IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Reportable

CASE NO: 2026-010115

In the matter between:

FPG HOLDINGS (PTY) LTD	Plaintiff
and	
VOILA BEAUTY BOUTIQUE	First Defendant
ANNELLE DEVILLIER ERASMUS	Second Defendant
AMIT KUMAR	Third Defendant

Date heard: **21 July 2026**

Date delivered: **5 August 2026**

Summary:

Landlord and Tenant – Commercial Lease – Summary Judgment – Ejectment – Successor Landlord – Huur gaat voor koop – Cession – Locus standi – Debt-splitting – Lis pendens – National Credit Act 34 of 2005 – Uniform Rule 32

JUDGMENT

O'Brien AJ.

Introduction

1. This is an application for the recovery of possession of commercial premises following the cancellation of the lease. The dispute involves Shop 2[…], Sitari Village, Somerset West (the property'), where the plaintiff alleges that the defendants defaulted on rental obligations after the transfer of ownership, failed to remedy the breach within the contractual notice period, and continued to occupy the premises after written demand and lease cancellation. The plaintiff seeks summary judgment in accordance with Uniform Rule 32, limiting the relief currently requested to ejectment from the premises. Claims for arrear rental, damages, and ancillary monetary relief are not presently before me for final determination and will proceed to trial.

2. On or about 15 August 2024, the first defendant concluded a written lease agreement with Shoprite for a fixed three-year period commencing on 1 September 2024 and terminating on 31 August 2017. On 11 September 2024, the plaintiff purchased the property and was registered and transferred to the plaintiff on 7 July 2025. The first defendant fell into arrears for the period 1

September 2024 to 31 August 2025; 1 September 2025 to 31 August 2026. The second and third defendants bound themselves as sureties and co-principal debtors, jointly and severally with the first defendant for the due fulfilment of all obligations and payments of all amounts due by the first defendant. The first defendant failed to comply with the payment of rental. The plaintiff issued a demand for the first defendant to make payments. Despite the demand the first defendant did not make good on the outstanding payments. The plaintiff cancelled the lease and issued summons.

3. The defendants oppose the application on many grounds. They challenge the plaintiff's standing; dispute the efficacy and scope of the cession pleaded in the particulars of claim; invoke lis alibi pendens; contend that the plaintiff and Shoprite have impermissibly fragmented a single debt or cause of action; deny this Court's jurisdiction; and rely upon the National Credit Act 34 of 2005. They also sought condonation for the late delivery of their opposing affidavit.

4. The delay has been adequately explained, and the plaintiff has not identified any material prejudice that could not be addressed by the cost order. The interests of justice favour determination of the application on its merits. Accordingly, condonation is granted.

5. The numerous objections raised by the defendants should not obscure the central enquiry. The Court is not presently required to determine the ultimate

enforceability of each monetary claim pleaded by the plaintiff, nor to resolve every dispute regarding the historical administration of the lease. The relevant question is whether the plea and opposing affidavit disclose a bona fide defence to the specific claim for ejectment.

6. This enquiry calls for scrutiny of three conceptually distinct matters: first, the procedural standard governing summary judgment following the 2019 amendment to Rule 32; second, the juridical consequences of transferring leased property under the doctrine of *huur gaat voor koop*; and third, the distinction between a successor landlord's entitlement to enforce the subsisting lease.

The pleaded case and the issues

7. The plaintiff alleges that a written commercial lease was concluded in respect of the premises; that ownership of the shopping centre was thereafter transferred to it; that the defendants committed breaches after transfer; that demand was made; that the lease was cancelled; and that the first defendant nevertheless remains occupied.

8. The plaintiff pleads a cession, but it does not rest its claim to possession exclusively upon that cession. It also relies upon its status as owner and successor landlord following transfer. The distinction is material. A cession is ordinarily required to transfer personal rights already vested in the cedent. The

substitution of a purchaser as landlord under an existing lease, by contrast, is a consequence attributed by law to transfer of ownership.

9. It is common cause that the first defendant remains in occupation. The defendants' case is not that a new lease was concluded after cancellation, that cancellation was withdrawn, or that some independent statutory or real right authorises continued occupation. Their principal contention is that the plaintiff has not proved a complete juridical chain entitling it to enforce the lease.

10. The issues are therefore whether the defendants' objections, taken at their highest and assessed in accordance with Rule 32, constitute a legally cognisable answer to the plaintiff's right to recover possession.

