



**IN THE HIGH COURT OF SOUTH AFRICA  
FREE STATE DIVISION, BLOEMFONTEIN**

**Not reportable**

Case no: 3495/2025

In the matter between:

**SAPOR RENTALS (PTY) LIMITED**

**PLAINTIFF**

and

**AMADEUS MEAT TRADING (PTY) LIMITED**

**FIRST DEFENDANT**

**PIETER ENSLIN VAN BLERK N O**

**SECOND DEFENDANT**

(In his capacity as trustee for the time being in respect  
of the Amadeus Trust-Trust No: IT1515/07)

**JACOB COENRAAD DE CLERK N O**

**THIRD DEFENDANT**

(In his capacity as trustee for the time being in respect  
of the Amadeus Trust-Trust No: IT1515/07)

**FYNBOSLAND 444 CC**

**FOURTH DEFENDANT**

**AMADEUS SLAGHUIS (PTY) LIMITED**

**FIFTH DEFENDANT**

**PIETER ENSLIN VAN BLERK**

**SIXTH DEFENDANT**

**PORTE DOREE (PTY) LIMITED**

**SEVENTH DEFENDANT**

**STEFAN SMIT N O**

**EIGHTH DEFENDANT**

(In his capacity as trustee for the time being in respect  
of the EVR Trust-Trust No: IT000646/2023(B))

**ANNELIE WESSELS N O**

**NINTH DEFENDANT**

(In her capacity as trustee for the time being in respect  
of the EVR Trust-Trust No: IT000646/2023(B))

**Neutral citation:** *Sapor Rentals (Pty) Limited v Amadeus Meat Trading (Pty) Limited and Others* (3495/2025) [2026] ZAFSHC 302 (19 May 2026)

**Coram:** DANISO J

**Heard:** 19 March 2026

**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 14h00 on 19 May 2026.

**Summary:** Summary judgment – rule 32 of the Uniform Rules of Court – loan agreement – breach of contract – material breach – acceleration clause – certificate of balance – bona fide defence – Conventional Penalties Act 15 of 1962 – execution against immovable property – rule 46A.

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## ORDER

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1 Summary judgment is granted against the defendants jointly and severally one paying the other to be absolved for:

1.1 Payment of the amount of R481 808.59 together with interest at the rate of prime plus 6% per annum from date of summons to date of final payment; and

1.2 Costs of suit on an attorney and client scale.

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## JUDGMENT

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**Daniso J**

[1] In this opposed summary judgment application, the plaintiff sought an order against the defendants jointly and severally the one paying the other to be absolved for payment of the amount of R518 977.27, together with interest at the rate of prime plus 6% per annum from date of summons to date final payment and costs. An order declaring the immovable property described as Holdings No 24 Kromkloof North Small Holdings, District Bethlehem, Province Free State, in extent 4, 2827 hectares, held by deed of transfer 16276/2022 (the immovable property), especially executable is also sought.

[2] The application arises from summons issued by the plaintiff against the defendants for breach of a written loan agreement (the agreement), by failing to pay the instalments due in terms of the agreement, concluded between the plaintiff and the first defendant duly represented by the sixth defendant, on 28 November 2023. The remainder of the defendants are sued based on their written guarantees for the due, punctual and full payment of all the debts of the first defendant. In terms of the agreement, the plaintiff advanced an amount R500 000 to the first defendant. The total loan amount repayable

was R745 577.40 constituting the principal debt and finance charges in the amount of R245 577.40.

[3] In terms of the agreement the total loan amount was repayable by way of 60 monthly instalments of R12 426.29. As security for the debt, the first defendant registered a mortgage bond in favour of the plaintiff over the immovable property registered in the first defendant's name. The pertinent guarantees were subsequently signed by the second and third defendants in their capacities as the trustees of the time being of the Amadeus Trust, the fourth and fifth defendants duly represented by the sixth defendant and the seventh defendant represented by the eighth and ninth defendants in their capacities as the trustees of the time being of the EVR Trust. It is the plaintiff's case that the first defendant breached the terms of the agreement by failing to pay the instalments due in terms of the agreement. As on 02 June 2025, the first defendant's account was in arrears with an amount of R24 267.99. In terms of clause 10 of the agreement, the plaintiff served the defendants with a letter of demand on 04 June 2025. The relevant parts reads as follows:

