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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2025 - 143277

1. REPORTABLE: YES/ NO
2. OF INTEREST TO OTHER JUDGES: YES/NO
3. REVISED: YES / NO

DATE: 15/06/2026

SIGNATURE OF JUDGE:

In the matter between:

CORPFIN (PTY) LTD

APPLICANT

and

JOLENE JACOBS

FIRST RESPONDENT

LUCILLE JACOBS

SECOND RESPONDENT

Delivered: 15 June 2026 – This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email, by being uploaded to the CaseLines system and by release to SAFLII.

JUDGMENT:

MARITZ, AJ

A. INTRODUCTION

1. This is an application for final relief brought by the applicant, wherein it seeks to enforce a deed of settlement concluded between the applicant and ESRU Investment Fortunes (Pty) Ltd (“ESRU”), the first respondent and the second respondent on 22 May 2024, to have it made an order of court and to recover the alleged outstanding balance. The respondents oppose the application on the basis that it is not capable of determination on affidavit due to the existence of material disputes of fact and that it falls within the ambit of Rule 6(5)(g) of the Uniform Rules of Court.

B. COMMON CAUSE FACTS

2. The following facts are common cause between the parties:
 - 2.1. A loan agreement was concluded between the applicant as the lender and ESRU as the borrower, duly represented by the first respondent on 14 March 2024.
 - 2.2. Both the first and second respondents, separately, bound themselves as sureties and co-principal debtors having signed deeds of suretyship on 14 March 2024.

- 2.3. The first and second respondents further entered into an unconditional guarantee separately in terms whereof they *inter alia*, unconditionally and irrevocably guaranteed the obligation by ESRU to the applicant of any and all obligations in existence or which may accrue in the future. This guarantee was entered into separately by the first and second respondents on 14 March 2024.
- 2.4. On 22 May 2024, the applicant and ESRU, the first respondent and the second respondents entered into a deed of settlement. The deed of settlement, *inter alia*, records an acknowledgement of indebtedness on the part of ESRU, the first respondent and the second respondent to the applicant.
- 2.5. The first and second respondents partially performed in terms of the deed of settlement by transferring their shareholding in ESRU to the applicant.
- 2.6. The deed of settlement provides for the sale of the property known as Portion 18 (a portion of portion 12) of the farm Eerstegeluk 256, Registration Division I.S, Province of Mpumalanga (“the property”). The deed of settlement further houses a shortfall clause. The property was sold. The applicant alleges a shortfall remains due and payable by the first and second respondents.
- 2.7. The loan amount was approved for payment to the principal debtor, ESRU, but was paid to a third party, Desmo Trans (Pty) Ltd

(“Desmo”), represented by the erstwhile director, Mr. Evert Jacobs (“Mr. Jacobs”), who is also the father of the respondents. Desmo was placed into final liquidation on 22 May 2024, the date upon which the deed of settlement was concluded.

C. THE ISSUES IN DISPUTE

3. The following disputes have been crystallised through the papers and through argument on behalf of the applicant and the respondents.

[1] The applicant’s case

4. The applicant submits that the defences, dealt with below, are *mala fide*, vague, unsupported and raised for the first time more than sixteen months after the deed of settlement was concluded and after partial performance. The respondents were informed of the sale and never objected to the sale at the time. The deed of settlement contains no reserve price and the shortfall clause expressly contemplated the possibility of the sale proceeds being insufficient. On *pacta sunt servanda* principles the deed of settlement must simply be enforced.
5. The factual disputes, if any, are so implausible and fictitious that the Court should take a robust approach and dismiss them on the papers.

