

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NUMBER: 2025-041944**

Reportable: **NO**

Circulate to Judges: **NO**

Circulate to Magistrates: **NO**

Circulate to Regional Magistrates **NO**

In the matter between:-

**FLAGSTAFF SQUARE (PTY)LTD  
(REG NO: 2013/173514/07)**

Plaintiff

And

**NELSON JARDIM CANECA**

1<sup>st</sup> Defendant

**VINCENTE SACRAMENTO FERREIRA**

2<sup>nd</sup> Defendant

**JUAN MANUEL SOUSA DE FREITAS**

3<sup>rd</sup> Defendant

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**JUDGMENT**

**TROMP AJ**

**Introduction:**

- [1] This is an opposed application for summary judgment in which the Plaintiff is applying for a monetary judgment with regard to arrear rentals, interest on that amount and costs.
- [2] The First, Second and Third Defendants (hereinafter referred to collectively as the "Defendants") are opposing this application. The Plaintiff issued Summons herein during April 2025.
- [3] The cause of action of the Plaintiff's claim is based upon arrear rental in terms of the lease agreement, on the part of the close corporation Caesium Investments 2020 CC (in liquidation) (hereinafter referred to as the "close corporation"), for whom the Defendants stood surety as co-principal debtors.
- [4] In this matter, the Plaintiff relies upon the fact that there is a written lease agreement, entered into between the Plaintiff and the close corporation, for the lease of commercial property. The written lease agreement was for a fixed term of 5 years, commencing on the 1st of November 2021 and terminating on the 31st of October 2026. The written lease agreement is attached to the Particulars of Claim as Annexure "B". The lease agreement and its content, is admitted by the Defendants.
- [5] In terms of the lease agreement, the close corporation, and therefore the Defendants, will be liable to pay the monthly payments of the rental, and any operating costs associated with the property and/or building, which would include, but not limited to, any electricity, water, gas, sewerage/effluent and other similar services actually used on or in respect to the leased premises for any cause whatsoever.
- [6] These charges would include any and/or all other charges or amounts in

respect of the leased premises, as well as any rubbish removal / special refuse removal charges and/or any other utility, service or encroachment charges on the property, which may be levied by the local authority or any other responsible authority, as well as a *pro rata* share of any electricity, water, gas, sewerage/effluent and other services used on or in respect to common areas as may be levied by the local authority or any other responsible authority, and a *pro rata* share of the rates and taxes which are payable by the Plaintiff from time to time, including all increases thereon, including its pro rata share of any new property levies, charges or taxes which may be imposed by the local or any other responsible authority in respect of the property and/or building.

- [7] The Plaintiff also relies upon the fact that there are two written addendums to the lease agreement, entered into between the Plaintiff and the close corporation which are also not disputed.
- [8] The Plaintiff further relies upon the fact that there is a Deed of Suretyship entered into between the Plaintiff and the First, Second and Third Defendants, wherein the Defendants bound themselves as surety and co-principal debtors for the debts of the close corporation, owed to the Plaintiff. The deed of suretyship and the terms thereof is not disputed.
- [9] The Plaintiff claims that the Defendants are in breach of the lease agreement, together with the close corporation in liquidation, in that the Defendants, and the close corporation, failed to pay the monthly amounts in terms of the lease, and that the Defendants are in arrears in the amount of R443 732.03.

**Points *in limine***

[10] Three points *in limine* were raised by the Defendants. The first point *in limine* is authority to act, the second is lack of personal knowledge and the third is that there is no liquid claim.

10.1 The Defendants challenge the deponent to the affidavit in support of summary judgment's authority to act. Rule 32(2)(a) specifically provides for the following: "*Rule 32(2)(a) 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.*"

10.2 Rule 32 (2)(a) does not require specific authority to act. It is clear from the papers as well as the correspondence attached to the affidavit resisting summary judgment that correspondence relating to this matter was with the deponent, Mr Paul himself, indicating that he indeed had personal knowledge of the facts of the matter and that he is, indeed a person who can swear positively to the facts as is required in terms of the Rule. I find that the first and second points *in limine* hold no water.

10.3 With regards to the third point *in limine*: No Liquid claim. The plaintiff relies on the tenant transaction statement, as attached to the Particulars of Claim, and which is confirmed by Mr Paul in the affidavit in support of summary judgment.

