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

Not reportable

Case no: 5258/2024

In the matter between:

SB GUARANTEE COMPANY (RF) PROPRIETARY LIMITED APPLICANT

And

YOLANDA DE WAAL RESPONDENT

Neutral citation: *SB Guarantee Company (RF) Proprietary Limited v De Waal*
(5258/2024) [2026] ZAFSHC 337 (8 June 2026)

Coram: DANISO J

Heard: 28 May 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 08 June 2026.

Summary: Summary judgment – adequacy of the applicant's affidavit verifying indebtedness – rule 32(2)(a) of the Uniform Rules of Court – reckless credit – sections 80 and 81 of the National Credit Act 34 of 2005 – onus to prove reckless lending falls on the party who alleges it.

ORDER

1 Summary judgment is granted against the respondent for:

1.1 Payment of the amount of R1 114 643.40 together with interest at the rate of 11.450% for the first amount from R0.00 and R549 000, 11.625% per annum for the next amount from R594 000 to R792 000 and 11.950% per annum in respect of the amount in excess thereof till date of final payment; and

1.2 Costs of suit on an attorney and client scale.

JUDGMENT

Daniso J

[1] In this application for summary judgment, the applicant seeks payment of the amount of R1 114 643.40 together with interest and costs. The application arises from the summons issued by the applicant as plaintiff against the respondent as defendant for breach of a home loan agreement the respondent concluded with Standard Bank (the cedent) on 14 October 2021.

[2] The pertinent facts of this matter, as alleged in the particulars of claim, are the following: in terms of the home loan agreement, the applicant advanced a capital amount R990 000 to the respondent repayable in monthly instalments of R7 578.14 for a period of 240 months. The respondent caused a first continuing mortgage bond to be registered over her immovable property described as Erf 4[...] Frankfort, Free State, held by deed of transfer number T16[...] and also referred to as 4[...] P[...] S[...], Frankfort (the property) in favour of the plaintiff as security for the debt.¹ The respondent breached the terms of the agreement by failing to pay the required instalments. As at 5 March 2024, the respondent's account was in arrears with the amount of R113 415.91 and, notwithstanding written demand as provided for in s 129 of the National Credit Act 34 of 2005, the respondent failed to remedy the breach. The amount presently due by

¹ Copies of the home loan, mortgage bond, Indemnity and Guarantee agreements are annexed to the particulars of claim as Annexures 'POC01' to 'POC05'.

the respondent is an amount R1 114 643. 40.² In the plea including the opposing affidavit, the conclusion of the agreements, their terms and the respondent's breach of her obligations, is indisputable.

[3] The claim is resisted on technical grounds of nonjoinder or misjoinder of the occupier of the respondent's property. The premise is that in the summons the applicant also seeks an order for the executability of the respondent's property but has failed to join the occupier of the property to the proceedings. The respondent also takes issue with the legality of the agreements for want of compliance with the provisions of section 80 and 81 of the National Credit Act 34 of 2005 (the NCA) and the applicant's lack of *locus standi* to institute these proceedings contending that the agreements were concluded with a different entity Standard Bank. In the opposing affidavit, the respondent also challenges the validity of the applicant's supporting affidavit on the grounds that it does not comply with the provisions of rule 32(2) as the deponent therein lacks personal knowledge of the facts he has attested to.

[4] At the commencement of the proceedings the respondent acquiesced to the deferral of the non-joinder or misjoinder challenge to the separate hearing of the executability of the property in terms of rule 46A. The objection to the applicant's *locus standi* was also not proceeded with.

[5] As regards the validity of the applicant's supporting affidavit, rule 32(2)(a) provides:

'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.'

² The Certificate of balance in that regard is attached to the particulars of claim as Annexure 'POC09'.