[2] The defences raised by the respondents

a) Payment of the loan amount to Desmo

6. The loan agreement reflects the borrower's account as ESRU Investment Fortunes (Pty) Ltd, ABSA Bank, account number 4[...] and at paragraph 2.2 of the loan agreement provides that "*the loan amount shall be advanced into the borrower's account or any such other account as per the borrower's special instance and request from time to time...*".
7. The deed of settlement recorded that "*the parties agreed that the loan amount would be repaid by ESRU to Corpfm within six months from the date on which the loan amount (or first portion thereof) was advanced to ESRU, and/or on ESRU's behalf and/or to ESRU's benefit.*"
8. The respondents contend that the loan amount was not advanced to the principal debtor, ESRU, but instead to a third party, Desmo, and that this undermines the existence of a valid underlying debt, such that the deed of settlement is premised on a material misapprehension or *justus error*.
9. The respondents allege that they entered into the deed of settlement on the understanding that the loan amount had been advanced to ESRU as recorded in the deed of settlement, and that they only later discovered that the funds had been paid directly to Desmo. They allege that this constitutes a material misapprehension as to the true structure of the transaction and the identity of the principal debtor.

10. The respondents further contend that this gave rise to a material misapprehension as to the identity of the true principal debtor and the true structure of the transaction which vitiated their consent by justus error. They further allege that payment to the third party was a breach of the settlement agreement reached between the parties.

11. The applicant disputes this, contending that the respondents had knowledge of, authorised, and/or consented to payment of the loan amount to Desmo, and that such payment constituted proper performance of the loan agreement.

b) The sale of the property

12. The respondents allege that the property was sold at a price substantially below its true market value or intrinsic value, that there were irregularities in the auction process including potential non-compliance with section 45 of the Consumer Protection Act,¹ and that the applicant's conduct in relation to the sale materially prejudiced the respondents as sureties and parties to the deed of settlement.

13. The respondents further allege that the auction was conducted by an auctioneering house known as Devhula Auctioneers and was conducted under suspicious circumstances. They allege that the auction proposal, prepared by one Mr. Christoffel Andreas Greeff ("Mr Greeff"), incorporates a record of the bidding which occurred during the auction held on 8 October

¹ 68 of 2008 ("*Consumer Protection Act*").

2024. The name of “*Mr. Christoffel Andreas Greeff*” appears nine times on that record as a bidder. The respondents express concern regarding Mr. Greeff, as an active director of Devhula Auctioneers, having participated so actively in the bidding process. Of further concern to the respondents is the fact that the applicant instructed the auctioneer to conduct the sale. This, coupled with the auctioneer, Mr. Greeff, being actively involved in the bidding process, posed a possible conflict of interest, which may have influenced the sale of the property.

14. The relationship between the auctioneer and the applicant, as well as the end purchaser, one Ms. Boshoff, who purchased the property on behalf of an entity known as Fris Trans CC, raises questions regarding the integrity and independence of the sale of the property on auction.
15. The respondents contend that this will have to be investigated to determine the validity of the sale, which they contend was irregular.
16. Section 45 of the Consumer Protection Act provides that unless advance notice is given that the owner or auctioneer intends to bid at an auction, the owner or auctioneer must not bid or employ any person to bid at the sale, must not knowingly accept any bid from a person who is the owner or auctioneer or any person employed to bid on their behalf at the sale, and that a court may be approached to declare the transaction fraudulent if the subsection has not been complied with.
17. The following facts are alleged to place the validity of the sale in question:

- 17.1. The alleged sale of the property at a value significantly under the market value;
 - 17.2. The auctioneer's failure to comply with section 45(5) of the Consumer Protection Act by actively participating in the bidding process during the auction held for the sale of the property, without giving the requisite prior notice; and
 - 17.3. The auctioneer having been instructed by the applicant or its legal representatives to conduct the auction.
18. In support of their valuation contention, the respondents obtained a valuation from an expert and recognised valuer, one Mr. Koop de Vries-Steiger, which indicates that the property should yield at least R8 million on sale in the open market and, if sold in forced sale circumstances, it would yield at least R7 million.
19. The respondents further allege that the initial mortgage bond registered and secured over the property in favour of the applicant was for a capital sum of R5 million with a provision for a further R2,5 million for associated costs and interest, reflecting the inherent value of the property as being in the vicinity of R7,5 million or more. Had this not been the case, and the property was only valued at just over R4 million, as was realised on sale, then the applicant would not have agreed to finance the property and secure the debt by means of the R7,5 million mortgage bond registered.

