

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
	
	
DATE.....SIGNATURE.....	

CASE NO: 2025-062698

In the matter between:

PROPELL SECTIONAL TITLE SOLUTION

(PTY)(LTD) (Registration number: 1999/04482/07)

Plaintiff/Applicant

and

THE BODY CORPORATE OF EDLYN COURT

First Respondent

(Scheme number: 78/1988)

JUDGMENT

Maunatlala AJ:

[1] This is an application for summary judgment brought by the Plaintiff against the Defendant for payment of R416,763.23, together with interest and costs. The claim arises

from a loan agreement, subsequent addendum, and repayment agreement concluded between the parties.

[2] The Defendant has raised a special plea of prescription, contending that the debt had prescribed before the conclusion of the repayment agreement and an addendum. This is the primary issue before this Court.

The Factual Matrix

[3] The parties entered into a Revolving Arrear Levy Finance Agreement on or about 11 April 2014. In terms of this agreement, the Plaintiff advanced funds to the Defendant to cover arrears levies owed by defaulting owners, with the Defendant remaining liable for advances not recovered.¹

[4] On 22 August 2019, the Plaintiff gave notice in terms of clause 3.2.1 of the original agreement, ceasing to provide further advances.² The Defendant contends that this notice "ended" the agreement and that the debt therefore prescribed three years thereafter, on or about 22 August 2022.

[5] The Plaintiff however contends that the debt has not prescribed because in terms of clauses 19.4 and 20 of their original agreement, the amounts advanced only become due and payable by the Defendant once the Plaintiff has issued a notice to that effect, or in the event of breach by the Defendant.³

¹ Annexure POC2, clause 11.2

² Annexure POC3

³ Para 35; Applicant's heads of argument

[6] During September 2023, the parties concluded an addendum to the agreement agreeing that the Defendant would be liable for Financed Arrear Levies that cannot be recovered from the Owners.⁴

[7] On 23 October 2023, the parties entered into a Repayment Agreement ("the RA") wherein the Defendant:^{7.1.} Acknowledged its indebtedness of R612,076.03;⁵

[7.2.] Agreed to a discounted amount of R350,000.00 plus interest;⁶

[7.3.] Undertook to make 60 monthly instalment payments.⁷

[8] The Defendant subsequently defaulted on the repayment agreement. The Plaintiff issued a letter of demand on the Defendant on or about 25 March 2025. The Plaintiff, now the Applicant, seeks summary judgment for the outstanding balance.

[9] The defendants contend that this Repayment Agreement and the subsequent addendum were entered into after the debt had already prescribed and does not revive the debt.

The Prescription Defence

[10] The Defendant's central contention is that the debt prescribed on or about 23 September 2022 being three years after the Plaintiff gave notice that it would cease making

⁴ Para 9; Particulars of claim

⁵ RA, clause 3.1

⁶ RA, clause 3.3

⁷ RA, clause 4.1

further advances.⁸ The Defendant further contends that the subsequent addendum and repayment agreement cannot revive a prescribed debt.⁹

[11] This argument is, with respect, fundamentally flawed and misunderstands the nature of the original agreement. To this effect, I refer to the Constitutional Court decision in *Trinity Asset Management (Pty) Ltd v Grindstone Investments 132 (Pty) Ltd 2018 (1) SA 94 (CC)* where the court held, at paragraph 47 that “a contractual debt becomes due in accordance with the terms of the contract and that, where demand is a condition precedent to claimability, prescription commences only upon demand. “

[12] In determining when prescription commenced, the acceleration provisions contained in clauses 19.4 and 20 of the original agreement take precedence. The respondents proceeded on a premise that prescription commenced to run from the date of the Notice by the Applicants ceding to make further advances, without due regard to the acceleration clause which governs when the debt became due and, consequently, when prescription commenced to run.

[13] It is worth pointing out that the provisions of Section 12 of the Prescription Act provides that prescription will run from “*the date on which the debt becomes due and payable*”, in this case, such a date would be determined by the creditor electing to make a demand as contemplated in clause 19.4 and 20 of the Agreement. (“**POC2**”).¹⁰

[14] The agreement between the parties was not a term loan that became due on termination. Clauses 19.4 and 20 of the original agreement provide that the amounts advanced become due and payable only upon a notice of breach or demand. The notice

⁸ Para 5 of Special Plea v Para 9 of Respondent’s heads.

⁹ Para 9 of Respondent’s heads.

¹⁰ Prescription Act 68 and 69

dated 22 August 2019 merely informed the Defendant that the Plaintiff would stop making further advances; it did not demand payment of the existing indebtedness. In addition, clause 3.3 provides that the agreement remains in force until the Defendant has discharged all amounts due.

