


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG.

Case No: 2023-013161

(1)	REPORTABLE: <del>YES</del> / NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> /NO
(3)	REVISED: NO
<b>19 June 2026</b>	
DATE	SIGNATURE

In the matter between:

**ABSA BANK LIMITED**

Applicant

And

**FRANCHISING TO AFRICA (PTY) LTD**

First Respondent

**SYDIVEDA (PTY) LTD**

Second Respondent

**EFPRAXIA NATHANIEL**

Third Respondent

**Coram:** Noko J

**Heard on:** 4 June 2026

**Delivered on:** 19 June 2026

**Summary:** Summary Judgment – defence - debt has prescribed - Prescription Act – s13(1)(g) – no claim filed - prescription not delayed. Sections 11 and 12 of the Prescription Act – suspension pending appointment of the liquidator – respondents disclosed a bona fide defence – summary judgment refused.

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**ORDER**

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On application for summary judgment, the following order is made:

1. The application for summary judgment is dismissed.
2. The second and third respondents are granted leave to defend the main action.
3. Applicant is ordered to pay costs, including costs of counsel on scale B.

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**JUDGMENT**

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**NOKO J**

*Introduction*

[1] The applicant, ABSA Bank Limited, instituted proceedings against the second and third respondents, seeking a money judgment of R 1 522 078.20. The claim is based on breaches of instalment sale agreements entered into with the first respondent, who failed to make payments when due. The second respondent, Sydiveda (Pty) Ltd, and the third respondent, Efpraxia Nathaniel, are sued as sureties and co-principal debtors *in solidum* together with the first respondent. The respondents have filed their plea and raise the following defences: that the applicant’s claim has prescribed; that the liability of the third

respondent under the suretyship agreement dated 24 December 2014 is disputed; and that the Certificate of Balance is disputed.

*Background*

[2] The parties entered into four instalment sale agreements (the agreements): first, the sale of a 2015 Isuzu NPR AMT (“*Isuzu*”) for R 767 770.73 entered into on 14 January 2015; secondly, the sale of a 2015 Bulk Holding Freezer for R 1 712 406.45 entered into on 10 September 2015; third, the sale of a 2015 5Ton Mitsubishi Forklift (“*Forklift*”) for R 304 050.40, entered into on 23 September 2015; and fourth, the sale of a 2016 Porche Cayenne GTS (“*Porche*”) for R 1 522 078.20, entered into on 23 November 2016. The agreements provided that ownership of the assets sold would remain with the applicant until payment of the total purchase price.

[3] The second respondent executed a suretyship agreement limited to R 2 500 000.00 on 23 April 2018, and the third respondent executed her suretyship agreement, limited to R 2 007 295.00, on 24 December 2014. The third respondent also executed a further suretyship agreement, limited to R 724 000.00, on 4 December 2016.

[4] The respondents breached the agreements, and letters of demand were sent to the first, second, and third respondents on 25 April 2019, 15 April 2019, and 2 May 2019, respectively. The applicant cancelled the agreements on 10 June 2019. The first respondent was placed under liquidation on 23 October 2020. The applicant could not locate the assets, except for the Porsche, which the liquidators repossessed and sold at a public auction.

[5] The applicant sued out a summons for a total sum of R 1 519 837.55,<sup>1</sup> which was served on the second respondent on 13 April 2023 and on the third respondent on 3 May 2023. The applicant further filed a claim with the liquidator for the amount due on 6 March 2024.

[6] The second and third respondents served a notice to defend and a plea containing a special plea of prescription. The respondents contended in their special plea that the cause

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<sup>1</sup> Balances due were: R 212 492.66 in respect of Isuzu; R 717 843.68 in respect of Bulk Holding Freezer; R 115 392.26 in respect of the Forklift, and R 474 148.95 in respect of Porche.

of action arose on 10 June 2019 and that the claim prescribed three years later, on 9 June 2022.