20. The applicant disputes both the valuation and the alleged irregularities. The applicant alleges that the property was sold at a fair market value, having been properly advertised and sold on auction. The applicant further contends that no reserve price was provided for in the deed of settlement and that, therefore, the respondents' contention regarding the sale price is irrelevant. The applicant also disputes the correctness and reliability of the valuation evidence produced by the respondents and alleges that the condition of the property at the time of its sale (the applicant alleges that the property was derelict), materially affected its value and sale price.
21. The respondents, further, dispute that they were informed of and participated in decisions relating to the sale of the property.
22. This creates a material dispute of fact between the parties which will require expert evidence to resolve.

c) Quantum and accounting

23. The respondents challenge:
 - 23.1. The calculation of the outstanding amount;
 - 23.2. The inclusion of certain amounts in the capital; and
 - 23.3. The treatment of rental income and other payments.
24. The respondents allege that re-payments of the loan were made by the applicant in the following forms:

- 24.1. Repayments made by the respondents;
 - 24.2. Rental income collected by the applicant, alternatively paid by ESRU, further alternatively paid by third parties in *lieu* of rental income; and
 - 24.3. The proceeds of the sale of the property of ESRU.
25. The respondents, further, contend that:
- 25.1. Various payments were made that the applicant has not fully accounted for, and that unexplained payments raised after the advance of the capital, together with amounts improperly added post-settlement, have inflated the amount claimed by the applicant;
 - 25.2. The statement provided by the applicant does not properly reflect the rental income collected by the applicant, is inconsistent, and does not provide a proper explanation; and
 - 25.3. The interest claimed by the applicant amounts to a sum, which upon calculation, may result in an amount in excess of the capital amount advanced, such that the *in duplum rule* comes into play, as, in terms of this rule, the interest claimed from the respondents may not exceed 100% of the capital amount advanced.
26. The respondents therefore contend that the entire debt calculation is unreliable and requires re-calculation and evidence regarding such calculation to be led.

d) The validity of the Deed of Settlement

27. The respondents allege that they entered into the suretyship on the understanding that the loan amount would be advanced and paid to ESRU. Thereafter, they allege they later entered into the deed of settlement under the mistaken belief that the loan amount had in fact been advanced and paid to ESRU. It later transpired that the loan amount had been paid to Desmo, an entirely different company, such that there was no underlying *causa*.
28. The respondents further contend that this gave rise to a material misapprehension as to the identity of the true principal debtor and the true structure of the transaction, which vitiated their consent by *justus error*.
29. The applicant contends that the deed of settlement was properly entered into, that it forms the basis of its claim against the respondents, and that the respondents' defences are not bona fide, are raised late, and are designed to delay enforcement.
30. The respondents thus allege that there are multiple disputes of fact, namely, the loan amount advanced to Desmo, the disputed property valuation, the alleged irregular auction process and non-compliance with section 45 of the Consumer Protection Act, as well as the disputed debt calculation, which disputes cannot be resolved on affidavit.