[15] The legal position regarding prescription and acceleration clauses is clear. In *Standard Bank of South Africa Ltd v Miracle Mile Investments 67 (Pty) Ltd and Another* 2016 (2) SA 153 (GJ), the Supreme Court of Appeal held that where a contract contains an acceleration clause that requires an election by the creditor, the debt falls due and prescription commences only when the creditor elects to terminate the agreement and demand payment of the full amount.¹¹

[16] The position is accurately summarised by Christie:

'If the contract contains an acceleration clause making the entire balance of the debt payable on the debtor's failure to pay any one instalment, it will only be necessary to examine the clause carefully in order to see whether anything in addition to the debtor's default, such as a written demand, is required to bring it into operation.'

[17] In this matter, the original agreement did not make the full amount due upon termination of the facility. The Defendant was required to remain liable for financed arrear levies that could not be recovered from owners. In terms of clauses 19.4 and 20, the debt only became due and payable upon a demand or breach.

¹¹ See para 15-18 of the case

[18] The letter of demand was only served on 20 March 2025.¹² It is from this date that prescription commenced to run in respect of the full outstanding balance.

[19] The Defendant's reliance on *Miracle Mile* is misplaced. That case concerned a situation where the creditor failed to make an election to accelerate the debt. Unlike the circumstances in that matter, the Plaintiff's contractual right to recover the outstanding balance was dependent upon the occurrence of the circumstances contemplated in clauses 19.4 and 20 including demand upon default. The Plaintiff has clearly elected to enforce the debt by issuing a letter of demand and launching these proceedings. Prescription in respect of the outstanding balance therefore commenced no earlier than that date. I submit that the debt has not prescribed

The Nature of the Defence

[20] The summary judgment procedure is a valuable mechanism to prevent delay and abuse of process by defendants who have no real defence to a claim. A defence must be bona fide and raise a triable issue, otherwise it would merely be delivered solely for the purpose of delay. See *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009 (5) SA 1 (SCA).¹³ The Defendant's plea and affidavit resisting summary judgment are replete with bald denials and vague allegations of a lack of accounting. The Defendant does not, however, provide any specific particulars of what amounts were not properly accounted for.

[21] In *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A), the Appellate Division held that a defendant must "disclose fully the nature and grounds of his defence and the

¹² Annexure POC10

¹³ At para 32.

material facts upon which it is founded" and that the defence disclosed must be "bona fide and good in law".

[22] As this Court has recently reaffirmed in *Hbgschindlers Attorneys and Notaries v Glen Acre 16 (Pty) Limited and Another* 2026 ZAGPJHC 371:

'a defendant cannot content him- or herself with bald denials... Something more is required'.

More recently, the same principle was reaffirmed in *SA Taxi Impact Fund (RF) Pty Ltd v Vilakazi* [2026] ZAGPJHC 369, where the Court held that bald denials and vague allegations which do not set out facts constituting a defence do not satisfy the requirements for resisting summary judgment.¹⁴

[23] The Defendant's complaint that it "never received such advance" is contradicted by its own plea, which admits that payments were made to the Plaintiff and that a payment of R2,000.00 was made to "demonstrate its preparedness or willingness to pay off its debt".¹⁵ The Defendant further attaches annexures "AD1" and "AD2" to its plea, acknowledging the existence of the financed arrear levies.

[24] As was held in *Botha v W Swanson & Company (Pty) Ltd* 1968 (2) PH F85 CPD, a claim based on a certificate of balance in a loan agreement constitutes a liquidated amount for the purposes of summary judgment. Clause 25 of the original agreement, which applies to the RA, provides that a certificate issued by a director of the Plaintiff constitutes prima

¹⁴ at paras 19 and 47–50

¹⁵ Plea: Para 21 v Para 27

facie proof of the indebtedness.¹⁶ The Plaintiff has attached the requisite certificate as annexure "POC9".

[25] The Defendant has failed to advance a defence that is bona fide or good in law. The opposition to this application bears all the hallmarks of a delaying tactic.

Order

[26] In the premises, the Plaintiff has established a clear claim, and the Defendant has failed to disclose a bona fide defence. The Defendant's special plea of prescription is dismissed with costs.

[27] Summary judgment is therefore granted in favour of the Plaintiff as prayed for in the Notice of Motion:

1. Payment of the amount of **R416,763.23** (Four Hundred and Sixteen Thousand Seven Hundred and Sixty-Three Rand and Twenty-Three Cents);
2. Interest thereon at the rate of **16.75%** calculated from 20 March 2025 to date of payment;
3. Costs of suit on the attorney and client scale, including the costs of counsel on Scale C.



MI Maunatlala

**ACTING JUDGE OF THE HIGH COURT,
JOHANNESBURG, GAUTENG DIVISION**

¹⁶ Annexure POC2, clause 25

APPEARANCES;

For the Plaintiff/Applicant:

Adv PJ Badenhorst

Instructed by: Heerschop Pienaar Inc

For the Defendant/Respondent:

MacGillivray Pool Inc

DATE OF HEARING : ...

DATE OF ORDER : 28 August 2026

DATE OF REASONS FOR JUDGMENT : ...