IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No: 28771/2022

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED

.....28 May 2026..... .....
DATE SIGNATURE

In the matter between:

FIRSTRAND BANK LIMITED t/a FIRST NATIONAL BANK (Registration No: 1929/001225/06)	**Plaintiff/Applicant**
and	
HAPPY STEVEN MAKHONGELA	**1st Defendant/Respondent**
ZONKE CHARITY NTOMBELA	**2nd Defendant/Respondent**
EDUARDO PEREGRINO CASTRO	**3rd Defendant**
LERATO CONFIDENCE THAELE	**4th Defendant/Respondent**
CECILIA CASTRO	**5th Defendant**

This order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his/her secretary. The date of this Order is deemed to be 28 May 2026.

JUDGMENT

DU PLESSIS, AJ

INTRODUCTION

1.

1.1. Two interlocking applications for summary judgment, brought under case number 28771/2022 by FirstRand Bank Limited trading as First National Bank ("the plaintiff" or "the Bank"), came before me for argument on 27 May 2026. The first is an application against the fourth defendant, Ms Lerato Confidence Thaele, served on 20 March 2024. The second is a subsequent application against the first defendant, Mr Happy Steven Makhongela, and the second defendant, Ms Zonke Charity Ntombela, served on 14 February 2025. The two applications were enrolled and argued together. They raise overlapping legal questions and it is convenient to dispose of them in a single judgment.

1.2. Default judgment was granted by this Court on 26 May 2025 against the third defendant, Mr Eduardo Peregrino Castro, and the fifth defendant, Ms Cecilia Castro, who did not deliver notices of intention to defend or pleas. They did not appear before me, and nothing in this judgment disturbs that order.

1.3. At the hearing the plaintiff was represented by Adv R van Dyk. The first, second and fourth defendants were represented by Adv N Gaffoor. Comprehensive heads of argument were filed by both sides, together with their respective lists of authorities and a joint practice note. I am grateful to both counsel for the considerable assistance they rendered, both in writing and in oral argument.

1.4. For convenience, where the context permits, I refer to the parties by their designations in the main action — "*the plaintiff*" and "*the first, second, and fourth defendants*" — notwithstanding that in the summary judgment applications they are technically the applicant and the respondents respectively.

THE CLAIMS

2.

2.1. The plaintiff's claims arise from two written credit agreements concluded between it and Setoil (Pty) Ltd (registration number 2004/020592/07) ("the principal debtor"), supported by suretyships signed by each of the defendants. The relief sought against the first, second and fourth defendants, jointly and severally with the third and fifth defendants, the one paying the others to be absolved, is:

Claim 1 (Overdraft):

2.1.1. Payment of R1 145 358.26;

2.1.2. Interest thereon at the rate of prime plus 5.00% calculated daily on the outstanding balance and capitalised monthly in arrears from 1 February 2022 to date of final payment; and

2.1.3. Costs of suit on the attorney-and-client scale.

Claim 2 (Loan):

2.1.4. Payment of R67 214.78;

2.1.5. Interest thereon at the rate of prime plus 7.00% calculated daily on the outstanding balance and capitalised monthly in arrears from 1 February 2022 to date of final payment; and

2.1.6. Costs of suit on the attorney-and-client scale.

2.2. The first agreement is a Short-Term Direct Facility (an overdraft,) concluded on or about 27 June 2019 at Northcliff, with a facility limit of R1 000 000.00, repayable on demand and subject to annual review. The second is a Revolving Loan Agreement concluded on or about 30 May 2017 at Johannesburg. Both are admittedly large agreements with a juristic person and accordingly fall outside the ambit of the National Credit Act 34 of 2005 ("the NCA") in terms of section 4(1)(b) read with the relevant ministerial determination.

2.3. The suretyships (as annexed to the particulars of claim) were signed on different dates: the fourth defendant on 27 November 2015 ;the second defendant on 27 November 2015 ; and the first defendant on 23 August 2018. All bind the relevant defendants as sureties and co-principal debtors, in solidum, for the indebtedness of the principal debtor to the plaintiff. The amount secured is unlimited, and each suretyship is expressly described as continuing security for present and future debts of the principal debtor.

COMMON CAUSE FACTS

3.

Although the affidavits resisting summary judgment contain numerous pleas of "*no knowledge*", much is common cause when the pleadings and the opposing affidavits are read together. Each of the following is either expressly admitted or is not put in issue on any meaningful basis: the identity of the parties, the registration of the plaintiff as a credit provider, and the jurisdiction of this Court; that the first, second and fourth defendants signed their respective written suretyships; that the principal debtor was placed under voluntary liquidation, as evidenced by the CIPC certificate annexed as "SJ4", and that upon liquidation the outstanding amounts under the credit facilities became immediately due, owing and payable; that the NCA does not apply to the underlying credit agreements; that letters of demand were properly dispatched ;that the amounts claimed are liquidated and supported by certificates of balance signed by an authorised official of the plaintiff ; and that the procedural chronology pleaded by the plaintiff is correct.