'Dear Sirs

**RE: SAPOR RENTALS (PTY) LIMITED // AMADEUS MEAT TRADING (PTY) LIMITED**

1. We refer to the above matter and confirm that we act for and on behalf of Sapor Rentals (Pty) Limited, who instructed us to forward this letter of demand to you.
2. We confirm that on or about 28 November 2023 and at Bethlehem you entered into a Term Loan Agreement with our client and that you are currently indebted to our client in the arrear amount of R24, 267.99 as at 2 June 2025.
3. As a result of your breach, our client elected to execute their rights in terms of clause 10 of the Term Loan Agreement and claim the full amount of R518,977.27 (arrears plus future instalments) A of the aforesaid Term Loan Agreement is attached hereto marked as annexure "A" for you ease of reference.
4. In light of the aforesaid, we herewith demand that you attend to payment of the aforesaid outstanding arrear amount of R24,267.99 within seven (7) days from date hereof and that you further adhere to the terms and conditions of the Term Loan Agreement in that all monthly payments are honoured, failing which we hold instructions to proceed with the necessary legal action against you.

5. Once judgment is obtained against you, we will proceed with execution proceedings which will include, but is not limited to, the attachment of all movable and immovable property and the sale thereof and attachment of all bank accounts.'

[4] The breach was uncured. Following the issuing of summons on 07 July 2025, cash payments ranging from R12 020.63 to R12 328.98 were made by the first defendant from 08 July 2025 thereafter in August and September 2025. The account is still in arrears. In terms of the certificate of balance annexure "CB1" to "CB7", the total amount owed by the first defendant is an amount of R481 808.59, constituting of arrears in the sum of R25 024.65 and R456 783.94 as future payments.

[5] The application for summary judgment is opposed by the first, seventh, eighth and ninth defendants only. In the plea, the defendants dispute the computation of the amounts claimed by the plaintiff on the grounds that the amounts do not accord with the defendants' reconciliation statement (Annexure "AMA1" of the plea) in terms of which, the outstanding balance on 07 August 2025 is reckoned at R355 860.49 and the plaintiff's own statement of account dated 07 February 2025 (Annexure "AMA2") reflects the outstanding balance of an amount of R417 878.69. The plaintiff is also not entitled to claim the prospective finance charges/interest in the amount of R518 977.27 together with further *mora* interest in addition to the principal debt. The cancellation of the agreement is disputed on the premise that the first defendant was not aware that the debit orders due for March and April 2025 were not debited from its account, the plaintiff did not notify the first defendant about the unpaid instalments and by cancelling the agreement based on a breach which fell within its (the plaintiff's) knowledge, the plaintiff acted unilaterally.

[6] The opposing affidavit raises additional defences namely that: the arrears have since been brought up to date. Payment of an amount of R24 657.96 was made on 01 October 2025.

[7] The defendants further contend that the cancellation of the agreement is invalid. The premise is that the plaintiff was not entitled to cancel the agreement purely on the basis of the first defendant's failure to pay the instalments. The agreement can only be validly cancelled in the circumstances where the breach is material, and the first defendant is given proper notice which provides a reasonable opportunity to remedy the breach, and indicates a clear election to cancel the agreement, in the event if no payment is made within the period specified in the notice. The plaintiff's letter of demand dated 04 June 2025 does not clearly set out the plaintiff's election to cancel the agreement because on the one hand it invokes clause 10 of the agreement and purports to cancel the agreement and accelerate the entire debt, on the other hand a demand is made for payment of arrear instalments and compliance with the agreement. The letter of demand is contradictory and actually evinces the plaintiff's intention to uphold the agreement.

[8] Insofar as the plaintiff's claim includes the future portion of the capitalised interest, the defendants contend that the claim falls to be reduced in terms of s 3 of the Conventional Penalties Act 15 of 1962 (the Act), as the plaintiff has not actually suffered the full time-value loss of the loan. The defendants shall, to the extent necessary amend their plea to incorporate a prayer for a reduction of the penalty.

