



**IN THE HIGH COURT OF SOUTH AFRICA,
MPUMALANGA DIVISION, MIDDELBURG**

CASE NO: 2025-114217

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED YES/NO
SIGNATURE	<u>01/09/2026</u> DATE

In the matter between:

SFT ENERGY (PTY) LTD

PLAINTIFF

and

IMPANGELE LOGISTICS (PTY) LTD

DEFENDANT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date of hand down is deemed to be 1 September 2026

JUDGMENT

Phahlamohlaka J

Introduction

[1] The plaintiff seeks summary judgment for payment of the capital sum of R5 400 00.00, together with interest and costs, in respect of the mortgage loan advanced to the defendant.

[2] The defendant opposes the application, raising, among others, technical defences including lack of *locus standi* and the plaintiff's alleged insolvency.

Brief synopsis

[3] The plaintiff issued summons against the defendant for payment of the sum of R5 400 000.00, together with interest and costs, as well as an order declaring an immovable property specially executable. The claim arises from an agreement in terms of which the plaintiff advanced monies to the defendant.

[4] According to the particulars of claim, the parties caused two mortgage bonds to be registered over an immovable property as security for the debt. The parties further agreed that the mortgage bonds would remain registered over the property until full payment was made by the defendant to the plaintiff.

[5] The plaintiff alleges that the defendant committed a breach in terms of the agreement and therefore demanded full payment of the whole amount.

[6] The defendant pleaded to the particulars of claim but initially raised only a point of law that the plaintiff was placed under provisional liquidation and therefore lacked *locus standi* to institute the action.

[7] The plaintiff filed an application for summary judgment, and upon the filing of that application, the defendant filed a notice of intention to amend its plea. Subsequently, the defendant filed an amended plea.

Issues for Determination

[8] The court is therefore called upon to determine the following issues:

8.1 Whether the defendant has raised a *bona fide* defence or triable issue to the plaintiff's claim as required by Rule 32 of the Uniform Rules of Court.

8.2 Whether the plaintiff has complied with the procedural requirements for summary judgment, particularly in light of the defendant's amended plea and provision of security.

Legal Principles and Case Law

[9] In order to successfully resist a summary judgment, the defendant has to disclose a *bona fide* defence or triable issue.

[10] The test was restated in *Cohen NO and Others v D (Cohen)*,¹ where the Supreme Court of Appeal stated that:

“[31] The high court failed to consider the test to be applied in deciding whether to grant summary judgement. This was, and remains, whether the facts put up by the defendants raise a triable issue and a sustainable defence in law, deserving of their day in court. The defendants must fully disclose the nature and grounds of their defence and the material effects 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.”

[11] In *PCL Consulting (Pty) Ltd t/a Phillips Consulting SA v Tresso Trading 119 (Pty) Limited*,² the court emphasised that the defendant's defence must be set out in the affidavit. The court remarked as follows:

“[8] The defendant's counsel submitted in argument that the mere fact that the defendant had entered appearance to defend, was sufficient to raise the existence of a dispute which could be formulated at a later stage in the proceedings. The submission ignores the provisions of rule 32(3)(b) which in peremptory terms require

¹ *Cohen N.O and Others v D* [2023] ZASCA 56 at paras 31 and 32.

² *PCL Consulting (Pty) Ltd t/a Phillips Consulting SA v Tresso Trading 119 (Pty) Ltd* [2007] ZASCA 9; 2009 (4) SA 68 (SCA) at para 8.

the defendant in an affidavit resisting summary judgment not merely to 'disclose fully the nature and grounds of the defence' but also to disclose 'the material facts relied upon therefor'."

[12] In *J.E.M and Another v G.P.J.V.N*,³ the court found that a defendant's failure to directly address the existence of the debt or the rationale for the mortgage bond undermined the *bona fides* of the defence.

