SA 375 (A).

[37] That is not enough to displace the prima facie proof of the certificates or to meet the *Maharaj*<sup>14</sup> standard.

[38] In these circumstances, the appropriate course is to grant summary judgment for the reduced amounts reflected in the updated certificates and, to the extent necessary, to limit the second defendant's leave to defend to a strictly defined balance.

#### *The nature of the guarantee and excussion*

[39] Although not explicitly emphasised during the argument, the papers imply that the second defendant considers himself a traditional surety, only liable after the principal debtor's liability has been definitively determined, especially in relation to MECS's business rescue and subsequent liquidation.

[40] That position is untenable under the wording of the guarantee and under established authority.<sup>15</sup> The guarantee is expressly framed as a primary, independent and continuing obligation. The second defendant is described as a co-principal debtor; he expressly waives the benefit of excussion; and clause 1.2 (as described in the plaintiff's heads) indemnifies the plaintiff against losses even if the underlying agreements are void, voidable or unenforceable. This is the end of that defence.

#### *Conclusion and order*

[41] The plaintiff has pleaded and verified a proper cause of action under Rule 32(2), and the second defendant's cession-defence and quantification-defence, once the undisputed R280 000 payment is taken into account via updated certificates, do not disclose a triable issue save to a limited and defined extent.

[42] Summary judgment should accordingly be granted for the reduced, properly certificated balances under Claims B and C, coupled with leave to defend confined to the limited balance identified below. Costs should follow the cause, and there is no reason to depart from the attorney-and-client scale as per agreement.

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<sup>14</sup> *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A).

<sup>15</sup> *Neon and Cold Cathode Illuminations (Pty) Ltd v Ephron* 1978 (1) SA 464 (A).

*Order*

[43] The following order is made:

CLAIM B:

1. Payment of R 3,557,933.82;
2. Interest on the aforesaid amount at the rate of prime plus 6% per annum from 15 August 2023 to date of final payment;
3. Costs on a scale as between attorney and client.

CLAIM C:

4. Payment of R 2,235,441.45;
5. Interest on the aforesaid amount at the rate of prime plus 6% per annum from 15 August 2023 to date of final payment;
6. Costs on a scale as between attorney and client.
  
7. The Second Defendant is granted leave to defend the balance of the claims set out in the notice of application, namely R280,000 and interest thereon at the rate of 6% per annum from 15 August 2023 to date of final payment.

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**WJ du Plessis**

Judge of the High Court, Gauteng Division,  
Johannesburg

Date of hearing: 17 March 2026

Date of judgment: 5 June 2026

For the applicant: JG Botha instructed by ODBB

For the respondent: W Boonzaaier instructed by Mashabane  
and associates