Summary judgment under the amended Rule 32

11. Summary judgment has traditionally been described as an extraordinary and stringent remedy because it permits final relief without the ordinary processes of trial. It should not, however, be converted into a presumption against the remedy. Rule 32 is part of the ordinary procedural law. It serves the legitimate purpose of preventing a defendant who has no bona fide defence from using the machinery of trial merely to delay enforcement.

12. In **Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A) at 426A-D**, the Appellate Division explained that the defendant must disclose fully the nature and grounds of the defence and the material facts upon which it rests. The Court does not decide probabilities or conduct a trial on affidavit. It asks whether the facts alleged, if proved at trial, would constitute a defence in law and whether the disclosure is sufficiently full to demonstrate bona fides.

13. **Breytenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T) at 228C-F** remains important for the proposition that the Court must distinguish between an imperfectly articulated but genuine defence and a formulaic assertion devoid of supporting facts.

14. In **Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA) at para 32**, the Supreme Court of Appeal rejected the notion that summary judgment is inherently unjust or should be treated with institutional suspicion. Properly applied, it is a procedure designed to achieve the fair and expeditious resolution of claims where no triable defence exists.

15. The amendment effective from 1 July 2019 altered the sequence and focus of the procedure. An application is now brought after delivery of a plea. The plaintiff must identify why the defence as pleaded does not raise an issue for trial, and the defendant's opposing affidavit is assessed against the pleaded case. **Tumileng Trading CC v National Security and Fire (Pty) Ltd 2020 (6) SA 624**

(WCC) at para 24 explains that the amended procedure permits a better-informed enquiry because both the claim and the pleaded defence are before the Court.

16. Rule 32 does not transform summary judgment into an exception procedure, nor does it authorise a court to determine disputed facts. It does, however, require a Court to examine whether the defence pleaded and amplified on affidavit is legally sustainable and genuinely responsive to the claim.

17. Rule 32 expressly identifies ejectment as a category of claim for which summary judgment may be granted. A court must therefore avoid an undifferentiated approach in which a defence relevant to one component of a composite action is treated as if it necessarily answers every component. The relevant question is whether there is a defence to ejectment.

The juridical basis of the plaintiff’s claim to possession

18. A lessor’s claim to eject a lessee after cancellation is founded upon the termination of the lessee’s contractual right to occupy. During the period of a valid lease, the lessee’s possession is lawful, and the lessor is bound to afford undisturbed use and enjoyment. Once the lease is validly cancelled, that contractual title to remain in possession falls away.

19. **Chetty v Naidoo 1974 (3) SA 13 (A) at 20A-E** is frequently cited for the proposition that an owner is entitled to possession unless the occupier establishes a right to retain possession. In the context of a lease, the practical operation of that principle is uncomplicated: the landlord must establish the lease, the basis for termination, cancellation, and continued occupation; the tenant who resists ejectment must identify a subsisting contractual, statutory or other legal entitlement to remain.

20. The plaintiff's ownership is not, according to the pleaded case, the sole basis for the claim. The claim is also contractual, as the alleged breach and cancellation arise from the lease. This dual character does not create inconsistency. Ownership establishes the plaintiff's reversionary interest in possession, while succession to the lease provides the entitlement to invoke and enforce the contractual mechanisms governing breach and cancellation. Put differently, a future right to own or receive property reverts back after a temporary or conditional period ends.

21. The critical question is how the plaintiff became landlord when the property was transferred to it. That question is answered, in the first instance, by the doctrine *huur gaat voor koop*.

Huur gaat voor koop

22. The maxim *huur gaat voor koop* expresses a settled rule of South African property and lease law: a purchaser who takes transfer of leased immovable property ordinarily steps into the position of the lessor in relation to the subsisting lease. The lease is not extinguished merely because of ownership changes. The purchaser takes the property burdened by the tenant's contractual right of occupation and acquires the correlative rights and obligations of landlord.

23. The doctrine protects the tenant against eviction by a purchaser who was not an original party to the lease, but its operation is reciprocal. The purchaser may not disregard the lease; equally, the tenant may not deny that the purchaser is the landlord for purposes of performance, breach, cancellation, and restoration of possession.

24. **Genna-Wae Properties (Pty) Ltd v Medio-Tronics (Natal) (Pty) Ltd 1995 (2) SA 926 (A) at 939A-D** is the leading modern authority. It confirms that, upon transfer, the purchaser is substituted ex lege for the original lessor in the lease relationship. It follows from the legal effect of transfer upon an existing lease.