THE LEGAL FRAMEWORK

4.

Summary judgment under the amended Rule 32

4.1. Rule 32 of the Uniform Rules of Court was substantively amended with effect from 1 July 2019. Under the amended rule, a plaintiff may apply for summary judgment only after a plea has been delivered. The supporting affidavit must verify the cause of action and the amount claimed, identify any point of law relied on and the facts on which the claim is based, and explain briefly why the pleaded defence does not raise an issue for trial. The defendant resisting summary judgment must satisfy the Court by affidavit that there is a *bona fide* defence to the action, by disclosing fully the nature and grounds of the defence and the material facts relied upon.

4.2. The *locus classicus* on the standard to be met by a defendant's opposing affidavit is Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A), which is at the head of each side's list of authorities. Corbett JA, as he then was, said at 426B–C that the enquiry is whether the defendant has "*fully*" disclosed the nature and grounds of the defence and the material facts upon which it is founded, and whether on the facts so disclosed the defendant appears to have, as to the whole or part of the claim, a defence which is both *bona fide* and good in law. If so, summary judgment must be refused, either wholly or in part. The defendant need not deal exhaustively with the facts and evidence, but must disclose the defence and the material facts with sufficient particularity and completeness to

enable the Court to decide whether the affidavit discloses a bona fide defence.

4.3. In Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA) at 11G–12D, cited by both counsel, the Supreme Court of Appeal re-articulated the Maharaj test. The rationale of the procedure is impeccable: it is not intended to deprive a defendant who has a triable issue or a sustainable defence of his or her day in court. Adv Gaffoor relied on this passage — and rightly so — for the proposition that the Court must not, at this stage, determine disputes of credibility or probabilities. I keep that admonition steadily in mind.

4.4. The Supreme Court of Appeal added further guidance in NPGS Protection and Security Services CC and Another v FirstRand Bank Ltd [2019] ZASCA 94 at para [11], which is in the plaintiff's list of authorities and was relied on by Adv van Dyk. The Supreme Court of Appeal there held, in the context of certificate-of-balance claims by a bank, that an opposing affidavit must disclose fully the nature and grounds of the defence and the material facts relied upon. A defendant cannot content himself or herself with bald denials; something more is required. If the defendant disputes the amount claimed, he or she should say so and set out a factual basis for that denial, for example by identifying payments which have not been credited. That dictum bears directly on the present case, because the amounts claimed by the Bank are evidenced by certificates of balance and by detailed statements of account (annexure SJ3), and none of the defendants attempts to dispute the figures in any factual way.

4.5. Under the amended rule, the plaintiff is now required, in its supporting affidavit, to engage with the content of the defendant's plea: see Tumileng Trading CC v National Security and Fire (Pty) Ltd; E and D Security Systems CC v National Security and Fire (Pty) Ltd 2020 (6) SA 624 (WCC) at paras [19]–[22], a judgment of Binns-Ward J. The plaintiff's deponent, Ms Suneilla Williams, has done so. Her affidavit traverses the plea at length, identifies the defences raised, and explains why none of them, on the plaintiff's case, raises an issue for trial. The plaintiff has crossed its procedural threshold; the question is whether the defendants have crossed theirs.

Suretyship principles

4.6. A contract of suretyship must, in terms of section 6 of the General Law Amendment Act 50 of 1956, be embodied in a written document signed by or on behalf of the surety. Within those formal confines it

is to be construed strictly. In Standard Bank of South Africa v Kyriacou and Others (16547/2022) [2024] ZAGPPHC 1190 (20 November 2024) at para [12], a judgment on which Adv van Dyk relied, Ntlama-Makhanya AJ reaffirmed both the accessory nature of a suretyship — that the liability of a surety is dependent upon the obligation of the principal debtor — and the principle that a deed of suretyship is to be construed strictly, so that it may not be extended beyond what is expressed or covered by the intention and sense of its words. A surety who has bound himself or herself as co-principal debtor, in *solidum*, and who has renounced the usual benefits of excussion, division and cession of action, is liable for the principal debt jointly and severally with the principal debtor: Orkin Lingerie Co (Pty) Ltd v Melamed & Hurwitz 1963 (1) SA 324 (W) at 326G–H, also cited by Adv van Dyk.

4.7. The caveat subscriptor rule — that a person who signs a contractual document is taken to have assented to its terms — is reflected in George v Fairmead (Pty) Ltd 1958 (2) SA 465 (A), which appears in the plaintiff's list of authorities. Adv Gaffoor, for her part, relies on the qualification to that rule drawn from George v Fairmead at 470B–E, as quoted at paragraph [2] of Brink v Humphries & Jewell (Pty) Ltd 2005 (2) SA 419 (SCA): where a party trying to resile from a contract has been led into error by the conduct, or the misrepresentation (innocent or fraudulent), of the other party, the first party is not bound. That is the doctrine of iustus error. I return to Brink when considering the defendants' substantive defences below.

4.8. Both counsel placed fuller lists of authorities before me than the cases to which I have referred and shall refer in this judgment. I have considered the other authorities in counsel's lists but find it unnecessary to deal with them individually.

