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

Not reportable

Case no: 6152/2024

In the matter between

CASH CONVERTERS SOUTHERN AFRICA (PTY) LTD

PLAINTIFF

and

MOTSETSI FRASER CHALALA

DEFENDANT

Neutral citation: *Cash Converters Southern Africa (Pty) Ltd v Chalala*
(6152/2024) [2026] ZAFSHC 322 (1 June 2026)

Coram: THOMPSON AJ

Heard: 18 November 2025 and 11 December 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The time and date for hand-down is deemed to be 13h00 on 1 June 2026.

Summary: Prescription – acknowledgement of debt – promissory note – s 11(c) of the Prescription Act 68 of 1969 – s87(1) of the Bills of Exchange Act 34 of 1964 – negotiable instrument – six-year prescription period applicable – special plea.

ORDER

- 1 The special plea is dismissed.
- 2 Costs to be costs in the cause.

JUDGMENT

Thompson AJ

[1] The plaintiff issued summons out of this Court against the defendant for payment of the amount of R696 002.42, together with interest and costs. The plaintiff seeks to enforce an Acknowledgment of Debt (AOD) which was concluded between the parties on 21 July 2020, at Bloemfontein.

[2] In terms of the above AOD, the defendant acknowledged being truly and lawfully indebted to the plaintiff in his personal capacity in the sum of R473 778.24, which sum would accrue interest at the rate of prime plus 3%, calculated from 1 June 2020 to date of payment. The defendant agreed or undertook to pay the debt by way of instalments of R15 000.00 per month, commencing on 1 June 2020 until the debt, together with accrued interest, at the rate of prime plus 3% has been paid in full. All payments made in terms of the AOD would be made directly into the plaintiff's FNB bank account.

[3] In fulfillment of the terms of the AOD, the defendant commenced with payments. The defendant however subsequently defaulted on his payment obligations arising from the AOD resulting in the issuing of the current summons to recover the outstanding debt.

[4] In response to the plaintiff's claim, the defendant raised a special plea of prescription in his plea, dated and served on 9 December 2025. The defendant pleads that the plaintiff's cause of action arose on 26 April 2021 and the current action was only instituted on or about 29 October 2024, more than three years after the debt arose. According to the defendant the plaintiff 'failed to give timeous notice of the cause of action' and therefore the plaintiff's claim has become prescribed by virtue of the provisions of s 11 and s 12 of the Prescription Act 68 of 1969 (Prescription Act).

[5] The plaintiff subsequently served and filed a replication in response to the special plea of prescription on 10 January 2025. In the main the plaintiff denied that the claim has prescribed and pleaded as follows:

‘2. In terms of the Acknowledgement of debt (“AOD”):

2.1 The defendant acknowledged that he was truly and lawfully indebted in his personal capacity to the plaintiff in the amount of R473 778.24 (the debt) [introductory paragraph read with clauses 1 & 2];

2.2 The defendant made an unconditional promise in writing to the plaintiff to liquidate all amounts owing to the plaintiff in terms of the AOD in amount of R15 000.00 payable on the 01st day of each consecutive month effective 01 June 2020 and payments would be made until the outstanding debt has been paid in full. [clause 3];

2.3 The defendant appended his signature to the AOD.

3. In the premises, the AOD constitutes a promissory note as contemplated in terms of section 87(1) of the Bills of Exchange Act, 34 of 1964 as amended, and the prescription period in respect thereof is 6 (six) years as contemplated in section 11(c) of the Prescription Act 68 of 1969 (“the Prescription Act”).

4. The defendant made several payments to the plaintiff in accordance with the AOD, however the defendant failed to make any further payments as aforesaid from 26 April 2021 onward.

5. The plaintiff caused the summons to be served on the defendant on 5 November 2024.

6. Service of the summons as aforesaid, took place within a period of 6 (six) years from 26 April 2020 (six) and the debt has accordingly not prescribed.’