10.4 From the statement provided, it is clear how the amount claimed by the Plaintiff is derived at or calculated, and therefore the Plaintiff's claim is clearly a liquidated claim. The items that are being claimed for were agreed upon contractually between the parties.

710.5 A liquidated amount of money is an amount which is either agreed upon or which is capable of speedy and prompt ascertainment. As a result, the third point *in limine* also does not succeed.

### **Arguments of the parties**

[11] The core factual dispute in this matter is whether the lease agreement was terminated during December 2024.

[12] The plaintiff contends the following:

12.1 That the notice of termination of the lease agreement was sent to the Defendants on 3 February 2025 in the form of a final demand.

12.2 That at the time of issuing summons, the close corporation was still occupying the property as per the particulars of claim.

12.3 That at the date of the transaction statement being 13 March 2025, for the period up to and including 7 March 2025, no new tenant for the premises in question was obtained and the premisses remained empty and unoccupied.

12.4 That the Defendants are liable for the full term of the lease agreement, or until another tenant can be obtained.

12.5 The plaintiff argues that the summary judgment should be granted on the following grounds:

12.5.1 That the defendants raise no triable issues or valid defence.

12.5.2 That the payments made as alleged by the Defendants have already been taken into account and is reflected on the tenant statement, but that the amounts paid do not cover the total arrears in terms of the lease agreement and addendums thereto.

12.5.3 That the amount claimed does not constitute damages as alleged by the Defendants but that it is the arrears due to the plaintiff, calculated in terms of the lease agreement and the addendums thereto.

12.6 The plaintiff therefore claims:

12.6.1 payment of the sum of R443 732.03

12.6.2 Interest on the amount of R443 732.03 calculated at 2% compounded per month from 1 March 2025, alternative from date of service of Summons, until date of final payment;

12.6.3 Costs on an attorney and own client scale as is provided for in the lease agreement.

12.6.4 That the plaintiff's claim for damages be postponed *sine die*.

[13] The Defendants contend the following:

13.1 That the close corporation is no longer in occupation of the property and that the premises was vacated upon cancellation of the lease agreement on 11 December 2024 and that all charges after the cancellation date no longer constituted normal charges in terms of the lease agreement, but damages post cancellation.

13.2 That all amounts due up to date of cancellation was paid.

13.3 The accuracy and validity of the amounts claimed in terms of the tenant statement is challenged regarding the security charges, cleaning charges, refuse removal. Sewage, electricity, water and all other charges which were charged after the close corporation vacated the premises and terminated the lease agreement. These consumption charges should

have effectively been reduced to nil after the property was vacated.

13.4 The Defendants claim that the application for Summary judgment should be dismissed with costs on scale C.

### **Legal position**

[14] The principles governing summary judgment applications are well established. In *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 426A-C, the Appellate Division held that the defendant need not prove his defence on a balance of probabilities. It is sufficient if the defendant sets out facts which, if proved at trial, will constitute a defence to the plaintiff's claim.

[15] The full court in *Breitenbach v Fiat SA (Edms) Bpk* 1976 (2) SA 226 (T) at 228F-G further clarified that the defendant must swear to a defence "valid in law" which is "not inherently and seriously unconvincing". At page 277 B-E the following is said:

*"The purpose of the procedure known as summary judgment is well recognised. It is, indeed, implicit in the portion of Rule 32 which prescribes the contents of the affidavit which must be filed on behalf of the plaintiff. It is a procedure aimed at the defendant, who, although he has no bona fide defence to the action brought against him, gives notice of intention to defend solely in order to delay the grant of judgment in favour of the plaintiff. In a case where that is what the defendant has done, the summary judgment procedure serves a socially and commercially useful purpose. The relevant Rule should, therefore, not be interpreted with such liberality to defendants that purpose is defeated.*

*It is, however, even more important to guard against injustice to the defendant, who is called upon, at short notice, and without the benefit of further particulars, discovery or cross-examination, to satisfy the Court in terms of sub-rule (3) (b). If the requirements of that sub-rule are too stringently applied, a defendant who has a defence to the action brought against him may be denied, unjustly, an opportunity of establishing that defence by the ordinary procedure of a civil suit.”*

[16] The summary judgment procedure is a drastic remedy, intended to enable a plaintiff with an unassailable claim to obtain swift relief. It was never intended to shut the doors of the court for a defendant who raises a genuine dispute of fact or law. Where there is a reasonable possibility that the defence advanced may succeed at trial, the court should exercise its discretion in favour of granting leave to defend.