THE APPLICATION AGAINST THE FOURTH DEFENDANT

5.

The defences raised

5.1. The fourth defendant admits, at paragraph 1.2 of her plea, that she signed the suretyship on 27 November 2015. She raises two defences. First, she pleads that she signed the suretyship in her capacity as a director of the principal debtor and not in her personal capacity, with the result that the suretyship was in force only while

she remained a director, and that her resignation as director on 14 March 2016 brought it to an end. She supports this with an allegation that there was an "*understanding*" between her and the plaintiff that she would be released as surety upon her resignation. Second, she pleads ignorance of the overdraft (2019) and loan (2017) agreements, contending that they were concluded after she had cut ties with the principal debtor and that she cannot be held liable for agreements of which she had no knowledge.

The terms of the 2015 suretyship

5.2. These defences must be measured against the suretyship she admittedly signed. Clause 2 records that she would be liable for all "*direct, indirect, contingent and accessory liabilities*" of the principal debtor, that the suretyship would apply whether the debt or liability had matured or not, and that it would be "*continuous cover*", not reducing or lapsing by reason of cancellation, variation, novation or temporary discharge of any underlying facility. Clause 19, headed "*Release*", expressly provides that she would not be released from her obligations to FRB under the suretyship otherwise than as provided by law, and that her obligations would continue notwithstanding events such as death, insolvency, liquidation or business rescue.

5.3. Three features of the suretyship are decisive. First, there is no mention of the fourth defendant's capacity, nor any link between the suretyship and her appointment as a director: a circumstance that is determinative on the strict approach to construction reaffirmed in Standard Bank v Kyriacou (*supra*) at para [12]. Second, the suretyship secures the principal debtor's present and future indebtedness, without limit. Third, the only contemplated form of release is one effected in writing by the plaintiff.

The resignation defence

5.4. The fourth defendant's contention that her resignation as director terminated the suretyship is not supported by the document. It is also wrong in law. A suretyship is a separate, accessory contract between the surety and the creditor. Its endurance is determined by its own terms, not by extraneous events affecting the surety's position with the principal debtor, unless the suretyship itself so provides. The suretyship before me does not so provide. It does the opposite: it expressly states that release requires a written act of the plaintiff.

5.5. The alleged "*understanding*" that she would be released on resignation fares no better. It is pleaded without particularity: she

does not say with whom, when, where or on what terms such understanding was reached, nor does she allege that any such agreement was reduced to writing as her suretyship requires. The suretyship itself answers the averment: clause 19 records that she would not be released otherwise than by a written act of the Bank, and the deed provides that any variation must likewise be in writing and signed. On her own version no written release was issued. The defence, considered with the particularity demanded by Maharaj at 426B–C, does not raise a triable issue.

The "*ignorance*" defence

5.6. The submission that the fourth defendant cannot be liable because the overdraft and loan agreements were concluded after she had cut ties with the principal debtor mistakes the nature of a continuing suretyship. The very purpose of such an instrument is to bind the surety in respect of debts the principal debtor may incur in the future. The Bank was contractually entitled to advance fresh credit on the strength of an existing suretyship that had not been formally released, and was not obliged to obtain further consent from the surety for each new facility. Because the suretyship covers all present and future indebtedness, the dates of the underlying credit agreements are not material to the fourth defendant's liability.

5.7. I conclude that neither defence raised by the fourth defendant is bona fide or good in law. The plaintiff is entitled to summary judgment against her.

THE APPLICATION AGAINST THE FIRST AND SECOND DEFENDANTS

6.

Overview of the defences

6.1. Adv Gaffoor advanced the defences of the first and second defendants under five interlinked heads, drawing on a coherent body of authorities listed in her heads of argument:

6.1.1. the timing of the suretyships in relation to the underlying credit agreements (paras 9–15 of the defendants' heads of argument);

6.1.2. *iustus* error and absence of informed consent (paras 16–23), relying principally on Brink v Humphries & Jewell (Pty) Ltd 2005 (2) SA 419 (SCA) and George v Fairmead (Pty) Ltd 1958 (2) SA 465 (A) at 470B–E;

6.1.3. misrepresentation and non-disclosure (paras 24–27),

relying on Broughton v Safintra Cape (Pty) Ltd [2012] ZAWCHC 345 and Absa Bank Ltd v Lowting and Others [2013] ZAGPPHC 265;

6.1.4. the B-BBEE "*fronting*" arrangement (paras 28–34), relying on Electronic Mining Supplies CC v Mabelane N.O and Another [2018] ZAGPPHC 648 and Dlamini Inc v Transnet SOC Ltd and Others [2022] ZAGPJHC 409, read with the Broad-Based Black Economic Empowerment Act 53 of 2003; and

6.1.5. undue influence and inequality of bargaining power (paras 35–39), relying on Standard Bank of South Africa Limited v McCrae [2016] ZAGPJHC 334 and Fritzsche v Booysen [2021] ZAWCHC 16.