[6] In light of the above, this Court is thus tasked to adjudicate the issue of prescription, and moreover, whether the AOD in question constitutes a promissory note and is subject to the prescription period of six years as contemplated in s 11(c) of the Prescription Act, read with s 87(1) of the Bills of Exchange Act 34 of 1964 (BEA), or whether the AOD is subject to the usual three year prescription period as contemplated in s 11(d) of the Prescription Act.

Legislation and authorities

[7] It is trite that in South Africa, prescription laws are regulated by the Prescription Act. This Act delineates the timeframes within which legal claims must be pursued, contingent upon the nature of the claim and the context in which it arises. Prescription, as a legal principle, operates to extinguish a debtor’s obligation to a pay a debt after a specified period has elapsed.

[8] Section 10 of the Prescription Act unambiguously states that a debt shall be extinguished by prescription after the lapse of the period which in terms of the relevant law applies in respect of the prescription of such debt. Section 12(1) provides that subject to subsections (2) and (3) thereof, prescription shall commence to run as soon as the debt is due.

[9] The relevant periods of prescription of debts are specified in s 11 of the Prescription Act as follows:

- '(a) thirty years in respect of –
 - (i) any debt secured by mortgage bond;
 - (ii) any judgement debt;
 - (iii) any debt in respect of any taxation imposed or levied by or under any law;
 - (iv) any debt owed to the State in respect of any share of the profits, royalties or any similar consideration payable in respect of the right to mine minerals or other substances;
- (b) fifteen years in respect of any debt owed to the State and arising out of an advance or loan of money or a sale or lease of land by the State to the debtor, unless a longer period applies in respect of the debt in question in terms of paragraphs (a);
- (c) *six years in respect of a debt arising from a bill of exchange or other negotiable instrument or from a notarial contract, unless a longer period applies in respect of the debt in question in terms of paragraph (a) or (b);*
- (d) save where an Act of Parliament provides otherwise, three years in respect of any other debt.' [My emphasis.]

[10] Furthermore, s 14(1) of the Prescription Act states that the running of prescription shall be interrupted by an express or tacit acknowledgement of liability by the debtor. Section 14(2) continues to state that if the running of prescription is interrupted as contemplated in subsection (1), prescription shall commence to run afresh from the day on which the interruption takes place or, if at the time of the interruption or at any time thereafter the parties postpone the due date of the debt, from the date upon which the debt again becomes due.

[11] A claim arising from an acknowledgement of debt is a regular debt and will prescribe after three years in terms of s 11(d) of the Prescription Act. It may however be possible to draft an acknowledgement of debt in such a manner that it constitutes

a negotiable instrument in the form of a promissory note and thereby extend the period of prescription to six years as per s 11(c) of the Prescription Act. There is thus a significant correlation between the Prescription Act, BEA and acknowledgements of debt.

[12] The legal question that arises is when does an acknowledgment of debt amount to a promissory note? The aforesaid question requires a legal conclusion to be drawn from the underlying facts coupled with *inter alia* the requirements set out in s 87(1) of the BEA.

[13] Section 87(1) of the BEA defines a 'promissory note' as follows:

'A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, and engaging to pay on demand or at a fixed or determinable future time, a sum certain in money, to a specified person or his order, or to bearer.'

[14] Against the above backdrop, I will proceed to deal with the oral and documentary evidence and make a finding accordingly.

An evaluation of evidence

[15] The defendant testified and Mr Richard Mukheiber, Chief Executive Officer of Cash Converters, testified on behalf of the plaintiff. The facts in the matter are mostly common cause. The conclusion of the AOD, the respective signatures of the parties on the AOD, and the underlying business and contractual relationship (franchise agreement) which gave rise to the AOD, were not placed in dispute. There was no condition attached to the written undertaking to pay the amount of R473 778.24, and all payments were to be paid into the plaintiff's bank account nominated in the AOD. The monthly instalment amount, frequency of the monthly instalments, and the day on each month when payment was due, effective from 1 June 2020, were also not placed in dispute.

