



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

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|------------------------------|--------|
| Reportable: | YES/NO |
| Of Interest to other Judges: | YES/NO |
| Circulate to Magistrates: | YES/NO |

Case no: **5082/2019**

In the matter between:

FIRSTRAND BANK LIMITED

Plaintiff

and

DUNCAN LEJONE MOTAUNG

Defendant

CORAM: **P R CRONJÉ, AJ**

HEARD ON: **20 JULY 2023**

DELIVERED ON: **8 SEPTEMBER 2023**

JUDGMENT BY: **P R CRONJÉ, AJ**

This judgment was handed down electronically by circulation to the parties' representatives by email, and release to SAFLII. The date and time for hand-down is deemed to be 12h00 on 08 September 2023.

[1] Plaintiff issued summons against the Defendant for payment of R1 986 964.70 plus interest at a variable rate of 10.15% from 15 October 2019. It seeks costs

on attorney and client scale. It does not seek an order that the property be declared executable. The cause of action is a written loan agreement concluded on 2 September 2016.

- [2] In 2019, the Plaintiff obtained default judgment under this case number against the Defendant. That judgment was set aside by Boonzaaier AJ on 6 May 2021. The relevance of that judgment is that she found that the Plaintiff complied with section 129 of the National Credit Act (NCA).¹
- [3] On 12 August 2022, the Plaintiff served a Notice of Bar on the Defendant's attorneys affording him an opportunity to file a Plea.
- [4] On 7 September 2022, a fresh s 129 notice was served on the Plaintiff's mother at his residence as he was not present.² By then the amount in default was R151 905.58 and the outstanding balance R2 011 099.07.
- [5] On 16 March 2023, the Plaintiff served a fresh Notice of Bar on the Defendant's attorneys and on 28 March 2023, the Defendant filed his Plea.
- [6] On 17 April 2023, the application for summary judgment was served on the Defendant and the matter set down for hearing on 18 May 2023. The Defendant states that his opposing affidavit should only have been filed five (5) days before the matter was heard, which was 11 May 2023. He did not file it and the matter was enrolled on the unopposed roll for 18 May 2023. By agreement between the parties the application was postponed to 20 July 2023. The Defendant had to file a condonation application together with his opposing affidavit in the summary judgment application. He was ten (10) days out of time.
- [7] When the matter came before me, the legal representatives of the parties agreed that the condonation application be heard simultaneously with the

¹ 35 of 2005

² Pleadings, p. 34 - 40

main application. The requirements for condonation is trite and I will deal with them in due course.

- [8] The Defendant raised a plethora of defences in the form of Special Pleas/points in *limine* and defences. I carefully considered each of the grounds of opposition in light of the facts, the arguments and the applicable principles of law in respect of Summary Judgment.

SPECIAL PLEA – AMENDMENT OF PAYMENT TERMS AND PAYMENT

- [9] The first is a special plea is that a written agreement was concluded via email between the parties on or about 11 October 2022 in terms of which the Plaintiff “*undertook to hold all further litigation in abeyance*”.³ The Defendant would pay R100 000.00 towards the arrears and thereafter instalments consisting of the instalment amount as well as an extra amount per month for a period of twelve (12) months in order to settle the full arrear amount.⁴
- [10] The arrangement was confirmed in an e-mail from the Plaintiff on 11 October 2022. It notes the proposal for payment of R100 000.00 as lump sum on the balance of R2 026 796.79. The arrears balance of R71 443.62 shall be paid over a twelve (12) month period in amounts of R5 953.63 plus an instalment of R20 405.40. The total monthly payment over twelve (12) months would be R26 359.03.⁵
- [11] The Defendant paid R100 000.00 on 11 October 2022 and thereafter R27 000.00 on 11 November 2022, R20 405.40 on 29 December 2022, R6 000.00 on 9 January 2023 and R26 000.00 on 7 February 2023.⁶

- [12] On 4 November 2022, the Defendant’s attorneys stated:

³ Pleadings, page 54, para 1.1

⁴ Pleadings, page 55, para 1.2

⁵ Pleadings, p. 68 - 69

⁶ Pleadings, page 55, para 1.3

“Our instructions are, that following the communication between our client and your client, represented by Sherika Kanhai, there was an agreement that the above action will be suspended upon our client’s payment of the amount of R100 000.00 and the balance of R51 905.58 to be paid over a period of twelve (12) months from date of payment of the R100 000.00. On the 11th October 2022 our client paid an amount of R100 000.00 and your client sent him an e-mail confirming the suspension of the action.