[13] In *Absa Bank Ltd v Peacock and Another*,⁴ the court described as bad faith a defendant's attempt to minimise liability in the face of clear evidence of indebtedness secured by mortgage bonds.

[14] The defendant relies on *Arend and Another v Astra Furnishers (Pty) Ltd*,⁵ which allows a defendant to raise issues of procedural compliance and the validity of the application for summary judgment, even if not set out in the opposing affidavit. The defendant also cites *Shackleton Credit Management (Pty) Ltd v Microzone Trading 88 CC*⁶ and *Cohen*,⁷ emphasising the need for strict compliance with Rule 32(2)(b) by the plaintiff.

Analysis

[15] The defendant raised two points of law to the plaintiff's application. Firstly, the defendant contended that the plaintiff failed to comply with Rule 32(2)(b) of the Uniform Rules of Court which provides that the plaintiff shall in the affidavit verify the cause of action and the amount, identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defendant's plea does not raise any triable issue.

³ *J.E.M and Another v G.P.J.V.N* (1791/2021) 2023 ZANWHC 190.

⁴ *Absa Bank Ltd v Peacock and Another* (1340/2020) [2020] ZAWCHC 154.

⁵ *Arend and Another v Astra Furnishers (Pty) Ltd* 1974 (1) SA 298 (C).

⁶ *Shackleton Credit Management (Pty) Ltd v Microzone Trading 88 CC and Another* 2010 (5) SA 112 (KZP).

⁷ *Cohen* fn 1 above.

[16] The defendant filed an amended plea wherein technical defences are raised. In the amended plea, the defendant also alleges that the plaintiff's particulars of claim are defective for not pleading the conclusion and terms of the agreement, compliance with obligations, and other essential elements.

[17] The plaintiff's affidavit in support of summary judgment addressed only the original plea and not the amended plea. The defendant argues that the plaintiff was required to engage with the amended plea and explain why it does not raise a triable issue.⁸ In my view, the plaintiff's supplementary affidavit did not adequately address the amended plea.

[18] Moreover, the defendant also provided security for judgment in terms of Rule 32(7). Subrule (7) provides that if the defendant files security or satisfies the court as provided in subrule (3), the court shall give leave to defend, and the action shall proceed as if no application for summary judgment has been made.

[19] The Supreme Court of Appeal in *De Waal Alberts and Others v Nel NO*,⁹ cautioning against easily granting summary judgment, said the following:

“[5] It is apposite to start with the first issue. Summary judgment is an extraordinary, drastic remedy, in that it closes the door to a defendant who wishes to defend an action. It should only be granted if the plaintiff's case is unimpeachable or the defence is bogus or bad in law or where the giving of notice to defend amounts to an abuse of the court process. (*Maharaj v Barclays National Bank Limited* 1976 (1) SA 418 (A) at 423F-G; *Edwards v Menezes* 1973 (1) SA 299 (NC) at 303E-FF).”

[20] The defendant's provision of security for judgment and costs shows a commitment and not just a stratagem to delay the finalisation of the matter. Therefore, the provision of security together with the fact that the defendant raised triable issues in the amended plea persuade me to grant leave to defend.

⁸ See *Tumileng Trading CC v National Security and Fire (Pty) Ltd* 2020 (6) SA 624 (WCC).

⁹ *De Waal Alberts and Others v Nel NO* [2019] ZASCA 33 at para 5.

[21] In the premises, and for the aforesaid reason, the application for summary judgment stands to be dismissed.

Order

[22] In the result, I make the following order:

1. The application for summary judgment is dismissed.
2. The defendant is granted leave to defend the action.
3. The costs of this application are to be costs in the cause.



K F PHAHLAMOHHLAKA
JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG

Appearances

For the plaintiff:	Adv Thobejane
Instructed by:	Botha Massyn & Thobejane Associated Attorneys

For the defendant:	Adv Sias Nel
Instructed by:	Dr TC Botha Attorneys

Date judgment reserved:	17 April 2026
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