[9] The defendants further submit that the order for the execution against the first defendant's immovable property would be severely disproportionate to the debt allegedly owed by the first defendant, and this is based on the fact that the value of the property is R1 250 000, which is the same amount the mortgage bond was registered over the first defendant's immovable property as security for the loan. This amount far exceeds the loan advanced to the first defendant, the forced sale is likely to yield only a fraction of its market value, and it has not been shown that the plaintiff has no other way of recovering the amount it alleges to be owed by the first defendant other than executing against the immovable property.

[10] It was argued by Mr van Aswegen who appeared for the defendants, that the Constitution of the Republic of South Africa, 1996, requires that courts consider the

proportionality of execution against residential immovable property including all legally relevant factors, as contemplated in Uniform rule 46A(9)(b)(ii). Such factors must appear either from the particulars of claim or the notice of motion in support of summary judgment.

[11] The plaintiff countered that the plaintiff's claim has been properly verified in the supporting affidavit. The defences raised by the defendants are merely red herrings, they do not raise a *bona fide* defence to the plaintiff's claim.

[12] Mr van der Merwe argues that the agreement provides for payment of the monthly instalments by way of a debit order. It was not the plaintiff's responsibility to inform the first defendant that the debit orders were returned unpaid. Furthermore, it is conceded by the defendants that a letter of demand was served on the defendants detailing both the breach and the plaintiff's rights arising from the breach as provided for in clause 10 of the agreement. The breach is material therefore it was not even necessary for the plaintiff to serve the demand and the defendants' contentions that they were not aware of the breach and also not afforded the opportunity to rectify the breach are not only devoid of truth, they also do not raise genuine triable issues.

[13] As regards the additional defences raised in the opposing affidavit, it is the plaintiff's case that the defendants have deprived the plaintiff of the right to fully engage with these defences in its supporting affidavit. The plea has still not been amended to incorporate the additional defences which are in any event meritless. On the available facts, the payment of R24 657.96 was only made approximately four months after the agreement was cancelled and two months after the summons was served on the defendants. The provisions of s 3 of the Act do not find application in this matter as the future interest or finance charges do not constitute a penalty but a provision of the agreement.

[14] Regarding the order sought for the execution against the first defendant's immovable property, Mr van der Merwe stated that much as he had no instructions to

abandon the relief he was fully aware that in this division the Court is not inclined to grant an order of execution against the immovable property where the application is not brought in terms of rule 46A of the Uniform Rules of Court,<sup>1</sup> he will not press on it. In that regard, an order can be granted in respect of money judgment together with interest and costs.

[15] A summary judgment procedure is intended to ensure that defendants with a triable issue or a sustainable defence have their day in court and that recalcitrant debtors pay what is due to their creditors. It is tested law that in order to resist a summary judgment, rule 32(3)(b) does not require the defendants to show that their defence is likely to prevail. Their opposing affidavit must render facts to satisfy the Court that they have a bona fide defence to the plaintiff's action by disclosing fully the nature and grounds of the defence and the material facts relied upon therefor. If they can show that they do have a legally cognisable defence on the face of it, and that the defence is genuine or bona fide, summary judgment must be refused.<sup>2</sup>

[16] I now turn to consider whether the defences raised by the defendants raise issues deserving to be entertained at trial. In the plea and the opposing affidavit, the loan agreement, the mortgage bond, the related guarantees and their respective terms and conditions are not disputed. The fact that the first defendant defaulted on its instalment obligations is also not in dispute.

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<sup>1</sup> The rule provides:

**'46A. Execution against residential immovable property**

(1) This rule applies whenever an execution creditor seeks to execute against the residential immovable property of a judgment debtor.

(2)(a) A court considering an application under this rule must—

(i) establish whether the immovable property which the execution creditor intends to execute against is the primary residence of the judgment debtor; and

(ii) consider alternative means by the judgment debtor of satisfying the judgment debt, other than execution against the judgment debtor's primary residence.

(b) A court shall not authorise execution against immovable property which is the primary residence of a judgment debtor unless the court, having considered all relevant factors, considers that execution against such property is warranted.'

<sup>2</sup> *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 425G-426E; *Joob Joob Investments v Stocks Mavundla Zek Joint Venture* [2009] ZASCA 23; 2009 (5) SA 1 (SCA); [2009] All SA 407 (SCA) para 29; *Tumileng Trading CC v National Security and Fire (Pty) Ltd* [2020] ZAWCHC 28; 2020 (6) SA 624 (WCC) para 13.