[7] In their plea, the third respondent first contended that a new suretyship agreement was entered into on 4 December 2016, novating the suretyship agreement underlying the claim against her. Second, the respondents contended that the certificate of balance is disputed, because the capital and interest were capitalised daily rather than monthly, and that interest has been calculated on finance charges and other charges. Lastly, the respondents contended that the deponent to the applicant's affidavit in support of the application for summary judgment has no personal knowledge of the facts underlying the suit against the respondents.

[8] The applicant chose not to file a replication to the special plea but addressed it in the affidavit supporting the summary judgment application.

#### *Issues*

[9] The issue for determination is whether the respondents have raised *bona fide* defences.

#### *Contentions and submissions by the parties.*

[10] Mr Ahir, on behalf of the applicant, argued that section 13(1)(g) of the Prescription Act<sup>2</sup> provides that the running of prescription will pause once a claim is filed against a company in liquidation. According to him, 'the filing of the claim' refers to the filing of the application for liquidation.<sup>3</sup> Accordingly, once the application for liquidation is filed, the prescription period is stayed until the Master of the High Court approves the Liquidation and Distribution Account. At the time the summons was served, the Liquidation and Distribution Account had not been approved by the Master; accordingly, he argues, the impediment had not ceased, and the claim has not prescribed.

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<sup>2</sup> Act 68 of 1969.

<sup>3</sup> In support of this submission, counsel for the applicant referred to *Jans v Nedcor* [2003] ZASCA 15; 2003 (6) SA 646 (SCA), where the Supreme Court of Appeal stated it was accepted in *Kilroe-Daley v Barclays National Bank Ltd* 1984 (4) SA 609 (A) at 621I that the impediment contemplated in s 13(1)(g) commences when the creditor's claim is filed. It ceases to exist once the Master confirms the final liquidation and distribution account.

[11] Mr Schorn, on behalf of the respondents, contended that the term "filing of the claim" refers to filing a claim with a liquidator, not to the filing of the liquidation application. Further, to the extent that the applicant filed its claim only on 6 March 2024, the prescription period had already lapsed on 9 June 2022, three years after the applicant cancelled the agreements on 10 June 2019. In addition, the summons served on 13 April 2023 was late, and the claim had prescribed.

[12] As an alternative argument, the applicant contended that the provisions of section 12(1)<sup>4</sup> and (3)<sup>5</sup> provide that, until a liquidator is appointed, the prescription period is suspended, and that, to this end, the liquidator's identity became known to the applicant far too late. The prescription would therefore run from the date the liquidator is appointed, which is 23 October 2020. In response, the respondents' counsel correctly contended that the liquidator's identity could have been readily ascertained from the office of the Master of the High Court. Furthermore, the contention that the prescription period is suspended until the appointment of a liquidator has no support in South African jurisprudence. The applicant's submissions in this regard are unsustainable and must be dismissed, counsel argued.

[13] Regarding the second respondent's argument that the suretyship agreement relied upon by the applicant is no longer binding, because it was novated by a subsequent suretyship entered into between the parties, the applicant argued that the second agreement constituted additional security. The applicant quoted clause 5 of the agreement in terms of which the third respondent admitted that the suretyship was additional to any security that the bank held or may thereafter hold. The respondent's argument about novation is therefore unsustainable.

[14] The defence in relation to the Certificate of Balance ("CoB") is unsustainable, as the available authority clearly indicates that it is *prima facie* proof of indebtedness. If accepted in the agreement, it should be binding unless the respondent upsets that conclusion

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<sup>4</sup> It provides that "[s]ubject to the provisions of subsections (2), (3), and (4), prescription shall commence to run as soon as the debt is due."

<sup>5</sup> It provides that "[a] debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care."

by providing evidence to displace it. The respondent contended that the CoB was challenged because interest was compounded daily rather than monthly, and that interest was also levied against the finance charges. Counsel conceded that these contentions were not well-founded and that he could not demonstrate this in the face of the certificate.

*Legal framework and analysis*

[15] The test, as restated by the SCA in *Cohen*<sup>6</sup>, in respect of an adjudication of a summary judgment application is "... whether the facts put up by the defendants raise a triable issue and a sustainable defence in the law, deserving of their day in court. The defendants must fully disclose the nature and grounds of their defence and the material facts on which it is founded. All a defendant has to do is set out facts which if proven at trial will constitute a good defence to the claim."<sup>7</sup> The bar is low, and the party should show that there is a defence and that he/she would be entitled to leave to defend, even if the prospects of success with such a defence are poor.