6.2. I treat each strand in turn. Before I do, I record what appears to be a material concession in the first defendant's opposing affidavit. At paragraph 22 of that affidavit, in answer to paragraphs 13.1 to 14.3 of the plaintiff's supporting affidavit — which set out the breach of the overdraft and loan, the cancellation and acceleration thereof, and the resulting indebtedness of the principal debtor in the amounts claimed — the first defendant states: "S*ave to deny that I failed to make payment of the arrears, the rest of the contents contained here are admitted*." On any reasonable reading, that is an admission of the principal debtor's breach, of the lawful cancellation and acceleration of the agreements, and of the indebtedness in the sums of R1 145 358.26 and R67 214.78 respectively. The principle in Maharaj (at 426B–C) is engaged: a defendant who admits the material facts on which the cause of action rests cannot thereafter sustain a *bona fide* defence to the merits of that cause of action.

6.3. I also record that no affidavit at all has been deposed to by the second defendant. The opposing affidavit was deposed to by the first defendant alone. Whatever he says about matters peculiar to the second defendant — her state of mind at signature, the pressure allegedly applied to her, what she did or did not understand — is hearsay and inadmissible against the plaintiff. To the extent that the second defendant's defences depend on her own evidence, they are not properly before me.

The timing of the suretyships

6.4. Adv Gaffoor began her oral submissions — echoing paras 9–15 of her heads — with the chronology. She submitted that the suretyships were signed in November 2015 (the second defendant), and August 2018 (the first defendant), while the principal credit

agreements were concluded in May 2017 (the loan) and June 2019 (the overdraft) by other directors. From this she invited me to conclude that the first and second defendants neither negotiated nor participated in those principal facilities, did not understand that they could be saddled with future indebtedness, and did not give informed consent to a continuing suretyship of indefinite scope.

6.5. The submission has some intuitive force, but it does not survive a careful reading of the suretyship deeds themselves. A continuing suretyship is, by definition, an undertaking given by a surety today for debts that the principal debtor may contract tomorrow. That is the very feature that makes it commercially useful. Both suretyships in the present matter contain clauses (clauses 1 and 2) that are explicit on the point: the surety binds himself or herself for the indebtedness of the principal debtor as it now stands and as it may in future arise, in unlimited amount, until released in writing by the Bank. The signatories are advised, in the text of the deed itself, that the obligations are burdensome and that legal advice should be sought if there is any doubt. The temporal mismatch on which Adv Gaffoor relies is not, therefore, a contradiction or an oddity: it is the design feature of the security the Bank required and the defendants signed.

6.6. The defendants' chronology argument therefore reduces, in substance, to a contention that they did not, in 1915 or 2018, appreciate what they were signing. That is not a temporal point at all. It is the iustus error point, and I take it up under the next head.

Iustus error and Brink v Humphries

6.7. Adv Gaffoor's principal substantive submission was that the first and second defendants signed the suretyships under a material and reasonable mistake as to their nature and effect. She invoked, at paras 16–22 of her heads, the leading authority of Brink v Humphries & Jewell (Pty) Ltd 2005 (2) SA 419 (SCA). In that case the Supreme Court of Appeal held that a credit application form which contained a personal suretyship clause buried among its other terms constituted a "*trap for the unwary*", and that the signatory had been justifiably misled into believing that he was signing only a credit application. Adv Gaffoor invited me to apply the same approach here. She also drew my attention, at para 22 of her heads, to the *dictum* quoted at paragraph [2] of Brink from George v Fairmead (Pty) Ltd 1958 (2) SA 465 (A) at 470B–E, to the effect that a party who has been led into error by the conduct or misrepresentation (innocent or fraudulent) of the other party is not bound.

6.8. With respect, Brink is plainly distinguishable on its facts. The ratio of Brink was that the credit application form was a "*trap for the unwary*" because the suretyship clause was buried in the small print of what otherwise presented as an ordinary credit application. There was, in Brink, a misrepresentation by silence: the document held itself out as one kind of instrument, while in fact it contained another. The deeds before me are not of that character. Each suretyship is a stand-alone document on FRB letterhead, prominently and exclusively headed "*SURETYSHIP*". There is no other transaction embedded in the document. The text immediately above the signature space records, in plain language, that the signatory binds himself or herself as surety and co-principal debtor for the principal debtor's obligations to FRB. There is no plausible "*trap*" in a stand-alone deed which says, on its face, that it is a suretyship and nothing else.

6.9. The *iustus* error doctrine, as recorded in the George v Fairmead passage at 470B–E on which Adv Gaffoor relied, requires that the mistake have been induced by the conduct of the other party to the contract — that is, the contract-enforcer. In Brink the other party was the creditor: it had drafted and presented the form said to be a trap, and the dispute lay between that creditor and the surety. In the present case, however, the defendants' own pleaded version (paragraph 20.2 of the plea and paragraphs 26.2–26.5 of the opposing affidavit) attributes the misrepresentation to the third defendant, who is said to have placed them in their nominal directorships in order to improve the principal debtor's BBBEE rating. A defence of *iustus* error against the Bank cannot rest on a misrepresentation said to have been made by a co-defendant. The defendants do not allege any conduct by the plaintiff that induced them to misunderstand the suretyships, and that is fatal to reliance on Brink.