[6] The applicant's supporting affidavit is deposed to by its authorised manager, Mr Dipesh Gihwala. The relevant parts of the affidavit read as follows:

1. I am an adult male employed as a Manager, Defended Legal, Personal and Private Banking Credit of The Standard Bank of South Africa Limited ("hereinafter referred to as "The Bank").
2. I am employed by the Bank in the above capacity at The Standard Bank Centre, 9th Floor, 5 Simmonds Street, Johannesburg.
3. I have been duly authorised by a Resolution of the Board of Directors of the Plaintiff and a Letter of Authority issued by the Bank to depose to this affidavit on behalf of the Plaintiff. Copies of the said Resolution and Letter of Authority are attached hereto marked **Annexures "SJ1"** and **"SJ2"**.
4. The facts contained herein are to the best of my belief both true and correct and save where the converse otherwise appears from the context, fall within my direct knowledge.
5. This affidavit is aimed at placing certain relevant facts before the above Honorable Court to enable it to consider the Applicant's application for summary judgment, including the relief sought by the Applicant declaring the immovable property forming the subject matter of this action specially executable, and authorizing the issue of a writ of execution against the immovable property.

(a) SUMMARY OF FACTS AND POINTS OF LAW UPON WHICH THE APPLICANT'S CLAIM IS BASED.

6. The Applicant's claim is based on a loan agreement entered into between The Bank and the Respondent on **14 October 2021**, in which The Bank agreed to advance the sum of **R990,000.00 (NINE HUNDRED AND NINETY THOUSAND RAND)** to the Respondent as a home loan.
7. A copy of the loan agreement is annexed to the particulars of claim in the action, marked as annexure **"POC1"** and **"POC2"**.
8. On or about **14 October 2021**, the Respondent executed a written indemnity agreement in favour of the Applicant and its successors in title or assigns ("the indemnity"), the terms of

which are more fully pleaded in the Applicant's particulars of claim and are summarised hereinbelow.

9. Pursuant to conclusion of the loan agreement, and the indemnity, the Respondent caused the mortgage bond to be registered over the property described as: **REMAINDER OF ERF 4[...] FRANKFORT DISTRICT FRANKFORT PROVINCE FREE STATE IN EXTENT 1777 (ONE THOUSAND SEVEN HUNDRED AND SEVENTY SEVEN) SQUARE METRES HELD BY DEED OF TRANSFER NUMBER: T16[...], SUBJECT TO THE CONDITIONS THEREIN CONTAINED** in favour of the Applicant.

10. A copy of the mortgage bond is annexed to the particulars of claim, marked as annexure **"POC3"**.

11. On or about **1 March 2015** the Applicant furnished The Bank with a written guarantee in terms of which, inter alia, the Applicant guaranteed the due and punctual payment of all sums which were then, and which may subsequently become due by the Respondent to The Bank, pursuant to the loan agreement. A copy of the guarantee is annexed to the particulars of claim, marked as annexure **"POC5"**.

12. The Respondent defaulted on her obligations under the loan agreement and as a result is presently indebted to The Bank under the loan agreement, and therefore to the Applicant under the indemnity, in the amount of **R1,114,643.40 (ONE MILLION ONE HUNDRED AND FOURTEEN THOUSAND SIX HUNDRED AND FORTY THREE RAND AND FORTY CENTS)**, being the balance of the total debt, together with interest thereon for the first (**R0.00 – R594,000.00**) at the rate of **11.450** per annum, for the next (**R594,000.00 – R792,000.00**) at the rate of **11.625%** per annum and for any amount in excess thereof at the rate of **11.950%** per annum from **9 May 2024** to date of payment both date inclusive, as reflected on the certificate of balance. (A copy of the of the certificate of balance bearing out this sum, may be found at annexure **"POC9"** of the particulars of claim).

13. In consequence of her default, default notices in terms of section 129 of the National Credit Act (**"the NCA"**) was sent to the Respondent by LGR Incorporated on **11 March 2024**, respectively by the registered electronic mail transmitted through the South African Post Office Limited (**"SAPO"**) and facilitated through Registered Communications Pty Ltd (2015/160706/07), in accordance with Section 19(4) of Electronic Communications and Transactions Act 25 of 2002 (**"ECTA"**). In compliance with this section, the Default Notice was

sent to SAPO, was registered by SAPO, and transmitted by SAPO to the electronic email address of the Respondent.

14. A copy of the Default Notice transmitted to the Respondent via-email is attached to the particulars of claim and marked as “**PCO10A**”.

15. A copy of the electronic mail through which the Default Notice was transmitted is attached to the particulars of claim and marked as “**POC10B**”.

16. The Respondent delivered her notice of intention to defend on **15 November 2024**. A copy of the notice of intention to defend is annexed hereto marked “**SJ3**”.