[16] The meaning of phrase "... the debt is the object of a claim filed against a company in liquidation", as set out in section 13(1)(g) of the Prescription Act, was considered in *Thrupp*<sup>8</sup> where the court stated that:

"... the filing of the claim referred to in section 13(1)(g) of the Prescription Act can only mean the date upon which the presiding officer of either the first or second meeting of creditors (*vide* s 44(1) of the Insolvency Act) admits the claim for the purposes of proof thereof."<sup>9</sup>

[17] This conclusion was referred to with approval in *Betterbridge*<sup>10</sup> where it was held that "... a claim has been filed against the company in liquidation when the presiding officer at either the first or second meeting of creditors admits the claim for purposes of

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<sup>6</sup> *Cohen N O & Others v D* [2023] ZASCA 56.

<sup>7</sup> *Id* at para 31.

<sup>8</sup> *Thrupp Investment Holdings (Pty) Ltd v Goldrick* 2008 (2) SA 253 (W) at para 22.

<sup>9</sup> The court further stated that where the claim is rejected by the presiding officer, the impediment provided for in section 13(1)(g) has not come into operation. It may be safer to issue a summons to interrupt the prescription, pending the decision to reject or admit the claim, if a three-year prescription period is likely to be reached before the chairperson's decision.

<sup>10</sup> *Betterbridge (Pty) Ltd v Masilo and Others* NNO 2015 (2) SA 396 (GP).

proof in the sense of allowing the claim to go forward to the meeting of creditors so as to determine whether the claim should be admitted or rejected.”<sup>11</sup>

[18] It follows from the above authorities that the applicant's submission that filing a claim under section 13(1)(g) of the Prescription Act refers to lodging an application for the liquidation of a company is incorrect and unsustainable.

[19] The applicant's contention that the prescription period could not commence until a liquidator is appointed has no basis in our law, counsel for the applicant could not provide any authority and I know of none.<sup>12</sup> In any event, the applicant could have proceeded against the sureties *qua* co-principal debtors.

### *Conclusion*

[20] I ergo find that the period of prescription commenced on 13 April 2019 and ran uninterrupted for three years, ending on 12 April 2022. The summons was served on the second respondent on 13 April 2023 and on the third respondent on 3 May 2023, and a claim was filed with the liquidator on 6 March 2024, all of which occurred after the prescription period had run. To this end, I find that the defence was not entered for the purpose of delay and that the respondents have raised a triable issue for the trial Court.

### *Costs*

[21] Ordinarily, costs in an application for summary judgment are costs in the cause, but this is an exception, as the persistence with the application in the face of such a weak case cannot be condoned. As such, the common-law principle that costs follow the results shall apply.

### *Order*

[22] As a result, I make the following order:

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<sup>11</sup> Idat para 24. The findings were confirmed by the SCA in *Masilo NO and Others v Betterbridge (Pty) Limited* [2016] ZASCA 73.

<sup>12</sup> One instance where a creditor's right to institute a claim against a company may be restrained is set out in section 358(b) of the Companies Act, 61 of 1973 which provides for the restraining of an action or proceedings about to be instituted against a company facing liquidation but before a winding up order is made. This section does not provide that once that restraining order is made prescription is suspended and I do not address myself to this aspect as it is not a matter before me.

1. The application for summary judgment is dismissed.
2. The second and third respondents are granted leave to defend the main action.
3. Applicant is ordered to pay costs, including costs of counsel on scale B.

  
**M V NOKO**  
Judge of the High Court

**DISCLAIMER:** This judgment was prepared and is handed down electronically by circulation to the Parties and legal representatives via email and by uploading it to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 19 June 2026. 16:00.

*Appearances:*

For the Applicant: U Ahir, instructed by Jay Mothobi Inc.

For the Respondents: RG Schorn, instructed by Alant Gell & Martin Inc.