Our client informs us, however, that despite the suspension of the action, you proceeded with the action by delivering amended particulars of claim on the 2nd November 2022, contrary to the agreement concluded between our client and your client.”⁷ [my emphasis]

- [13] In an e-mail from the Plaintiff to the Defendant on 4 November 2022, the Plaintiff referred to the Defendant’s attorney’s letter of 4 November 2022 and stated:

“It was our instruction from our client to pend legal action, but to first complete the amendment of the particulars of claim.

Legal action is not proceeding at this stage.”⁸ [my emphasis]

- [14] On 27 March 2023, the Defendant stated that the e-mail of 11 October 2022 contains the *“initial arrangement with a lump sum payment of R100 000.00.”⁹ [my emphasis]* It is apparent that when the e-mail of the Plaintiff dated 11 October 2022 that set out the monthly instalment plan of R26 359.03 (“payment plan”) is read with paragraph 1.3 of the Defendant’s Plea, the Defendant did not comply with the agreement. Only the payment of R27 000.00 exceeded R26 359.03. The other payments were all short. The Plea was signed on 27 March 2023 and by that date, the Defendant has not made any further payments. The opposing affidavit was filed on 26 May 2023. It, similarly, does not reflect any payments after 27 March 2023.

⁷ Pleadings, page 71 - 72

⁸ Pleadings, page 73

⁹ Pleadings, p. 66

- [15] It cannot be clearer that the obligatory monthly payments in terms of the loan agreement was not amended. Only an interim payment plan was agreed on.
- [16] The correspondence of the Plaintiff and the Defendant does not show that the action was to be withdrawn. What the Plaintiff did was to grant the Defendant an opportunity to reinstate the agreement and to pend further steps if he complies. He would in any event carry an onus in respect of not only the agreement but also payments according to the terms of the agreement that he relies on. His allegation that he remedied the breach by the payments in terms of the written agreement can be rejected.¹⁰ His first point *in limine* is therefore not *bona fide* and is dismissed.

SPECIAL PLEA – MATTER IS MOOT AND *RES JUDICATA*

- [17] The second point *in limine* is that the matter became moot and *res judicata* due to the agreement and payments made.¹¹ As shown above he failed to comply with the agreement. His failure to pay as agreed, cannot make the issue moot. *Res judicata* does not find application as the indebtedness, even on his own version, was not finally settled as per the agreement.

FIRST DEFENCE – NON-COMPLIANCE WITH SECTION 129 OF THE NATIONAL CREDIT ACT

- [18] He alleges that a defective notice in terms of s 129 of the NCA was served incorrectly. He does not produce the notice. I already referred to the judgment of Boonzaaier AJ where she found that a s 129 notice was correctly served.
- [19] According to him the s 129(1) notice does not align with the particulars of claim and is therefore irregular.
- [20] He proceeds to state that the contents of the s 129(1) notices and the

¹⁰ Pleadings, p. 148, para 5.7; p. 149, para 6.2.2

¹¹ Pleadings, p. 150, para 6.2.4

amounts therein does not correspond with the claim. However, the Defendant himself liquidated the exact debt by acceptance of the payment plan. At date of the s 129 notice the amount was correct as it was not disputed by the Defendant when he negotiated the terms to bring the arrears up to date. On 26 August 2022 the arrears was R151 905.58. This was demanded in the s 129 notice.¹² When he made the payment arrangement the arrears was R171 443.62, which he accepted when he agreed to make the payments.¹³