D. RELEVANT LEGAL PRINCIPLES

a) The principle of *pacta sunt servanda*

31. In the matter of *Mercedes-Benz Finance and Insurance v Thobejane*² where the court held as follows:

“[23] In Barkhuizen v Napier [8] in the majority judgment of Ngcobo J he emphasised that public policy requires the contractual obligations freely and voluntarily undertaken should be honoured, precisely because this requirement gives effect to the central constitutional values of freedom and dignity. This emphasis is entirely harmonious with the approach by the Supreme Court of Appeal to the same question in inter alia, Brisley v Drotsky, Afrox Healthcare Limited v Strydom [9], South African Forestry Co. Ltd v York Timbers Ltd [10], Bredenkamp v Standard Bank [11], Law Society of the Northern Provinces v Mahon [12] and Potgieter & Another v Potgieter NO & Others.”

b) Compromise (*transactio*)

32. It is trite that a compromise or settlement (*transactio*) is a contract which has as its object the prevention, avoidance or termination of litigation. It has the effect of *res judicata* irrespective of whether it is embodied in an order of court and it is an absolute defence to any action based on the original claim.
33. A compromise is a substantive contract which exists independently of the cause that gave rise to it. The agreement must relate directly or indirectly to an issue or lis between the parties; it must not be objectionable both from a legal and practical point of view and it must not be at odds with public policy.

² *Mercedes-Benz Finance and Insurance, a division of Mercedes-Benz Financial Services South Africa (Pty) Ltd v Thobejane* (Leave to Appeal) (16432/2019) [2023] ZAGPPHC 407 (26 May 2023) at para [23].

The agreement must hold some practical and legitimate advantage. A compromise cannot perpetuate an invalid agreement.

34. A court, in considering whether to make a settlement an order of court, does not consider the merits of the litigation, provided that the terms of the settlement accord with the constitution and are not at odds with public policy. It does, however, have the discretion to refuse to make a settlement an order of court, but it cannot amend the settlement. In the absence of a reservation of the right to proceed on the original cause of action, a compromise agreement bars any proceedings based on the original cause. In addition, the defendant is not entitled to go behind the compromise and raise defences to the original cause of action when sued on the compromise.
35. A compromise may be set aside if it was obtained fraudulently or on the ground of mistake, provided that the error vitiated true consent, and did not merely relate to the motive of the parties or to the merits of the dispute. In *Gollach*, the Court held as follows:

“A transactio, whether extra-judicial or embodied in an order of court has the effect of res judicata. It is obvious that, like any other contract (and like any order of court), a transactio may be set aside on the ground that it was fraudulently obtained. There is authority to the effect that it may also be set aside on the ground of mistake, where the error is Justus.”

36. The Constitutional Court in *Eke v Parsons*,³ confirmed that a court may make a settlement agreement an order of court where the agreement is competent

³ 2016 (3) SA 37 (CC).

and proper to be made an order, relates to the issues between the parties and does not offend the law or public policy.⁴ The underlying contract and the ordinary principles in the of contract, including grounds for rescission such as fraud, misrepresentation, duress or *justus error*, remain applicable, when making such an order.

c) Deed of suretyship

37. A suretyship is an accessory obligation: the liability of the surety is dependent upon the existence of a valid and enforceable principal debt. Where a person binds him/herself as "*surety and co-principal debtor*", he/she remains in law a surety; the words "*co-principal debtor*" primarily import a waiver of the benefits of excussion and division.⁵
38. Further, it is worth mentioning the principle set out in *Gruhn v M Pupkewitz*,⁶ where the Court held in summary judgment proceedings as follows:

"That a purchaser as against a seller normally knows what the case is about must be accepted, but it is not necessarily so that a surety, who stands in for the price of goods sold and delivered to a purchaser, knows what the case is about. Thus, where the seller applies for summary judgment against the surety, and the surety alleges that he has reason to believe that the amount claimed does not represent the correct price of the goods sold, it cannot be said that he has no defence to the application, and the Court must exercise its discretion and give the surety the opportunity of asking for further particulars and of defending the action."

⁴ At paras [25] to [31].

⁵ *Neon and Cold Cathode Illuminations (Pty) Ltd v Ephron* 1978 (1) SA 463 (A) at 471D; *Kilroe-Daley v Barclays National Bank Ltd* 1984 (4) SA 609 (A) at 623G.