6.10. There is, in addition, an internal inconsistency in the defendants' version. They plead, on the one hand, that they were pressured into signing without reading; and, on the other (paras 17–18 of their heads of argument), that they believed they were signing documents in a representative or administrative capacity. The two propositions cannot stand together: a person who signs unread cannot at the same time say that he or she positively believed the document to be something else.

Misrepresentation, non-disclosure, Broughton and Lowting

6.11. At paras 24–27 of her heads, Adv Gaffoor advances the misrepresentation/non-disclosure argument in slightly different

dress, relying on Broughton v Safintra Cape (Pty) Ltd [2012] ZAWCHC 345 and Absa Bank Ltd v Lowting and Others [2013] ZAGPPHC 265. Broughton was an appeal in which the appellant, who had signed a credit application form that included a suretyship clause, sought to escape liability by relying on Brink. The Court applied Brink but reached a different conclusion on the facts: the suretyship was upheld because, on the wording and layout of the document, the clause was sufficiently brought home to the signatory and he had had ample opportunity to read it. Broughton is therefore an authority in which the Brink defence failed. It does not assist the defendants. The same is true, with respect, of Lowting: to the extent that it affirms that the surrounding circumstances are relevant where signatories are instructed simply to sign, it does so within the analytical framework of Brink, which (for the reasons already given) is not engaged on the present facts.

The B-BBEE "*fronting*" argument

6.12. At paras 28–34 of her heads, Adv Gaffoor advanced the most novel of the defendants' submissions. She contended that the defendants were used as nominal directors for the purpose of improving the principal debtor's B-BBEE rating; that this constitutes a "*fronting practice*" within the meaning of the Broad-Based Black Economic Empowerment Act 53 of 2003; that the arrangement is contrary to the public policy considerations underpinning that Act; and that the suretyships, having been procured pursuant to that arrangement, are accordingly unenforceable. She relied on Electronic Mining Supplies CC v Mabelane N.O and Another [2018] ZAGPPHC 648 and Dlamini Inc v Transnet SOC Ltd and Others [2022] ZAGPJHC 409.

6.13. The submission requires careful analysis. Electronic Mining Supplies and Dlamini Inc both deal with fronting in the context of the regulation of B-BBEE compliance: the former is concerned with the statutory definition of "*fronting practice*" and its consequences within the B-BBEE regulatory framework; the latter with allegations of fronting raised in the context of state procurement. Neither case held, or could have held, that a person who has lent her name to a fronting arrangement is thereby entitled to escape from contractual obligations she has assumed towards a third-party creditor who acted on the strength of her apparent status. The Broad-Based Black Economic Empowerment Act 53 of 2003, on which Adv Gaffoor relied, regulates and proscribes fronting practices and attaches consequences to them; it does not, as a matter of construction or of policy, supply a private-law shield to a person who

has, on her own version, participated in the fronting alleged.

6.14. Indeed, the public policy considerations point the other way. If the defendants' case on fronting were accepted at face value, they would be saying that they participated in a statutorily proscribed deception of the broader commercial community in order to obtain advantage for the principal debtor in its dealings, and they would be asking this Court to disengage them from the consequences of the very deception they helped to perpetrate. The plaintiff, on this version, is in the position of a third party which acted on the appearance the defendants helped to create — directorships in a company with an annual turnover of R20 million — and which the defendants themselves rely on to bring the agreements outside the NCA. A defendant cannot, in good conscience and consistently with the maxim that one cannot benefit from one's own wrong, claim the benefit of the appearance and disclaim the burden that it carried.

6.15. The fronting argument is therefore not, on the authorities Adv Gaffoor cited, a defence available to the alleged front against a third-party creditor. It is, at best, an explanation for how the defendants came to be in the position they are in; it is not a justification for releasing them from the obligations they assumed.

Undue influence, McCrae and Fritzsche

6.16. Adv Gaffoor's last substantive head (paras 35–39 of her heads) relied on Standard Bank of South Africa Limited v McCrae [2016] ZAGPJHC 334 and Fritzsche v Booysen [2021] ZAWCHC 16 for the proposition that the defendants signed under inequality of bargaining power, implicit pressure from their employment relationship, and the absence of informed and voluntary consent.

6.17. Both cases must be considered carefully, and neither, in my view, assists the first and second defendants. McCrae was itself a suretyship matter in which the surety raised defences of non-disclosure, failure to explain the implications of the suretyship, and duress and undue influence — defences materially indistinguishable from those raised here. Those defences did not avail the surety: the Court held the surety bound on the deed she had signed. McCrae is therefore, with respect to Adv Gaffoor, an authority that tends against the first and second defendants on the very questions of non-disclosure, failure to explain, and undue influence on which she relies. Fritzsche v Booysen is of a different character: it concerned the setting aside of an agreement on the ground of undue influence in a context of a close personal and fiduciary relationship between the parties. It is not a suretyship matter. It does not establish a

doctrine of undue influence applicable as between a bank and an arm's-length surety; nor do the defendants' averments come close to demonstrating the kind of dependency, vulnerability and abuse of a relationship of trust that Fritzsche turned on.