17. As appears from what is set out above, the Applicant’s claim is founded in contract, and in particular on the Respondent’s default under the loan agreement as read with the Applicant’s rights under the indemnity, with her debt thereunder being secured by the mortgage bond, as more fully pleaded in the particulars of claim...’

[7] It is the respondent’s case that the applicant’s supporting affidavit is defective as the deponent therein lacks personal knowledge of the facts of the cause of action, the capacity to verify the amount claimed and to declare that the respondent has no triable issue. The respondent submits that the mere assertion that the deponent can swear positively to the facts is not sufficient, the deponent must qualify his alleged personal knowledge and also state how such personal knowledge was obtained. In this matter, the situation is also exacerbated by the fact that the affidavit was deposed to at Johannesburg whereas the agreement relied upon was signed at Frankfort. In addition, the certificate of balance was signed by someone else, one Chantel Ottino.

[8] In argument, the respondent contended that the deponent must state that all the documents were under his control, that he has studied and/or examined them, that he has personal knowledge of the contents and that the matter was allocated to him by the applicant. The applicant countered that there is no merit to the respondent’s objection as a deponent to an affidavit in support of summary judgment, other than the plaintiff a corporate entity, is only required to, at least, state that the facts are within his personal

knowledge or make some averment to that effect. First-hand knowledge of every fact which goes to make up the applicant's cause of action is not required, the deponent may rely on the records in the company's possession for his personal knowledge. It is not necessary for the deponent to supply reasons for the allegation that the facts fall within his personal knowledge. He must, at least, give an indication of his office to support the inference that he has had the opportunity to obtain personal knowledge of the facts that he verifies. In his capacity as a manager 'Defended Legal, Personal and Private Banking Credit of The Standard Bank of South Africa Limited', the deponent has provided more than enough sufficient reasons why he should attest to the facts that he verifies.

[9] I am in agreement with the applicant's contentions. On the facts germane to this matter, the plaintiff is a legal entity. Expectedly, the supporting affidavit would be deposed to by its authorised employee, in this instance Mr. Gihwala who would not possess first-hand knowledge of every fact relied upon by the plaintiff.

[10] In his quest to verify the respondent's indebtedness, Mr. Gihwala has relied on the particulars of claim which set out the cause of action succinctly and corroborated by the home loan agreement, the mortgage bond, and the guarantee.³ He has not claimed personal knowledge of the facts. In *Shackleton Credit Management (Pty) Ltd Microzone Trading 88 CC and Another*⁴ it was held that 'first-hand knowledge of every fact which goes to make up the applicant's cause of action is not required and that, where the applicant is a corporate entity, the deponent may well legitimately rely on records in the company's possession for their personal knowledge of at least certain of the relevant facts and the ability to swear positively to such facts.'⁵ Furthermore, on the basis of his position as the manager in the applicant's Defended Legal, Personal and Private Banking Credit department it does appear that the facts he deposed to are within his

³ Para 5 to 11 and 17 of the supporting affidavit.

⁴ *Shackleton Credit Management (Pty) Ltd Microzone Trading 88 CC and Another* [2010] ZAKZPHC 15; 2010 (5) SA 112 (KZP).

⁵ *Ibid* para 13.

knowledge, the law is trite on this aspect: in *Barclays National Bank Ltd v Love*⁶ it was held that “the nature of the deponent's office in itself suggests very strongly that he would in the ordinary course of his duties acquire personal knowledge of the defendant's financial standing with the bank.”⁷

[11] Rule 32(2) does not prescribe a formula or specific words to be used by the deponent in qualifying himself as a person able to swear positively to the facts. It was pointed out in *Rees* quoting with approval *Maharaj v Barclays National Bank Ltd*⁸ that: ‘undue formalism in procedural matters is always to be eschewed’ and must give way to commercial pragmatism. At the end of the day, whether or not to grant summary judgment is a fact-based enquiry. Many summary judgment applications are brought by financial institutions and large corporations. First-hand knowledge of every fact cannot and should not be required of the official who deposes to the affidavit on behalf of such financial institution or large corporation. To insist on first-hand knowledge is not consistent with the principles espoused in *Maharaj*.⁹

[12] Similarly, the fact that the deponent deposed to the affidavit in Johannesburg whilst the home loan agreement was signed in Frankfurt is of no moment, including the fact that the certificate of balance was signed by another employee of the applicant. Based on all these reasons, I hold that the applicant’s supporting affidavit adequately addresses the requirements as envisaged in rule 32(2). The respondent’s objection is accordingly dismissed.