25. A claim for rental that had accrued and become due to the former landlord before transfer is a vested personal right. Its transfer ordinarily depends upon cession or another recognised mode of transmission.

26. This distinction is not technical. The defendants' argument tends to collapse the two.

27. The plaintiff's alleged inability to prove every component of the pleaded cession may therefore be important at trial when a court considers historical rental or other accrued monetary claims. Unresolved issues as to the existence, scope or validity of the cession will stand over for determination at trial, where the parties will have the opportunity to present more detailed evidence and argument. The court's present decision is confined to possession, and nothing precludes the defendants from challenging the cession in relation to pre-transfer debts during the trial phase. It does not follow that the plaintiff lacks standing to enforce obligations arising after it became owner and landlord.

28. **Properties in Motion (Pty) Ltd v Lunkanga and Others (2021/9110) [2022] ZAGPJHC 248 (22 April 2022) at para 18**, recognise that legal substitution occurs upon transfer of ownership. The precise date of transfer may consequently determine which landlord owns a particular accrued claim. Still, it does not leave the lease without a landlord or the purchaser without the power to enforce post-transfer obligations.

29. The defendants have not identified a term of the lease excluding the ordinary operation of *huur gaat voor koop*, nor have they alleged that transfer did not occur. Their attack is directed principally at the cession. Even if that attack

succeeds in relation to pre-transfer debts, it does not answer the plaintiff's pleaded case that breaches occurred after transfer and that the plaintiff, as successor landlord, cancelled the lease.

Standing

30. Standing is not an abstract enquiry divorced from the right asserted. A plaintiff has standing if it is the bearer of the right which it seeks to enforce. Where different forms of relief depend upon different rights, standing must be examined claim by claim.

Cession

31. For an accrued pre-transfer debt, the plaintiff may have to prove a valid cession identifying the right transferred. For ejectment following cancellation based on post-transfer breach, the plaintiff relies upon rights acquired as successor landlord. The absence or invalidity of a cession of historical debts would not necessarily negate those rights.

32. The defendants' submission would produce an anomalous result. It would mean that, unless the purchaser could prove a cession of every pre-existing monetary

claim, it could neither enforce the lease nor recover possession after a later breach. That result is inconsistent with the reciprocal structure of *huur gaat voor koop*. The doctrine would protect the tenant against the purchaser while disabling the purchaser from exercising the landlord’s correlative rights.

33. There may be cases in which the validity of cancellation depends upon a pre-transfer breach or upon the purchaser’s ownership of the debt relied upon. In such a case the cession issue may be central. This is not the pleaded case as it presently stands. The plaintiff relies upon continuing and post-transfer defaults. The defendants do not materially dispute those defaults or allege that the cancellation was based solely on a debt that vested in the former landlord.

34. The court must decide the application on the pleaded cause of action and the defence disclosed. It is not permissible to manufacture a hypothetical defence that the defendants themselves have not advanced with the necessary factual foundation.

35. The challenge to the cession consequently raises, at most, a triable issue concerning some of the monetary claims. It does not disclose a defence to possession.

36. Cancellation is a juristic act that terminates future contractual performance, subject to accrued rights and the standard consequences of restitution. In the

context of a lease, the immediate effect is the termination of the lessee's contractual licence to possess the premises.

Cancellation and the right to remain in occupation

37. A court considering summary judgment for ejectment must be satisfied that the plaintiff alleges and verifies a contractual entitlement to cancel, compliance with any material notice requirements, an unequivocal act of cancellation, and continued occupation. A bare allegation that rent is owed is not, without further evidence, sufficient. Applying these requirements to the present case, the plaintiff has produced a written lease agreement, has identified the post-transfer breaches relied upon for cancellation, and has alleged that proper written demand was served upon the defendants with reference to the contractual cure period. The plaintiff further verifies that cancellation was communicated unequivocally in writing and that the first defendant remains in occupation of the premises despite cancellation. These allegations, supported by confirmatory affidavits and annexed correspondence, meet each element of the legal test for summary judgment for ejectment.

38. On the present papers, the defendants do not dispute the service of demand or the communication of cancellation in any factually developed manner. They do not allege that the breach was remedied within the contractual period, that the

plaintiff waived its right to cancel, that it elected to affirm the lease with knowledge of the breach, or that the lease was subsequently reinstated.

39. Nor do they place before the court a contractual interpretation under which the breach relied upon was incapable of founding cancellation. Their objections operate at the level of standing and procedure, not at the level of the subsistence of their own right to occupy.