6.18. More generally, the pleaded averment of "*pressure*" is impermissibly bald. The defendants do not identify by whom they were pressured, how, when, or in what manner. Such pleading is precisely what Maharaj at 426 (and Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T) at 229A and 229F–H, cited by Adv van Dyk) had in mind in cautioning against "*vague, sketchy or laconic*" defences. The defendant must condescend to particularity sufficient to enable the Court to determine whether the defence, if proven at trial, would be a good answer to the claim. The *ipse dixit* of "*pressure*" is not such particularity.

The breach defence raised in the plea

6.19. Although it does not feature in the heads of argument, the defendants' plea (and the opposing affidavit at paragraphs 23.1–23.6) raises a further defence: that the plaintiff breached the overdraft and loan agreements by releasing funds to the principal debtor without first obtaining the additional collateral or fresh suretyships required by clause 3 of the overdraft ("*COLLATERAL COVER*") and by the conditions precedent in annexure A to the loan. For completeness I deal with it briefly.

6.20. The clauses listed those persons whose suretyships were required: Eduardo Peregrino Castro, Happy Steven Makhongela, Zonke Charity Ntombela and Cecilia Castro. The difficulty for the defendants is that the suretyships contemplated by clause 3 were already in place at the time the relevant agreement was concluded. The first defendant signed his suretyship on 23 August 2018 — some ten months before the overdraft was concluded on 27 June 2019. The second defendant signed her suretyship on 27 November 2015 — long before either agreement. The third and fifth defendants are likewise on record as having bound themselves as continuous, unlimited sureties The condition in clause 3 was met.

6.21. In any event, conditions of the kind in clause 3 of the overdraft and in annexure A to the loan are imposed on the principal debtor for the benefit of the Bank as creditor. They are not stipulations made in favour of the sureties. A condition stipulated for the benefit of one contracting party may be waived by that party. Even if the Bank had advanced funds without insisting on every item listed (and it did not), it would have been entitled to waive a stipulation in its own favour,

and that waiver would not constitute a breach of contract as against the sureties, much less release them from suretyships which by their terms are unlimited and continuous. Indeed, the loan's special conditions themselves record that the conditions precedent may be "*waived by FNB*". The breach defence therefore fails.

The special conditions in the loan (CaseLines 005-5) and the position of each surety

6.22. In oral argument I was referred specifically to the "*special conditions*" in the loan agreement at CaseLines 005-5 — the clause headed "*CONDITIONS PRECEDENT AND SECURITY TO BE PROVIDED*" — and to paragraphs 15.4 to 15.7 of the plaintiff's supporting affidavit, which answer the reliance the defendants place on it. The clause provides that the borrower may not draw down the loan until the listed conditions precedent have been fulfilled to the satisfaction of FNB, or waived by FNB, within 90 days of signature, and that FNB "*must be provided with the following security*" — namely unlimited suretyships by Eduardo P Castro, Lerato C Thaele, Zonke C Ntombela and Cecilia Castro.

6.23. Three observations follow from a careful reading of that clause. First, the security required for the loan was suretyships from four named persons — the third, fourth, second and fifth defendants. The fourth defendant (Lerato Thaele) is expressly named; the first defendant (Mr Makhongela) is not. Each of the four named persons had, by the date the loan was concluded on 30 May 2017, already signed an unlimited suretyship (the second, fourth and fifth defendants in November 2015 and the third defendant likewise). The condition was therefore satisfied. Second, the clause is, in terms, a condition for the benefit of FNB: it records what FNB "*must be provided with*", and it reserves to FNB the right to waive it. Third, even on the defendants' own reading, the clause was a stipulation imposed on the borrower (the principal debtor), not a term conferring rights on the sureties. For the reasons given above, none of this assists the first and second defendants.

6.24. Paragraphs 15.4 to 15.7 of the plaintiff's affidavit make precisely these points, and I accept them. The submission that the Bank breached the loan or overdraft by advancing funds without first obtaining "*additional*" security misreads the clause: the security it called for was already in place. There was no breach, and accordingly no question of the sureties being "*released*" by a breach. I would add that clause 4 of the loan's general terms (also at CaseLines 005-5 and following), which defines the events of breach, is concerned with breach by the client, guarantor or surety, not by

the Bank; it lends no support to the defendants' contention either.

Whether the first and second defendants disclosed a sufficient factual matrix: the Maharaj enquiry

6.25. Adv Gaffoor's overarching submission, pressed again in oral argument, was that the respondents had disclosed a detailed factual matrix — they were employees, not genuine directors; they had no idea what they were signing; they never participated in the running of the company; they derived no benefit from it; and at least one of them remained a director for only a year — and that this disclosure is "*full*" in the sense required by Maharaj at 426B–C, so that the matter must go to trial. I have considered this submission with care, because if it is correct it is dispositive in the respondents' favour. In my judgment it is not correct, for the following reasons.