⁶ *Gruhn v M Pupkewitz & Sons (Pty) Ltd* 1973 (3) SA 49 (A).

d) Disputes of fact in motion proceedings

39. The principal ways in which a dispute of fact may arise are set out in *Room Hire v Jeppe Street Mansions*⁷ as follows:

“It may be desirable to indicate the principal ways in which a dispute of fact arises. The clearest instance is, of course, (a) when the respondent denies all the material allegations made by the various deponents on the applicant's behalf, and produces or will produce, positive evidence by deponents or witnesses to the contrary. He may have witnesses who are not presently available or who, though adverse to making an affidavit, would give evidence viva voce if subpoenaed. There are however other cases to consider. The respondent may (b) admit the applicant's affidavit evidence but allege other facts which the applicant disputes. Or (c) he may concede that he has no knowledge of the main facts stated by the applicant, but may deny them, putting applicant to the proof and himself giving or proposing to give evidence to show that the applicant and his deponents are biased and untruthful or otherwise unreliable, and that certain facts upon which applicant and his deponents rely to prove the main facts are untrue. The absence of any positive evidence possessed by a respondent directly contradicting applicant's main allegations does not render a case such as this free of a real dispute of fact. Or (d) he may state that he can lead no evidence himself or by others to dispute the truth of applicant's statements, which are peculiarly within applicant's knowledge, but he puts applicant to the proof thereof by oral evidence subject to cross-examination.”

I. Deciding factual disputes on affidavit

40. Price JP in *Soffiantini v Mould*⁸ said the following:

⁷ *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1163.
⁸ 1956 (4) EDCC page 150 at page 154G.

“It is necessary to make a robust, common-sense approach to a dispute on motion as otherwise the effective functioning of the Court can be hamstrung and circumvented by the most simple and blatant stratagem. The Court must not hesitate to decide an issue of fact on affidavit merely because it may be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over-fastidious approach to a dispute raised in affidavit.”

41. In *Williams v Tunstall*⁹ the Court held that a judgment could and should be granted on motion for a money sum when the respondents only defence was an objection, as a matter of procedure, to such a course. The only test to be applied is the existence or non-existence of a *bona fide* dispute on a material fact.

II. *The Plascon-Evans rule*

42. The general rule, as stated in *Stellenbosch Farmers’ Winery*¹⁰ has been followed and applied on numerous occasions: if the material facts are in dispute and there is no request for the hearing of oral evidence, a final order will only be granted on notice of motion if the facts as stated by the respondent together with the facts alleged by the applicant that are admitted by the respondent justify such an order, unless the Court is satisfied that the respondent’s version consists of bold or uncreditworthy denials, raises fictitious disputes of fact, is so far-fetched or so clearly untenable or so palpably implausible as to warrant its rejection merely on the papers.

⁹ 1949 (3) SACR 835.

¹⁰ *Stellenbosch Farmers’ Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C) at 235 E-G; This approach was approved in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

43. The *Plascon-Evans* rule was referred to by the Constitutional Court in *Democratic Alliance in Re: Electoral Commission of South Africa v Minister of Cooperative Governance*¹¹ as follows:

“The Plascon-Evans rule is that an application for final relief must be decided on the facts stated by the respondent, together with those which the applicant states and which the respondent cannot deny, or of which its denials plainly lack credence and can be rejected outright on the papers.”

44. In *National Director of Public Prosecutions v Zuma*,¹² it was held that motion proceedings, unless concerned with interim relief, are all about the resolution of *legal issues* based on *common cause facts*. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities.

III. *Uniform Rule 6(5)(g)*

45. Rule 6(5)(g) is wide in its application and empowers the Court to make such an order as it deems fit with a view to ensuring a just and expeditious decision, where an application cannot properly be decided on affidavit.¹³
46. As a general rule, an application for the hearing of oral evidence must be made *in limine* and not once it becomes apparent that the applicant is failing

¹¹ 2002 (1) BCLR 1 (CC) at [40] footnote [15].