40. This omission is determinative. A defendant opposing ejectment cannot establish a bona fide defence solely by raising disputes regarding collateral monetary accounting. The defendant must disclose facts which, if proved, would establish a legal right to remain in occupation or undermine the cancellation forming the basis of the ejectment claim. No such facts have been disclosed.

41. The defendants contend that the plaintiff, together with Shoprite, has impermissibly split a single debt or cause of action by pursuing rental in one forum and ejectment in another.

Debt splitting

42. The rule against splitting a cause of action is commonly associated with res judicata and the principle that a claimant should not subject a defendant to successive proceedings for portions of a single indivisible claim. The rule against

splitting a debt in the law of cession protects a debtor against being compelled, without consent, to render divisible performance to multiple cessionaries where the original obligation was owed as a single whole.

43. **Kostopoulos v Bilardi 1970 (2) SA 391 (C) and Segal and Another v Segal and Others 1977 (3) SA 247 (C)**, on which the defendants rely, is distinguishable. In Kostopoulos the court dealt with the collection of monies due under an agreement. The court had to consider whether a revocable mandate or a cession. The court held that the mandate to collect and pay principals' creditors debts due by them is a cession. The court held that the debt was ceded to two or more persons jointly and severally. It did not decide whether the consent of the debtor was necessary. In Segal the issue was the removal of an executrix. The applicants were the cessionaries of the rights of the executrix in the estate of one S against the estate of one M. The first respondent was the executrix in the estate of M. The court held that the rights so ceded were incapable of division on a pro rata basis between the applicants. What I am dealing with in this matter is the divisible claim of ejectment.

44. The current ejectment claim does not constitute a fractional claim for payment of the same debt. Instead, it seeks a distinct juridical remedy: restoration of possession following the termination of the right to occupy. The operative facts are cancellation and continued occupation. In contrast, an arrear rental claim seeks payment of an accrued monetary obligation and may arise independently

of cancellation. These remedies protect different interests and are not interchangeable.

45. The fact that two claims arise from one contract does not make them a single cause of action. The material facts necessary to establish arrear rental are not identical to those necessary to establish ejectment following cancellation.

46. The possibility that the same breach may be evidentially relevant to both claims does not render the remedies indivisible. A landlord may in appropriate circumstances claim cancellation and ejectment while reserving a damages claim for later quantification. What the law prohibits is oppressive duplication or the repeated pursuit of the same relief on the same cause, not the orderly determination of distinct rights.

47. The court must nevertheless consider the risk of inconsistent findings. If the ejectment claim depended upon a disputed fact that is central to the pending rental action, a stay might in some circumstances be appropriate. Here the defendants have not identified such a fact. Their case does not squarely dispute the post-transfer default or cancellation. The historical rental accounting can therefore proceed to trial without undermining the present conclusion on possession. The debt-splitting defence fails.

Lis alibi pendens

48. The plea of lis pendens is grounded in considerations concerning finality, convenience, and the avoidance of duplicative litigation. Its classical requirements are pending litigation between the same parties, founded upon the same cause of action and seeking the same relief.

49. **Caesarstone Sdot-Yam Ltd V World of Marble and Granite 2000 CC and Others 2013 (6) SA 499 (SCA)** confirms that the doctrine is not a rigid formula. In appropriate cases the requirements may be applied with some flexibility where the central issue in the two proceedings is the same and the continuance of both would be oppressive and create a real risk of conflicting judgments. Even where the requirements are present, the Court retains a discretion whether to uphold the plea or stay the later proceedings. The question is whether determination of the earlier proceedings will dispose of, or determine, the dispute in the later proceedings.

50. The Magistrates' Court proceedings concern the recovery of rental were said to have accrued before the plaintiff acquired the property. The present application concerns possession after an alleged post-transfer breach and cancellation. The relief is not the same. A judgment for or against payment of historical rental will not, in itself, determine whether the first defendant retains the right to occupy after cancellation.

51. The defendants have not shown that the validity of the present cancellation is an issue that the Magistrates' Court is required to determine. Nor have they demonstrated that the same post-transfer debts form the foundation of both proceedings.

52. The mere existence of another dispute arising from the same lease relationship is insufficient. The doctrine of lis pendens is not intended to place the entire contractual relationship under procedural suspension merely because one claim has been instituted.

53. The requirements of the plea are not established. In any event, considerations related to convenience and equity do not favour staying a claim for possession where the tenant has disclosed no legal basis for continued occupation.

54. The premises are situated within this division. An action concerning possession of immovable property within the Court's area ordinarily has a sufficient jurisdictional connection to the forum. The defendants are also alleged to be resident or to conduct business within the Court's jurisdiction.