[16] Contrary to the above, the defendant disputes that the AOD is a promissory note as contemplated in s 87(1) of the BEA. He contends that the AOD itself does not expressly document it to be a promissory note nor does the word 'promissory note'

feature anywhere in the AOD. It was submitted that the instrument in question is simply an AOD, and nothing else, and for that reason the claim against him has prescribed after having been served outside the three year grace period.

[17] In *Allwright v Gluck*¹ (*Allwright*), the court also had to decide whether a written document constituted a promissory note and found accordingly. The principle enunciated in this judgment is that an acknowledgement of debt coupled with a promise to pay would constitute a valid promissory note. The document read as follows:

*'Dear Mr. Allwright,
I hereby acknowledge receipt of £101 ... for repayment of which I hold myself responsible not later than the 31st of July, 1960.*

(signed) J.J. Gluck'

[18] In *Allwright* the court referred to the earlier judgement of *Wiehahn NO v Wouda*² (*Wiehahn NO*), in coming to its conclusion and stated that there is no difference in the two documents compared. The document in *Wiehahn NO* also included an acknowledgement of the capital sum of £450 plus interest at 8% per year (similar to the matter at hand).

[19] I disagree with the defendant's contentions that the AOD does not constitute a promissory note. The following extract is dispositive of the matter and proves that the AOD is a promissory note as contemplated in s 87(1) of the BEA:

'I, the undersigned, Motetesi Fraser Chalale

ID# 7[...]

(hereinafter referred to as the ("DEBTOR"), in my personal capacity for purposes hereof, do hereby acknowledge that I am, truly and lawfully indebted to

Cash Converters Southern Africa (Pty) Ltd

(hereinafter referred to as the "CREDITOR") in the sum of R473 778.24 (Four Hundred and Seventy Three Thousand, Seven Hundred and Seventy Eight Rand and Twenty Four Cents only), being the amount owing by the DEBTOR to the CREDITOR in respect of an

¹ *Allwright v Gluck* 1962 (1) SA 562 (W) at 563B-E.

² *Wiehahn N.O v Wouda* 1957 (4) SA 724 (W) at 725F.

agreement entered into between the parties,

1. In addition to the capital amount payable, the DEBTOR further acknowledges to be indebted and liable for interest on the capital amount owing to the CREDITOR at the rate of prime plus 3% per annum from 1 June 2020 to date of payment in full.
2. All payments made in terms of the Acknowledgement of Debt shall be paid directly into the CREDITOR bank account held at FNB, Account Number 6[...], Branch code 250655, or wherever else the CREDITOR at any time in writing directs.
3. We agree to pay the capital amount in monthly installments. The balance in the amount of R473 778 will be paid in monthly installments in the amount of R15 000 on the 1st day of each consecutive month effective 1st June 2020. Payments will be made until outstanding debt has been paid in full.’

[20] It is evident from the above that the AOD in question is not an acknowledgement of debt in the ordinary sense. It goes further than only acknowledging an amount or debt due by the defendant to the plaintiff. F R Malan *et al* states the following regarding the difference between an acknowledgment of debt and a promissory note:

‘A promissory note is a promise. A promise is an undertaking to pay, and involves more than a mere acknowledgment of debt with an implied undertaking to pay ... An acknowledgment of debt is not a promissory note but, coupled with an express undertaking to pay, it could be’³

[21] In *Salot v Naidoo*,⁴ the plaintiff sued the defendant in provisional sentence summons proceedings based on an acknowledgment of debt. The defendant undertook to pay the plaintiff a certain sum of money ‘on or before’ a certain time. The defendant pleaded prescription as a defense, but the plaintiff argued that the acknowledgment of debt was a promissory note, which was thus a negotiable instrument, and had not prescribed in terms of s 11 of the Prescription Act. This case was decided on the authority of the English case *Williamson and Others v Rider*,⁵ wherein an agreement to pay ‘on or before’ a certain date was not considered to be a promissory note as defined in the English Bills of Exchange Act 1882 (which

³ F R Malan, J T Pretorius and S F Du Toit *Malan on Bills of Exchange, Cheques and Promissory Notes* 5ed (2002) at 418–419.

