



**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**JUDGMENT**

**Not Reportable**

Case no: 2025-00387

In the matter between:

**BOTUMA INVESTMENT PROPRIETARY**

**PLAINTIFF**

**LIMITED t/a STAG AFRICAN**

and

**PAVEPRINT PROPRIETARY LIMITED**

**DEFENDANT**

**t/a CONCRETEx**

**Neutral citation:**

**Coram:** Mgengwana; AJ

**Heard:** 10 March 2026

**Delivered:** 12 June 2026

**Summary:** Summary Judgement Application – Rule 32 of the Uniform Rules of Court – Whether the defences raised in Defendant’s Plea raise any issues for trial.

---

**ORDER**

---

[1] In the result, I grant the following order:

[1.1] Application for summary judgment is dismissed with costs inclusive of counsel’s fees on Scale B.

[1.2] Defendant is granted leave to defend the action.

---

**JUDGMENT**

---

**MGENGWANA; AJ**

Judgement handed down: The judgement is handed down electronically by circulating to the parties or legal representatives by email. The date for the handing down of the judgment is deemed to be 12 June 2026.

## **Introduction**

[1] This is a summary judgment application in which the Plaintiff is seeking an Order against the Defendant on the following terms:

- (a) Payment of R600 000.00
- (b) Costs of suit;
- (c) Further and/or alternative relief.

## **Background**

[2] On 22 September 2022, the Plaintiff and the Defendant entered into a Settlement Agreement (Settlement Agreement) on, *inter alia*, the following terms after the parties had cancelled a Collaboration Agreement in terms whereof the Plaintiff had advanced the sum of R1 500 000.00 (the capital) to the Defendant, this Collaboration Agreement was entered into on 3 May 2021(Collaboration Agreement):

- (a) That the capital is repayable by way of payments of R50 000.00 per month which payments will be made on or before the 1<sup>st</sup> day of each and every month commencing on 1 October 2022 interest free.
- (b) That payments are to be made into the Nedbank bank account belonging to Stag Holdings, a Close Corporation (Stag).

(c) That should any payment referred to in clause (a) above (R50 000.00 monthly instalment) not be made on due date, then and in that event, the Plaintiff will give the Defendant 5 days written notice to make such payment, failing which the Plaintiff may institute proceedings for recovery thereof.

(d) That no leniency, indulgence, extension of time or other act of grace that the said Plaintiff shall afford the Defendant with regard to compliance with the terms hereof, and no neglect or failure on the part of the Defendant to exercise or enforce any of his rights, shall operate or be construed as a waiver by the Plaintiff or novation of the terms of this document.

(e) That the terms of this document shall novate, cancel and supersede the terms and conditions of all prior negotiations, document, letters or other communications between the parties hereto, with the intent and purpose that the terms and conditions hereof shall constitute the sole memorial of the Agreement subsisting between the parties.

[3] Between 7 October 2022 and 7 March 2024 the Defendant paid the Plaintiff a total amount of R900 000.00 and thereafter failed to abide by the terms of the Settlement Agreement in that no further payments were made to the Plaintiff by the Defendant. On 10 May 2024, the Defendant attorneys responded to a letter dated 7 May 2024 which was apparently written by Piet De Clerk. In the letter dated 10 May 2024, Defendant's attorneys submitted, *inter alia*, that it believes the amount of R900 000.00 already paid Plaintiff is fair and reasonable under the circumstances and regards its obligation to Stag

as settled. The Defendant went further to submit that it is not indebted to the Plaintiff for any future amount or at all.

[4] On 10 December 2024, the Plaintiff addressed a letter of demand to the Defendant in which it claimed payment of the sum of R600 000.00 from the Defendant within 5 days of the date of the letter of demand. The Defendant neglected to pay the aforesaid amount of R600 000.00 whereafter the Plaintiff served combined summons on Defendant on 21 January 2025.

[5] The Defendant served a Notice of Intention to Defend on the Plaintiff on 4 February 2025 and its Plea on 28 March 2025 whereafter the Plaintiff served a summary judgement application on the Defendant on 22 April 2025 and had same set down for hearing on 4 June 2025. After opposition thereto, the summary judgement application was then postponed to 10 March 2026.

[6] The Defendant raised, *inter alia*, the following defences in its plea:

(a) It raised a Special Plea of Non-Joinder based on the allegation that the Collaboration Agreement referred to indirectly in the Settlement Agreement was concluded by the Plaintiff and Birdhill and not by the Plaintiff and the Defendant. The Settlement Agreement purported to cancel the Collaboration Agreement between the Plaintiff and Birdhill without involving Birdhill. The Special Plea goes on to allege that the Defendant lacked authority to cancel the Collaboration Agreement on behalf of Birdhill. In the premises, this Court cannot adjudicate Plaintiff's claim without joining Birdhill as party to the proceedings first according to the Defendant.