Jurisdiction

55. No exclusive jurisdiction clause has been identified, and no statutory provision deprives the High Court of jurisdiction. The institution of proceedings in a

Magistrates’ Court for a different claim does not oust the High Court’s jurisdiction over ejectment.

56. The jurisdictional objection is accordingly without merit.

The National Credit Act

57. The defendants’ reliance on the National Credit Act is also misplaced. The Act does not apply to every agreement under which payment is deferred or made periodically. Its application depends upon whether the transaction falls within the statutory definition of a credit agreement.

58. Section 8(2)(b) distinguishes among credit facilities, credit transactions, credit guarantees and combinations of those categories. A conventional lease of immovable property, under which rent is paid for the temporary use and enjoyment of premises and ownership does not pass to the lessee, is not simply a credit agreement merely because rental is payable monthly or interest may accrue on overdue amounts.

59. The statutory concept of a ‘lease’ for purposes of the Act is directed at a transaction in which temporary possession is coupled with periodic payments and ownership either passes, or may pass, to the consumer at the end of the term.

That is materially different from an ordinary commercial lease of immovable premises.

60. The defendants do not identify any provision of the agreement bringing it within section 8(2)(b), nor facts showing that the plaintiff advanced credit in the statutory sense. They accordingly fail to establish that section 129 notice was a precondition to enforcement or cancellation.

61. The National Credit Act defence fails.

Assessment of the disclosed defence

62. The defendants are entitled to have their factual allegations accepted for purposes of determining whether a triable defence exists, provided those allegations are sufficiently particular and legally relevant. They are not entitled to have legal conclusions treated as facts.

63. The core allegations are that the cession is defective, that historical rental is disputed, that related litigation is pending and that the plaintiff has fragmented its remedies. Even if those allegations are accepted, they do not establish a subsisting right of occupation.

64. The defendants do not allege payment of the post-transfer arrears relied upon for cancellation. They do not allege that demand was not received, that the contractual cure period had not expired, that the cancellation was equivocal, that the plaintiff waived cancellation, or that another person is presently entitled to enforce the lease to the exclusion of the plaintiff.

65. Most importantly, they identify no contract, statute, lien, real right, or other juridical basis authorising continued possession after termination of the lease.

66. The defendants' case therefore fails not because the court prefers the plaintiff's version on disputed facts, but because the facts advanced by the defendants do not amount in law to a defence to ejectment.

67. That conclusion does not prejudge the trial. The defendants remain free to contest the validity and scope of the cession, the quantum and ownership of historical debts, the accuracy of the rental reconciliation, and any counterclaim. The counterclaim is for damages suffered and severable from the ejectment claim. Those issues are not dispositive of the plaintiff's present entitlement to possession.

68. The plaintiff has established, for purposes of Rule 32, that it acquired ownership and succeeded to the position of landlord; that the lease was cancelled following alleged post-transfer default; and that the first defendant remains in occupation.

The defendants have failed to disclose facts which, if proved, would defeat that claim.

69. Summary judgment must accordingly be granted for ejectment.

70. The lease provides for costs on the attorney-and-own-client scale. Contractual cost clauses are not enforced mechanically, because the court retains an overriding discretion in relation to costs.

Costs

71. The plaintiff has succeeded on the claim presently pursued. The remaining claims are reserved for trial, and nothing in this judgment determines their merits.

72. The first defendant must therefore pay the costs of the summary judgment application on the agreed scale.

73. The following order is made:

73.1. Condonation is granted for the late filing of the defendants' opposing affidavit.

73.2. Summary judgment is granted in favour of the plaintiff against the first defendant for ejectment from Shop 2[…], Sitari Village, Somerset West.

73.3. The first defendant and all persons occupying the premises through or under it shall vacate the premises within ten court days after service of this order.

73.4. Failing compliance with paragraph 74.3, the Sheriff is authorised to eject the first defendant and all persons occupying the premises through or under it.

73.5. The first defendant shall pay the costs of the summary judgment and condonation application on the attorney-and-own-client scale.

73.6. The plaintiff's remaining claims, the counterclaim and all issues arising from them are referred for determination at trial.

SC O'BRIEN
Acting Judge of the High Court
Cape Town

APPEARANCES

For the plaintiff:	Adv D de Wet
Instructed by:	Potgieter Joubert Inc
For the defendant:	Adv J Lourens
Instructed by:	Raymond McCreath Inc