⁴ *Salot v Naidoo* 1981 (3) SA 959 (D) at 960G-H.

⁵ *Williamson and Others v Rider* (1962) 2 All ER 268.

contained the same definition of 'promissory note' as the equivalent section in the South African legislation) because the money was not payable at a fixed or determinable future time. The reasoning being that the time in which the money was to be paid was limited but not fixed.

[22] Similarly, in *Weszak Beleggings (Edms) Bpk v Venter*,⁶ the court also found that a document promising to pay 'on or before' or 'within' a certain date only limited the time when payment must be made, but did not fix it. Thus, the document did not fall within the definition of a promissory note.

[23] The wording of the current AOD however resort within the ambit of s 7(1) of the BEA which unambiguously provides that:

'The sum payable by a bill is a sum certain in money within the meaning of this Act although it is required to be paid-

- (a) with interest;
- (b) by stated instalments;
- (c) by stated instalments, and upon default in payment of any instalment the whole becomes due by virtue of a provision to that effect in the bill; or
- (d) according to a rate of exchange indicated, or to be ascertained as directed, by the bill.'

[24] Additionally, the BEA provides in s 9(1) that:

'A bill is payable at a determinable future time within the meaning of this Act, if it is expressed to be payable –

- (a) at the expiration of a fixed period after date or sight; or
- (b) on, or at the expiration of a fixed period after, the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.'

[25] Having regard to the above legislation, authorities and the wording of the AOD, it appears to be an unconditional promise in writing by the defendant to the plaintiff, duly signed by both parties, to pay a sum certain in money at a fixed (or

⁶ *Weszak Beleggings (Edms) Bpk v Venter* 1972 (2) All SA 124 (T) at 732B-E.

determinable future) time to the plaintiff. The amount is certain or ascertainable *ex facie* the AOD. It was not necessary to look outside the document for the amount due. Payments were due in monthly instalments effective from 1 June 2020 until the debt was paid off. The aforesaid accords with the provisions of ss 7, 9 and 87(1) of the BEA.

Conclusion

[26] The AOD in the present matter meets the requirements set forth in s 87(1) of the BEA and I accordingly find that it constitutes a promissory note.

[27] The last payment made in terms of the AOD was on 26 April 2021 and the summons was served on the defendant on 5 November 2024, the latter dated being more than three years and seven months after the debt became due. As a result of my finding above, the debt has therefore not prescribed as the current summons was issued and served within the six year period as contemplated in s 11(c) of the Prescription Act.

[28] Although the plaintiff is successful and the general rule is that costs follow the event, I deemed it prudent to comment on the manner in which the case (special plea) was conducted. The special plea was set down for one day and despite the aforesaid, the parties utilised two court days for hearing thereof, with the relevant facts being mostly common cause. Neither the existence, or validity, of the AOD or its contents were placed in dispute. The parties were literally called to testify to confirm common cause facts and provide the court with their 'legal opinions'. It is my view that the matter could have been handled in a more responsible manner without unnecessarily wasting valuable court time and resources. The aforesaid was discussed before the matter commenced, but despite the discussion the parties proceeded in the manner they did. For the above reasons and the discretion afforded to me, I will not grant, or deprive, any party costs at this stage of the proceedings.

[29] I therefore, make the following order:

1. The special plea is dismissed.
2. Costs to be costs in the cause.

**D R THOMPSON
ACTING JUDGE OF THE HIGH COURT**

Appearances:

For the plaintiff:

Instructed by:

I Macakati

Thomson Wilks Incorporated,

Johannesburg

c/o Thabe Attorneys Incorporated,

Bloemfontein

For the defendant:

Instructed by:

M J Ponoane

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