6.26. First, and most importantly, the central factual premise of the respondents' matrix is directly contradicted by the documentary record they themselves rely upon. The CIPC company search annexed to the plaintiff's affidavit as "SJ4" records that the first respondent was appointed a director in June 2018 and resigned in January 2020, and that the second respondent was appointed a director in June 2014 and resigned in January 2020. On those dates — which the respondents do not dispute — the first respondent was a sitting director when he signed his suretyship (23 August 2018) and when the overdraft was concluded (27 June 2019), and the second respondent was a sitting director when she signed her suretyship (27 November 2015), when the loan was concluded (30 May 2017), and when the overdraft was concluded (27 June 2019). The contention in the heads of argument (paras 9–15) that the principal agreements were "*concluded years later by other directors*" after the respondents had "*cut ties*" with the company is, on this record, simply not so. The submission that the first respondent "*remained only a year*" is contradicted by SJ4, which reflects a tenure of approximately eighteen months on any view. A factual matrix that is contradicted by the very documents on which the defence relies is not a bona fide matrix; it is, in the language of Maharaj at 426, one which entitles the Court to form the impression that the deponent cannot or will not play open cards.

6.27. Secondly, the matrix is internally self-contradictory. The respondents plead (plea paras 6.6–6.8) both that they were rushed and not given time to read the documents, and that they positively believed they were signing "*a loan application*" for the company. As the plaintiff points out (affidavit paras 20.13 and 20.16), those two propositions are mutually destructive: a person who signs without

reading cannot simultaneously assert a positive belief as to the identifiable contents of the document. Where two mutually exclusive versions are advanced under oath, the Court is not obliged to accept the more favourable one merely because the matter is at the summary judgment stage; it is entitled to have regard to the inherent improbabilities, as the Court did in Standard Bank of South Africa Limited v McCrae [2016] ZAGPJHC 334.

6.28. Thirdly, the matrix is, on analysis, immaterial to the cause of action. The respondents' liability arises from suretyships they admit signing, not from their directorships. Whether they were "*genuine*" directors, whether they participated in management, and whether they drew a benefit, are questions that go to their relationship with the third defendant and the principal debtor — not to the Bank's contractual rights under the suretyships. As to benefit, the respondents say they received none; but a surety's liability does not depend on the surety having derived a personal benefit. A suretyship given without benefit to the surety is no less binding for that. The absence of benefit is therefore neither here nor there.

6.29. Fourthly, the suggestion that the third defendant "*handed the papers*" to the first and second respondents who then "*simply signed*" without understanding is not borne out by the documents. Each suretyship is a discrete instrument, headed "*SURETYSHIP*", opening with a bolded warning that the document "*contains IMPORTANT LEGAL INFORMATION*", that "*[t]he obligations on you may be very burdensome*", and that the signatory should not sign and should obtain independent legal advice if in any doubt. That warning appears, in terms, in the fourth defendant's suretyship (annexure A4) and in the like deeds of the others. A signatory who signs a document bearing that express warning, having had the opportunity to read it, cannot be heard to say that the creditor failed to alert her to its nature: that is the very situation the caveat subscriptor rule governs, and it is the feature that distinguishes this case from Brink, where the suretyship was concealed within a credit-application form bearing no such warning. As to the allegation (plea para 6.12, repeated at opposing affidavit para 28.3) that "*the Plaintiff together with the 3rd Defendant pressured*" the respondents, it is unsupported by any primary fact: the respondents do not say which official of the Bank was present, what was said, or how the Bank participated in any pressure. The averment is the kind of bald conclusion that Maharaj and Breitenbach (*supra*) hold to be insufficient.

6.30. Fifthly and finally, the respondents' own pleadings concede the

matters that matter. The second respondent admits (in her plea at paras 13, 15 and 20.1) the procedural chronology, the common-cause facts at paragraphs 9.1–10.2.1 of the affidavit, and — critically — that "*the authenticity and usage of the loan agreement and the overdraft are not in dispute*", while at para 14 she admits that the sums claimed are liquidated. The first respondent, for his part, makes the admission already discussed above. A defendant who concedes the authenticity and operation of the agreements, the liquidity of the amounts, and (in the first respondent's case) the indebtedness itself, and who simultaneously pleads "*no knowledge*" of those very agreements, has not disclosed a bona fide defence within the meaning of Maharaj. The disclosure is neither "*full*" nor genuine; it is contradictory and, in material respects, contradicted by the record.

The alternative pro rata defence and the position of the fourth defendant

6.31. Both the first and second defendants (plea para 6.17) and the fourth defendant (plea para 8) plead, in the alternative, that they are liable only for a pro rata share. The fourth defendant's plea puts it in terms: *"[a]lternatively and only in the event that the above Honourable Court dismisses the defence above, then the 4th Defendant pleads that [she] is only liable to the Plaintiff her pro rata share*." I raised with counsel whether this might suggest that the fourth defendant could be only pro rata liable. In my judgment it cannot, for two reasons.