¹² 2009 (2) SA 277 (SCA) at para [26].

¹³ *Moosa Bros and Sons (Pty) Ltd v Raja* 1975 (4) SA 87 (D) at 91A (“Moosa Bros”).

to convince the Court on the papers or on appeal.¹⁴ The circumstances must be exceptional before a Court will permit the applicant to apply in the alternative for the matter to be referred to evidence should the main argument fail. It is undesirable that a Court *mero motu* orders a referral to oral evidence.¹⁵

47. The presence of a dispute of fact in an opposed application, and the nature thereof, will often be the determining consideration in deciding whether *viva voce* evidence should be ordered.¹⁶

48. The Court has a wide discretion in deciding whether to refer a matter to evidence.¹⁷ The Court will refer a matter to trial if the dispute of fact is incapable of resolution on the papers and too wide-ranging for resolution by way of referral to oral evidence.¹⁸ In such an instance, it is essential that the issues be defined. Referral to trial is an alternative procedure to dismissal of the application in such circumstances and is appropriate where the applicant, when launching the application, could not reasonably have foreseen that a serious dispute of fact, incapable of resolution on the papers, was bound to develop.¹⁹

¹⁴ *Law Society, Northern Provinces v Mogami* 2010 (1) SA 186 (SCA) at [23].

¹⁵ *De Reszke v Maras* 2006 1 SA 401 (C) at paras 32 to 33.

¹⁶ *Moosa Bros* at 93D; *Minister of Environment Affairs and Tourism v Scenematic 24 (Pty) Ltd* 2005 (6) SA 182 (SCA) at 202H.

¹⁷ *Lombaard v Droprop CC* 2010 (5) SA 1 (SCA) at 10A–D.

¹⁸ *Less v Bornstein* 1948 (4) SA 333 (C); *Room Hire Co* at 1162.

¹⁹ *Standard Bank of S.A. Ltd v Newgarten* 1987 (3) SA 695 (W) at 699A.

IV. Costs in circumstances of referral to oral evidence or trial

49. In the ordinary course, the Court will make the costs of the application abide the result of the action. Where costs will not be made costs in the cause is where the applicant should have known that the proceedings brought by him would be abortive: in such case he will be ordered to pay them himself.²⁰

E. **APPLICATION OF THE LEGAL PRINCIPLES TO THE FACTS**

50. The applicant's case is founded on the deed of settlement as an independent *causa*. On the papers, it is common cause that the respondents signed the deed of settlement, that the agreement records an acknowledgement of indebtedness, that there is a shortfall clause and that it contains a clause permitting it to be made an order of court. These facts establish, at least *prima facie*, a complete cause of action in favour of the applicant.
51. The respondents do not dispute that they signed the deed of settlement, nor that they partially performed under it. However, the existence of a settlement agreement does not preclude a party from raising material disputes of fact relating to the underlying transaction, particularly where such disputes may bear upon the validity, enforceability or proper interpretation of the compromise.

²⁰ *Brown v Cloete* 1914 CPD 757; *Room Hire Co* at 1162.

52. The applicant's claim is framed as one for the enforcement of a deed of settlement, which, as a matter of law, constitutes a compromise creating new obligations and extinguishing prior causes of action.²¹
53. The applicant contends that the respondents' defences are contrived, vague, and not *bona fide*, and that there is force in this submission, particularly having regard to the respondents' conduct and partial performance.
54. The test is, however, not whether the respondents' case is ultimately persuasive, but whether their version is so far-fetched or untenable that it may be rejected on the papers. The respondents' case is not a direct attack on the formal validity of the deed of settlement, but rather that it was concluded in circumstances where the underlying transaction was misunderstood or misrepresented (*justus error*).
55. In my mind, the most significant factual dispute concerns the payment of the loan amount to Desmo rather than to ESRU. This dispute raises several interrelated questions, *inter alia*:
- 55.1. Whether the loan agreement was performed in accordance with its terms;
- 55.2. Whether the applicant was authorised to pay the amount so advanced to an unrelated third party;

²¹ *Gollach supra* at 922H to 923A.