[17] In *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) the Court of Appeal (as it was then known) held as follows at 426A-C:

[18] *“Accordingly, one of the ways in which a defendant may successfully oppose a claim for summary judgment is by satisfying the Court by affidavit that he has a bona fide defence to the claim. Where the defence is based upon facts, in the sense that material facts alleged by the plaintiff in his summons, or combined summons, are disputed or new facts are alleged constituting a defence, the Court does not attempt to decide these issues or to determine whether or not there is a balance of*

*probabilities in favour of the one party or the other. All that the Court enquires into is: (a) whether the defendant has 'fully' disclosed the nature and grounds of his defence and the material facts upon which it is founded, and (b) whether on the facts so disclosed the defendant appears to have, as to either the whole or part of the claim, a defence which is both bona fide and good in law."*

[19] The above principles were once again confirmed in the Supreme Court of Appeal in *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009 (5) SA 1 (SCA) as follows:

[20] “[31] So too in South Africa, the summary judgment procedure was not intended to 'shut (a defendant) out from defending', unless it was very clear indeed that he had no case in the action. It was intended to prevent sham defences from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavouring to enforce their rights.

[32] The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of her/his day in court. After almost a century of successful application in our courts, summary judgment proceedings can hardly continue to be described as extraordinary. Our courts, both of first instance and at appellate level, have during that time rightly been trusted to ensure that a defendant with a triable issue is not shut out.

*In the Maharaj case at 425G - 426E, Corbett JA was keen to ensure, first, an examination of whether there has been sufficient disclosure by a defendant of the nature and grounds of his defence and the facts upon which it is founded. The second consideration is that the defence so disclosed must be both bona fide and good in law. A court which is satisfied that this threshold has been crossed is then bound to refuse summary judgment. Corbett JA also warned against requiring of a defendant the precision apposite to pleadings. However, the learned judge was equally astute to ensure that recalcitrant debtors pay what is due to a creditor.”*

- [21] In considering this application for summary judgment, cognisance must be had that justice for an applicant (plaintiff) must be swift where the defendant does not enter a *bona fide* defence and the defence is bad in law. At the same time justice for a respondent (defendant) must also be considered. Summary judgment should not be granted against a defendant who has a *bona fide* defence which is good in law. The defendant has a right to have his *bona fide* defence tested at trial.
- [22] The summary judgment procedure requires swift justice and that a judicial discretion be exercised in considering and balancing justice for both parties.

## **Evaluation**

- [23] The critical question is whether the Defendants have disclosed a *bona fide* defence that raises a triable issue.

- [24] The parties' versions as set out in the founding affidavit and affidavit resisting summary judgment has already been dealt with.
- [25] The existence of the lease agreement, addendums thereto as well as the deed of suretyship are not disputed.
- [26] The date of cancellation of the lease agreement and the amount due and payable by the Defendants for arrears rental and other agreed expenses are in dispute.
- [27] This raises certain factual questions and a dispute that cannot properly be resolved on the papers in these summary judgment proceedings.
- [28] This Court is not required to determine where the probabilities lie at this stage; it might be sufficient that the defendants have advanced a version that is not inherently and seriously unconvincing.
- [29] This is not a case where the defendants have merely advanced bald, vague, or sketchy allegations. The defences advanced is coherent and, if proven at trial, could constitute a defence to the plaintiff's claim.

## **Conclusion**


- [30] Summary judgment is a drastic remedy that should be granted only in clearest of cases. This is not such a case.
- [31] The defendants have, in my opinion, raised genuine triable issues relating to the cancelation of the agreement and the amount payable to the plaintiff for arrears rental and other expenses in terms of the lease agreement. These issues can only be properly resolved after oral evidence and cross-examination at trial.
- [32] For the reasons set out above, I am persuaded that the defendants have

disclosed a *bona fide* defence that raises a triable issue.

### Order

[33] In the premise, the following order is made:

- (i) The application for summary judgment is dismissed.
- (ii) The defendants / respondents are granted leave to defend the action.
- (iii) The costs of this application shall be costs in the cause.

  
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**TROMP AJ**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

**DATE OF HEARING: 03 FEBRUARY 2026**

**DATE OF JUDGMENT: 22 JUNE 2026**

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