(b) It denied and put the Plaintiff to proof of its allegation that the whole cause of action arose within the jurisdiction of this Court given that the Collaboration Agreement was concluded with Birdhill, an Irish entity.

(c) It pleaded that the alleged advance of the capital was not made by the Plaintiff but by Stag which is a distinct legal entity from the Plaintiff as evidenced by payments totaling R1 500 000.00 (1 x R500 000 and 3x R333 000).

(d) It pleaded that the Plaintiff lacks *locus standi* to claim payment of a debt it did not advance in respect of an agreement it was not party to.

(e) It admitted to making payments totaling R900 0000.00 to Stag and not the Plaintiff as it had no obligation towards the Plaintiff in terms of the Settlement Agreement.

(f) It denied the allegation that the parties to this litigation do not fall within the scope of section 8(3)(a)(i) of the National Credit Act 34 of 2005 (the Act).

(g) In the alternative, and should it be found that the Settlement Agreement is enforceable, the Defendant denied that the amount of R600 000.00 is due and payable as the Plaintiff failed to comply with clause 3 of the Settlement Agreement which provides that should any payment not be made on the due date, the Plaintiff shall give the Defendant 5 days' written notice to make such payment, failing which the Plaintiff may institute proceedings. In this instance, Plaintiff's notice dated 11 December 2024 demanded payment of the full outstanding balance of R600 000.00 within 5 days but did not specify any missed instalment or provide notice to remedy a specific breach as contemplated by clause 3.

[7] In essence, besides the Special Plea, the Defendant has taken issue with the jurisdiction of this Court to hear this action, *locus standi* of the Plaintiff to institute the action, compliance with the provisions of the Act and compliance with paragraph 3 of the Settlement Agreement should the court in the main action come to the conclusion that the Defendant herein had the necessary

authority to cancel the Collaboration Agreement even though it was not party thereto.

[8] Plaintiff's submissions in the main is that the defences raised by the Defendant in his plea do not raise any issues for trial for, *inter alia*, the following reasons:

(a) Even though it admits that the Collaboration Agreement was entered into by it and Birdhill, however, the Defendant had at all times presented to it that Birdhill was a related party to the Defendant and controlled by the Defendant and always acted accordingly. As proof of the foregoing, both the Settlement Agreement and the Collaboration Agreement were signed by the same person, Mark Patrick Ryan. Therefore, the Settlement Agreement was validly entered into. Anyway, the capital was advanced to the Defendant and no funds were at any stage advanced to Birdhill.

(b) The Settlement Agreement does not contain any operative provision purporting to cancel the Collaboration Agreement as pleaded by the Defendant. The Collaboration Agreement was already cancelled when the Settlement Agreement was entered into keeping in mind that the Defendant at all times represented to the Plaintiff that Birdhill was a related party to it and controlled by it. The Defendant is therefore precluded from relying on the cancelled Collaboration Agreement to deflect liability under the operative Settlement Agreement.

(c) It was not required to join Birdhill as Birdhill is not party to the Settlement Agreement and therefore has no interest in the current proceedings which are strictly between the Plaintiff and the Defendant. The Defendant, through its attorneys of record, has never denied its indebtedness to the Plaintiff. The Special Plea of non-joinder of Birdhill is not only misguided but amounts to a delaying tactic aimed at frustrating the Plaintiff's enforcement of a valid and binding agreement.

(d) Both agreements were entered into in Cape Town and payment of the capital was indeed made by Stag but this payment was made on behalf of the Plaintiff and

therefore, the Plaintiff does have *locus standi* to reclaim the capital. Anyway, as the Defendant acknowledged its indebtedness to the Plaintiff in clause 1.1 of the Settlement Agreement and undertook to repay same to the Plaintiff, the Defendant is therefore precluded from now challenging Plaintiff's *locus standi*.

(e) The Settlement Agreement is not a credit agreement under the provisions of the Act and therefore, no compliance therewith is required. Clause 3 of the Settlement Agreement does not place an obligation on the Plaintiff to punctually give 5 days' written notice to the Defendant the moment a payment was missed, and it also does not oblige the Plaintiff to immediately institute proceedings for the recovery of each and every single payment missed.

### **Issues to be determined**

[9] This Court is being called upon to determine whether the Defendant's Plea discloses a genuine defence to Plaintiff's particulars of claim or not.