6.32. First, the pro rata plea is self-contradictory when set beside the principal defence. The respondents' principal case is that they are not bound at all — because (they say) the suretyships lapsed on resignation, or were vitiated by mistake, or are unenforceable as products of fronting. But one cannot divide a liability one denies. To plead, even in the alternative, that one is liable for a pro rata share is to concede that one is bound as a surety; the only question such a plea raises is the extent of the liability, not its existence. The alternative plea thus undercuts the primary defence.

6.33. Secondly, and decisively, the pro rata contention is bad in law on the terms of these deeds. Each defendant bound himself or herself as surety and co-principal debtor, in *solidum*, and expressly renounced the benefit of division (beneficium divisionis). The effect of a renunciation of the benefit of division is precisely that the creditor may recover the whole debt from any one co-surety, leaving that surety to pursue contribution from the others. The right of contribution between co-sureties is a separate matter inter se; it does not qualify the creditor's entitlement. The fourth defendant is

accordingly liable for the full amount, jointly and severally with the others, and not merely for a pro rata share. There is therefore no triable issue as to the extent of her liability either.

Conclusion on the first, second and fourth defendants

6.34. Taking the defences raised by the first, second and fourth defendants individually and cumulatively, and giving Adv Gaffoor's careful submissions the weight they deserve, they do not meet the threshold for resisting summary judgment. The respondents have not disclosed a factual matrix that is full, genuine and material in the sense required by Maharaj; on the contrary, the matrix advanced is in critical respects contradicted by the documents they themselves rely on, internally self-contradictory, immaterial to the cause of action, and undercut by their own admissions and by their alternative pro rata plea. The authorities on which Adv Gaffoor relies establish principles that, on appropriate facts, would defeat a claim of this kind; but those principles are not engaged on the facts disclosed here. The plaintiff is entitled to summary judgment against the first, second and fourth defendants.

THE AMOUNT, INTEREST AND CERTIFICATES OF BALANCE

7.

7.1. The plaintiff supports the amounts claimed by certificates of balance signed by an authorised official of the Bank ,supplemented by detailed statements of account (annexure SJ3). Each underlying agreement provides that such a certificate constitutes prima facie evidence of indebtedness. None of the defendants advances any factual challenge to the figures. In the absence of such a challenge, the certificates are sufficient to establish quantum for the purposes of summary judgment: NPGS Protection and Security Services CC v FirstRand Bank Ltd (*supra*) at para [11].

7.2. I note that in the plaintiff's heads of argument the rate of interest claimed on the overdraft is at one point recorded as "*prime plus 7%*". The declaration, the certificate of balance and the notice of motion fix interest on the overdraft at prime plus 5.00%, calculated daily and capitalised monthly, consistently with the underlying agreement. The reference to prime plus 7% in the heads is a typographical error. I grant relief in accordance with the contractually agreed rates: prime plus 5.00% on the overdraft and prime plus 7.00% on the loan.

COSTS

8.

The plaintiff seeks costs on the attorney-and-client scale. Each suretyship, and each underlying credit agreement, contains a provision to that effect. Where parties have contractually agreed to such a scale, the Court will generally give effect to the agreement absent some good reason not to do so. No such reason has been advanced. The first, second and fourth defendants have raised defences which, viewed objectively against the test in Maharaj at 426B–C and Joob Joob, are not *bona fide*. In those circumstances, even apart from the contractual provision, costs on the attorney-and-client scale would in any event be appropriate.

ORDER

9.

In the result I make the following order:

9.1. Summary judgment is granted in favour of the plaintiff against the first defendant (Happy Steven Makhongela), the second defendant (Zonke Charity Ntombela) and the fourth defendant (Lerato Confidence Thaele), jointly and severally with the third defendant (Eduardo Peregrino Castro) and the fifth defendant (Cecilia Castro), the one paying the others to be absolved, as follows:

CLAIM 1 (OVERDRAFT):

9.1.1. Payment of the sum of R1 145 358.26;

9.1.2. Interest thereon at the rate of prime plus 5.00% per annum, calculated daily on the outstanding balance and capitalised monthly in arrears, from 1 February 2022 to date of final payment; and

9.1.3. Costs of suit on the scale as between attorney and client.

CLAIM 2 (LOAN):

9.1.4. Payment of the sum of R67 214.78;

9.1.5. Interest thereon at the rate of prime plus 7.00% per annum, calculated daily on the outstanding balance and capitalised monthly in arrears, from 1 February 2022 to date of final payment; and

9.1.6. Costs of suit on the scale as between attorney and client.

9.2. The default judgment granted on 26 May 2025 against the third and fifth defendants remains undisturbed, and the orders in paragraph 1 above are made jointly and severally with that order, the one paying the others to be absolved.

DU PLESSIS, AJ

GAUTENG DIVISION, PRETORIA

APPEARANCES

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Date of hearing:	27 May 2026
Date of judgment:	28 May 2026