[17] As correctly pointed out by Mr van der Merwe, pursuant to the amendment of rule 32, the plaintiff is now required to engage with the content of the plea in order to substantiate its averments that the defence is not bona fide.<sup>3</sup>

[18] It must be borne in mind that in terms of rule 32(4) 'no evidence may be adduced by the plaintiff otherwise than by the affidavit referred to in subrule (2)'. In this matter, not even an attempt has been made by the defendants to seek leave to amend their plea to bring it in harmony with the opposing affidavit. The defendants' attempt to pivot their pleaded defences to something else in the opposing affidavit are indeed indicative of absence of bona fides. That aside, I am not persuaded that the defendants' defence as pleaded and also set out in the opposing affidavit disclose a bona fide defence that is good in law to result in triable issues as regards the money judgment.

[19] The examination of the loan agreement reveals that the defences raised by the defendants directed at the computation of the claim and the validity of the cancellation of the agreement are neatly resolved by the express terms and conditions of the agreement. In clause 1.1. of the agreement, the parties agreed that the amount repayable by the first defendant is an amount of R745 577.40 which includes the capital amount of R500 000, the finance charges in the sum of R245 577.40 and the loan administration fee calculated at 0.75% in the amount of R3750.00.

[20] There is no ambiguity in the plaintiff's letter of demand. It is clear from the reading of clause 10 that a default of instalments is a material breach which in my view, entitles the plaintiff to seek the relief sought in these proceedings. The relevant part reads as follows:

**'10 BREACH**

'Sapor may, without affecting any other rights which it may have in terms hereof or in law, claim immediate payment of all amounts payable in terms of the AGREEMENT, all of which shall then become due, if the BORROWER ---

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<sup>3</sup> See also Tumileng para 22 supra at fn 2.

10.1 fails to comply timeously with any provision of the AGREEMENT or any other agreement between the parties, all of which are material;'

[21] Similarly, in clause 15 the parties agreed that a certificate of balance relating to the amounts owed shall constitute prima facie proof the debt. Finance charges do not equate to damages, they constitute the total costs of credit which in terms of s101 of the National Credit Act 34 of 2005, a creditor is permitted to add onto the principal debt for that reason, s 3 of the Act would not offer any refuge to the defendants at trial.

[22] All these express terms of the agreement were agreed to by the parties and on the facts germane to this matter, there is no evidence that the first defendant including the rest of the defendants were misled or coerced into concluding the agreement and the guarantees on these agreed terms. Parties must be held to contracts that they conclude freely and voluntarily unless the contractual terms are in conflict with the constitutional values. The law is trite on this aspect.<sup>4</sup>

[23] Having regard to the facts of this matter, I have come to the conclusion that the plaintiff's claim against the defendants has been clearly established as regards the monetary judgment, the defendants' defence as pleaded and also set out in the opposing affidavit do not disclose a bona fide defence that is good in law to result in a triable issue.

[24] As is the practice with applications for the executability of immovable properties which are primary residence in this Division, the order to authorise the execution against immovable property of the first respondent must be sought by way of an application as predicated in rule 46A.

## **Order**

[25] In the result, I make the following order:

1 Summary judgment is granted against the defendants jointly and severally one paying the other to be absolved for:

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<sup>4</sup> *Barkhuizen v Napier* [2007] ZACC 5; 2007 (5) SA 323 (CC); 2007 (7) BCLR 691 (CC) para 57.

- 1.1 Payment of the amount of R481 808.59 together with interest at the rate of prime plus 6% per annum from date of summons to date of final payment; and
- 1.2 Costs of suit on an attorney and client scale.

The Honourable Justice  
2026-05-19  
N.S. Daniso  
NS DANISO  
JUDGE OF THE HIGH COURT

**Appearances**

For the plaintiff:

Instructed by:

R van der Merwe

Jay Mothobi INC, Rosebank

c/o EG Cooper Majiedt Attorneys,  
Bloemfontein

For the defendants:

(first, seventh, eighth and ninth defendants)

Instructed by:

WA Aswegen

Van Aardt & Van der Walt Inc, Bethlehem  
c/o Maree & Partners, Bloemfontein.