### **Applicable Law**

[10] Rule 32 of the Uniform Rules of Court, which governs Summary Judgement Applications, states the following:

- “(1) The plaintiff may, after the defendant has delivered a plea, apply court for summary judgment on each of such claims in the summons as is only—
- (a) on a liquid document;
  - (b) for a liquidated amount in money;
  - (c) for delivery of specified movable property;
  - (d) or for ejection,
- together with any claim for interest and costs.

(2)

(a) Within 15 days after the date of delivery of the plea, the plaintiff shall deliver a notice of application for summary judgment, together with an affidavit made by the plaintiff or by any other person who can swear positively to the facts.

(b) The plaintiff shall, in the affidavit referred to in sub-rule (2)(a) verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence as pleaded does not raise any issue for trial.

(c) If the claim is founded on a liquid document a copy of the document shall be annexed to such affidavit and the notice of application for summary judgment shall 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.

(3) The defendant may—

(a) give security to the plaintiff to the satisfaction of the court for any judgment including costs which may be given; or

(b) satisfy the court by affidavit (which shall be delivered five days before the day on which the application is to be heard), or with the leave of the court by oral evidence of such defendant or of any other person who can swear positively to the fact that the defendant has a bona fide defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor.”

[11] In *Joob Joob Investments v Stocks Mavundla ZEK*<sup>1</sup>, Navsa JA states the following with regard to the Summary Judgement procedure:

---

<sup>1</sup> 2009 (5) SA 1 (SCA).

“[31] So too in South Africa, the summary judgment procedure was not intended to ‘shut (a defendant) out from defending’, unless it was very clear indeed that he had no case in the action. It was intended to prevent sham defences from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavouring to enforce their rights.

[32] The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of her/his day in court. Our courts, both of first instance and at appellate level, have during that time rightly been trusted to ensure that a defendant with a triable issue is not shut out. In the Maharaj case at 425G-426E, Corbett JA, was keen to ensure first, an examination of whether there has been sufficient disclosure by a defendant of the nature and grounds of his defence and the facts upon which it is founded. The second consideration is that the defence so disclosed must be both bona fide and good in law. A court which is satisfied that this threshold has been crossed is then bound to refuse summary judgment. Corbett JA also warned against requiring of a defendant the precision apposite to pleadings. However, the learned judge was equally astute to ensure that recalcitrant debtors pay what is due to a creditor.

[33] Having regard to its purpose and its proper application, summary judgment proceedings only hold terrors and are ‘drastic’ for a defendant who has no defence. Perhaps the time has come to discard these labels and to concentrate rather on the proper application of the rule, as set out with customary clarity and elegance by Corbett JA in the Maharaj case at 425G-426E.”

[12] In the unreported but reportable judgement *Cohen N.O. and Others vs Deans*<sup>2</sup> Nicholls JA held as follows:

---

<sup>2</sup> 2023 [ZASCA] 56.

“[29] The only decision to trace the history and reasoning behind the amended procedure for summary judgment in detail is *Tumileng Trading CC v National Security and Fire (Pty) Ltd; E & D Security Systems CC v National Security and Fire (Pty) Ltd (Tumileng)*. As observed by Binns Ward J in *Tumileng*, most of the old authorities still apply in determining whether a defendant has disclosed a bona fide defence. All the defendant is required to do is disclose a genuine defence, as opposed to ‘a sham’ defence. Prospects of success are irrelevant and as long as the defence is legally cognisable in the sense that it amounts to a valid defence if proven at trial, then an application for summary judgment must fail.

[31] The high court failed to consider the test to be applied in deciding whether to grant summary judgment. This was, and remains, whether the facts put up by the defendants raise a triable issue and a sustainable defence in the law, deserving of their day in court. The defendants must fully disclose the nature and grounds of their defence and the material facts on which it is founded. All a defendant has to do is set out facts which if proven at trial will constitute a good defence to the claim.”

### **Analysis of the defences raised by the Defendant**

[13] The inescapable fact is that the Settlement Agreement that is the subject of these proceedings is a product of the cancelled Collaboration Agreement entered into by Birdhill Investment Limited (Ireland) (Birdhill) and the Plaintiff at the beginning of May 2021. It therefore goes without saying that Birdhill has substantial and direct interest in the cancellation of the Collaboration Agreement entered into by it and the Plaintiff. This is more so if Birdhill disputes the validity of the cancellation of the Collaboration Agreement without its input as such cancellation then paved the way for the

conclusion of the Settlement Agreement which is the subject of these legal proceedings. This Court therefore finds that the Special Plea of non-joinder and the challenge to Defendant's authority to cancel the Collaboration Agreement are triable issues that would have to be determined by the trial court.

[14] There is also a dispute regarding this Court's jurisdiction to hear this action. This dispute arises from the Defendant's denial of Plaintiff's allegation that the whole cause of action arose within the jurisdiction of this Court as the Collaboration Agreement, which was concluded with Birdhill, an Irish Company. This defence cannot be sustained as both the Collaboration and Settlement Agreements were entered into in Cape Town. This defence therefore does not constitute a *bona fide* defence.

