

IN THE HIGH COURT OF SOUTH AFRICAGAUTENG DIVISION, JOHANNESBURGCASE NO: 144557/2024DATE: 27.08.2026

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES : NO

(3) REVISED



SIGNATURE

DATE: 27 August 2026

In the matter between

10 FEDBOND NOMINEES

Applicant

and

MARK VAN HOUTEN AND OTHERS

Respondents

J U D G M E N T E X T E M P O R E

WILSON J: The applicants extended loan facilities to a trust known as the Van Houten Properties Trust over an extended period. Provisions of the relevant loan agreements were breached and the terms of the loans have now

20 expired.

The applicant seeks to recover in terms of the loan agreements and to execute against property owned by the Trust and against which the sums owing under the loan agreements were secured. The agreements themselves and the fact of their breach are not in dispute. What is

principally in dispute is whether the individual who entered into the loan agreements on behalf of the Trust, the first respondent, Mr Van Houten, was authorised to do so on the Trust's behalf.

When he entered into the various loan agreements Mr Van Houten warranted that he was duly authorised to do so on behalf of the Trust. In his answering affidavit, supported by confirmatory affidavits from the other trustees, Mr Van Houten now says that he was not so authorised. These two
10 contradictory assertions lead to what was described in the case of *Moraitis Investments v Montic Dairy (Pty) Ltd* 2017 (5) SA 508 (SCA), as a “stark question”. There, Justice Wallis, writing for a unanimous court, posed the question as follows: Why should we believe that the trustee was lying when he signed the loan agreements but telling the truth in his affidavit? (Moraitis, para 33).

The same question arises here. Why should a court believe that Mr Van Houten was not, after all, duly authorised to enter into the various loan agreements by the
20 other trustees, he having signed a large quantity of documentation warranting that he is so authorised. In order to answer that question, it would have been incumbent upon the Trust and its trustees to set out the circumstances under which authority flowed through them to Mr Van Houten in the ordinary course and scope of the Trust's

business and why, on each individual occasion that he signed the various loan agreements, that authority was absent. Such a version is entirely absent from the Trust's answering affidavit.

But it gets worse. The trustees themselves, over extended periods, signed various agreements where they bound themselves on as sureties for the Trust's performance under the various loan agreements. Not every trustee signed as a surety in respect of every transaction, 10 but enough of the trustees signed enough of the suretyships to raise the question of how, if they did not authorise the decisions to incur the indebtedness under the various loan agreements for which they stood as surety, the trustees came to sign the suretyship agreements in the first place. That is not explained in the answering affidavit either.

Furthermore, on 30 March 2012, all the trustees, that is, each one of the first to fourth respondents, signed a resolution authorising Mr. van Houten to be,

20 "nominated to represent the Van Houten Properties Trust and be authorised to sign all documentation pertaining to any transaction with regard to the trust."

That document was disclosed in reply, but its existence is not explained or contextualised at all by the respondents. The document adds to the mountain of

documentary and circumstantial evidence which leads to the conclusion that Mr Van Houten was in fact authorised to enter into the various loan agreements upon which the first applicant now seeks to collect.

To put it another way, on the *Moraitis* case, especially on a conspectus of paragraphs 32 and 33 of that decision, a trust which seeks to resist liability for the performance of an obligation, on the basis that the obligation was incurred unauthorised by one of its trustees, may not simply issue a
10 bare denial of authority. It must explain the circumstances under which authority is usually given, and it must contextualise the circumstances under which the trustee whose authority is denied purported to possess authority they did not have. A trust that does not do that runs the risk in application proceedings such as those presently before me of having its denial of authority rejected as far-fetched and untenable.

In my view, for all the reasons I have given, the respondents' denial of Mr Van Houten's authority to enter
20 into the various agreements is stark, far-fetched and untenable. It falls to be rejected on the ordinary principles applicable to applications for final relief.

There were a number other points raised in the answering affidavit. Mr Bhima, who appeared for the respondents, quite wisely declined to press them. Although

the respondents do not abandon them, they are transparently without merit. The first point is that it is said to be unclear on the Notice of Motion which of the two applicants seeks to enforce the obligations owed under the loan agreement. It is plain, on a conspectus of the papers, that it is the first applicant to whom the obligation is owed and the first applicant to whom payment is due. Any other interpretation of the papers that seeks to create an ambiguity is tortured and untenable.

10 It was then alleged that action to collect on the loan agreements was contrary to an underlying understanding between the parties, that execution of the loan agreements would not follow upon a single or a small number of acts of default, that essentially what was agreed between the parties was some sort of revolving loan facility, and that the present action is in breach of that understanding. Unfortunately, the underlying understanding, if it exists, has not been pleaded, and the facts giving rise to the understanding have not been set out in the answering
20 affidavit.

 The loan agreements and the letters of grant embodying them are in writing and attached to the founding affidavit. In those circumstances, the mere mention of an underlying understanding is not sufficient to create a dispute that would prevent my granting final relief of the

nature the applicants seek.

It was then suggested that the identity of the debtor under the suretyships signed by the various trustees is unclear. The most cursory glance at the first page of each of the suretyships puts paid to that suggestion. The debtor is described as the trustees of the trust, which is the appropriate form.

It was then suggested that the property against which the applicants seek to execute is residential in nature, and
10 that as a result, Rule 46A of the rules of this court and the various underlying legal principles controlling execution against residential property have application. That, too, is an empty defence. No primary facts are set out in the answering affidavit, which are capable of grounding the suggestion that any of the property against which the loans are secured is residential. In reply, facts are put up which demonstrate the property is, in fact, commercial. Rule 46A plainly does not apply.

It was finally suggested that one of the letters of
20 grant referred to in the papers as B929 did not create any liability on the Trust's behalf. That defence appears to be a rather opportunistic attempt to seize on the fact that the original of the letter of grant cannot be found. The applicant put up a true copy of it. Instead of disputing the authenticity of the true copy, a bare denial that it gave rise

to any liability was issued in the answering affidavit. Given that, on the papers, Mr Van Houten acknowledges the indebtedness in respect of letter of grant B929, and that there is a mortgage bond that mentions it, that denial is far-fetched and untenable. It falls to be rejected – especially since there is, as I have said, no challenge to the authenticity of the document the applicants put up.

It follows that there has been no defence raised to the claim for payment and execution, and an order in terms
10 of the draft handed up by the applicants' counsel, Mr Kromhout, must follow.

Mr Kromhout asked for costs on Scale C. In light of the conclusions I have reached, it should be clear that this is not a complex case. The quanta are fairly high, but the quanta of the claim justify, at best, the taxation of counsel's costs on Scale B. I will amend the draft order accordingly.

For all those reasons, I make an order in terms of the draft handed up by counsel, which I have signed, dated, amended and marked X.

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WILSON, J
JUDGE OF THE HIGH COURT
27 August 2026