[13] Regarding the respondent’s defence that the home loan agreement and the mortgage bond agreement arose from reckless lending as the applicant failed to do a proper assessment to determine her ability to meet her financial obligations under the agreement,¹⁰ it is the respondent’s case that at the time she submitted the application

⁶ *Barclays National Bank Ltd v Love* 1975 (2) SA 514 (D) at 516H; *Rees and Another v Investec Bank LTD* [2014] ZASCA 38; 2014 (4) SA 220 (SCA) paras 13 to 14 (*Rees*).

⁷ *Op cit* fn 6 at 516H.

⁸ *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A).

⁹ *Rees* para 15.

¹⁰ Section 81(2) provides:

for the home loan she was aware that her credit score was too low for her to qualify for the home loan and on the basis of her gross income including her bank statements she did not have enough disposable income to service the debt.

[14] The applicant insists that the agreement is not reckless and points out that when the respondent applied for the home loan, she submitted an application accompanied by supporting documents which included her proof of income by way of pay slips as well as the record of her monthly expenses and financial commitments. On the basis of this information, the respondent had a disposable income of R26 320.00 which was substantially greater than the instalments she was required to pay, namely R7 578.14, upon the approval of the loan. The respondent also signed the declaration in the home loan agreement confirming that the information she provided as proof of her ability to meet her obligations in terms of the home loan, was correct.

[15] One of the aims of the NCA is to protect consumers from irresponsible credit granting, thereby saddling them with debt they can ill-afford. The responsibility to prevent reckless credit granting lies with both the consumer and the credit provider. Section 81(1) requires consumers to be frank and honest about their creditworthiness. The onus is on the respondent to adduce evidence which *prima facie*, demonstrates that at the time that she applied for the home loan she could not afford it and did not even understand the risks and obligations associated with the credit she sought. Only then does the burden shift to the applicant to prove that a proper affordability assessment was conducted.

[16] On the available facts, the respondent submitted a home loan application accompanied by her financial information. The applicant relied on the financial

'A credit provider must not enter into a credit agreement without first taking reasonable steps to assess

(a) The proposed customer's

i. General understanding and appreciation of the risks and costs of the proposed credit, and the rights and obligations of a consumer under a credit agreement;

ii. Debt repayment history as a consumer under credit agreements

iii. Existing financial means, prospects and obligations; and

(b) Whether there is a reasonable basis to conclude that any commercial purpose may prove to be successful, if the consumer has such a purpose for applying for that credit agreement.'

information provided by the respondent when it conducted the assessment of her affordability and concluded that she had the financial means to meet her obligations. The respondent also signed a declaration confirming the truthfulness of the financial information and her understanding of her obligations arising from the home loan agreement. The respondent is thus not entitled hide behind reckless lending when she has to pay what is due to her creditors. Accordingly, ss 80 and 81 of the NCA does not offer refuge to the respondent, the defence does not raise a triable issue.

[17] Having regard to the facts of this matter, I am persuaded that the applicant has made out a case for summary judgment. The applicant's claim against the respondent has been clearly established, summary judgment succeeds. The costs shall follow the results.

Order

[18] In the premises, the following order is granted:

1 Summary judgment is granted against the respondent for:

- 1.1 Payment of the amount of R1 114 643.40 together with interest at the rate of 11.450% for the first amount from R0.00 and R549 000, 11.625% per annum for the next amount from R594 000 to R792 000 and 11.950% per annum in respect of the amount in excess thereof till date of final payment; and
- 1.2 Costs of suit on an attorney and client scale.

NS DANISO
JUDGE OF THE HIGH COURT

Appearances

For the applicant:

KN Petersen

Instructed by:

Van Hulsteyns Attorneys, Sandton
c/o Strauss Daly, Bloemfontein

For the respondent:

I Strydom

Instructed by:

Rabie Botha & Associates INC, Pretoria
c/o Noordmans Attorneys, Bloemfontein.