[15] The issue of *locus standi* is not very clear at this stage as the Plaintiff admits that the capital was not advanced to the Defendant by the Plaintiff but by Stag. However, the Plaintiff averred that Stag made such advance on behalf of the Plaintiff, and this is disputed by the Defendant on the basis that there is no evidence of agency or assignment that has been provided to support this assertion. Moreover, the Defendant went on to aver that the amount of R900 000.00 has all been paid to Stag's bank account and this supports its contention that any of its obligations are owed to Stag and not the Plaintiff. This is the basis of Defendant's averment that the Plaintiff lacks *locus standi* to claim the R600 000.00 from the Defendant. This Court finds that clarity on the issue of *locus standi* will only be achieved at trial stage after evidence has been led by both parties to these proceedings and therefore concludes that the dispute around the issue of *locus standi in judicio* of the Plaintiff to institute

these proceedings constitutes a triable issue.

[16] There is also a dispute around the letters sent by Defendant's attorneys on 19 April 2022 wherein the Defendant acknowledged liability for the capital and a letter dated 10 May 2024 wherein the Defendant admitted that it has already paid R900 000.00 of the capital. The Plaintiff avers that these two letters amount to admissions of liability by the Defendant to the Plaintiff.

[17] However, the Respondent avers that the letter of 19 April 2022 was conditional as it stated that repayment would occur "as and when it is convenient and financially prudent" due to economic constraints post Covid 19 and accordingly, this letter does not constitute unconditional admission of liability to the Plaintiff. This Court does not accept Defendant's averment in this regard as it is clear that the Defendant unconditionally accepted liability in this letter however it sought to only delay repayment as a result of the economic constraints resulting from Covid 19. This Court therefore finds that the defence raised by the Defendant in respect of the letter dated 19 April 2022 is not *bona fide*.

[18] The Defendant also asserted that the letter dated 10 May 2024 merely mentioned that the amount of R900 000.00 already paid was "fair and reasonable under the circumstances,". This, according to the Defendant, was an indication of the Defendant's belief that its obligations were fulfilled or that further liability was disputed. This Court agrees with Defendant's interpretation of the letter 10 May 2024 as Defendant's attorneys ended paragraph 2.8 of this letter with a sentence saying that "Our client therefore regards its obligations to Stag as settled." (My underlining). The underlined

words also corroborate Defendant's assertion that it had an obligation to pay Stag and not the Plaintiff.

[19] The question of whether the Settlement Agreement, which is the subject of this litigation is a credit agreement and therefore falls within the ambit of section 8 of the Act, can only be answered after evidence has been led. It is definitely not enough for the Plaintiff to simply aver that it is not a credit agreement without more or by simply averring that the parties do not fall within the scope of section 8(3)(a)(i) of the Act.

[20] There is also a dispute around the interpretation of clause 3 of the Settlement Agreement. Defendant avers the Plaintiff failed to comply with clause 3 of the Settlement Agreement as the Plaintiff failed to give the Defendant 5 days written notice to make payment of R50 000.00 for a specific month failing which the Plaintiff will institute legal proceedings. According to the Defendant, the Plaintiff's notice dated 11 December 2024 demanded payment of the full R600 000.00 within 5 days but did not specify any missed instalment or provide notice to remedy a specific breach as required by clause 3. Even though the Plaintiff denied that it was obliged to immediately give 5 days' notice to the Defendant the moment a specific payment is missed however, the Defendant avers that strict compliance with clause 3 is a condition precedent to enforcement and the current notice's failure to specify the missed payment renders the debt unenforceable until proper notice is given. This Court finds that this alternative defence is plausible and therefore incapable of outright dismissal without more evidence being led in respect thereof. This defence that has been raised in the alternative also constitutes a triable issue.

[21] This Court therefore finds that some of the defences raised by the Defendant do indeed disclose *bona fide* defences that are good in law. The Court therefore finds that the Defendant should be granted leave to defend the action instituted against it by the Plaintiff.

[22] In the result, I grant the following order:

22.1 Application for summary judgment is dismissed with costs inclusive of counsel's fees on Scale B.

22.2 Defendant is granted leave to defend the action.



**TJ MGENGWANA**  
**Acting Judge of the High Court**

APPEARANCES:

For the plaintiff: Mr. J.D. De Vries

Instructed by: Hannes Gouws & Partners Inc.

Ms. M. Grobler

For the Defendant: Mr. P. Tredoux

Instructed by: Deon Perold & Associates Inc.

Mr. D. Perold