- 55.3. Whether the respondents had knowledge of and consented to the payment to a third party; and
- 55.4. Whether the underlying indebtedness, which forms the foundation of the deed of settlement, is properly calculated.
56. These issues are factually and legally material, as they bear directly on the existence and enforceability of the indebtedness recorded in the deed of settlement. The disputes are not supported by detailed evidence on either side and are inherently credibility-based.
57. They cannot be resolved without oral evidence. As such, the respondents' version cannot be dismissed as fictitious or clearly untenable. The respondents' partial performance under the deed of settlement weighs against them and may ultimately prove decisive at trial, but it is not sufficient, in itself, to eliminate the factual disputes raised.
58. Regarding the sale of the property, as a matter of contractual interpretation, the absence of a reserve price and the inclusion of a shortfall clause in the deed of settlement tend to favour the applicant. However, the respondents' case is not limited to contractual interpretation. It includes allegations of improper conduct in the sale process, a substantial disparity between alleged market value and sales price, and potential irregularities in the auction.
59. These issues involve factual and potentially expert evidence, including valuation evidence, which cannot be received on affidavit. Even if the

respondents' case is not 'bullet proof', it is not so devoid of substance as to be rejected on the papers.

60. Furthermore, while the respondents' challenge to quantum is broadly stated and lacks particularity, it is intertwined with the manner in which the loan was allegedly advanced, the treatment of payments and rental income, and the capitalisation of amounts. These issues are not purely issues of arithmetic and cannot be separated from the broader factual disputes.
61. The Court must consider the factual disputes not in isolation, but cumulatively. When viewed holistically, the disputes concern the performance of the loan agreement, the knowledge and conduct of the respondents, the validity of the sale of the property, and the correctness of the quantum claimed. These disputes are interrelated, factual, and depend upon credibility findings such that they cannot be determined on affidavit. In the circumstances, motion proceedings are not suited to the resolution of these disputes.²²
62. The Court must exercise its discretion under Rule 6(5)(g) in a manner that promotes a fair and just determination of the issues. The disputes identified are not confined to discrete, narrow questions that could be resolved by limited oral evidence. They are broad and foundational, and their proper determination will require pleadings, discovery, oral evidence, cross-examination and expert testimony.

²² *Room Hire Co supra* at 1162 to 1165.

63. A referral to oral evidence on limited issues would not adequately address the complexity of the disputes. The appropriate course is therefore to refer the matter to trial.
64. While the applicant has established a *prima facie* case based on the deed of settlement, the respondents have raised disputes of fact that are sufficiently real, material and not clearly untenable. In these circumstances the applicant is not entitled to final relief on motion. The matter must be determined in trial proceedings, where the disputes may be properly ventilated.

F. ORDER

65. In the circumstances I make the following order:
- 65.1. The application is referred to trial;
- 65.2. The notice of motion shall stand as a simple summons;
- 65.3. The applicant shall deliver a declaration within 20 (TWENTY) days of the date of this order;
- 65.4. The respondents shall deliver the plea within 20 (TWENTY) days after receipt of the declaration;
- 65.5. The parties shall thereafter proceed in accordance with the Uniform Rules of Court applicable to trial proceedings, including discovery and pretrial procedures; and

65.6. The costs of the application are reserved for determination by the trial Court.

S MARITZ AJ
Acting Judge of the High Court
Pretoria

Heard: 20 April 2026
Delivered: 15 June 2026
For the applicant: Adv Hannes Lerm
Instructed by: Van Rooyen & Associates Inc
For the respondents: Adv Johann Hershenson SC and Ruan Britz
Instructed by: Barnard & Patel Attorneys