SECOND DEFENCE – PLAINTIFF DID NOT PROVE REGISTRATION UNDER THE NATIONAL CREDIT ACT

[21] It is not necessary to attach the NCR Certificate to the pleadings. It is obligatory to make an averment whether the claim is subject to the provisions of the NCA or not. In such instance the creditor has to show that there was compliance with s 129 and that the Defendant failed to explore the options granted therein. Averment of registration is *facta probanda*, whilst proof by way of a certificate is *facta probantia*. This point does not constitute a *bona fide* defence. The Plaintiff in any event attached, upon being invited by the Defendant to proof it,¹⁴ its certificate to the affidavit in support of the application for summary judgment.¹⁵ Complaining that it cannot be introduced in the affidavit for summary judgment is misplaced.

THIRD DEFENCE – NEW ACTION NEEDED

¹² Pleadings, p. 37 - 38

¹³ Pleadings, p. 68 - 69

¹⁴ Pleadings, p. 61, para 8.3

¹⁵ Pleadings, p. 139

[22] He states that if the Plaintiff wish to rely on a breach of the payment plan, it should have issued a new action and complied with s 129.¹⁶ The issue of mootness and res judicata would then find application. I already dealt with this

FOURTH DEFENCE - LACK OF AUTHORITY – RULE 7(1)

[23] This was for the first time challenged in the plea. If the authority of an attorney is challenged by the other party, that attorney may not proceed to act unless he satisfies the court that he is in fact duly authorised so to act. The challenge must be by way of notice in terms of this Rule.¹⁷ The object of the Rule is to eliminate the issue about authority because it is assumed that persons will not litigate who do not have the necessary authority. There is no proof that the Rule was utilised. It is important to distinguish between a power of attorney (Rule 7) and lack of authority. In the affidavit in support of summary judgment, the Plaintiff states that the Defendant already during October/November 2022 realised that its attorneys are acting for it.¹⁸ This is not a bona fide defence.

COURT SHOULD NOT VENTURE INTO THE MERITS

[24] He states that the Court should not venture into the merits and make a finding on the validity of the agreement, but only determine whether a *bona fide* defence is raised. The Defendant not only raised the conclusion of the agreement, thereby implying some form of misplaced novation, but went further to state that he complied. Even if he does not have an onus, his own version shows that he failed to comply. This is not unjustifiable venturing into the merits. It is the search for *bona fides*, which his defence lacks.

UNDERTAKING NOT TO PROCEED WITH ACTION

¹⁶ Pleadings, p. 150, para 6.2.3

¹⁷ Derek Harms, Civil Procedure in the Superior Courts, Part B High Court ,LexisNexis, February 2023 – para B7.3

¹⁸ Pleadings, p. 91, para 5.1.2.1

- [25] He maintains that the Plaintiff's attorneys informed him that "*they are instructed not to proceed with legal action at that stage*" [my emphasis]. this is a far cry from withdrawing an action. Even the letter of the Defendant's attorney made it clear that action was only pending.¹⁹
- [26] He takes issue that the loan agreement does not specify punctual monthly payments and he in any event made such payments. He fell in arrears as a result of short-payment on the bond instalment and not due to failure to make punctual monthly payments.²⁰
- [27] The loan agreement, however, specify that the monthly repayment amount, excluding other fees, is R20 329.11, which has to be paid over a period of two hundred and forty (240) months.²¹ The bond document states that the bond is a continuing covering security in terms of or arising out of the provisions of any loan agreement entered into between the parties.²²
- [28] Strangely, the Defendant admits that as of 24 October 2019 he was in arrears with R78 305.51, but further states that it has been settled thereby eliminating the Plaintiff's cause of action.²³ He takes issue with the Certificate of Balance stating that it has become moot as the arrears as on 24 October 2019 was settled in full.²⁴ I am of the view that the Defendant's acceptance of the term in the e-mail of the Plaintiff dated 11 October 2022, which exceeded the amount in the certificate, and which terms he accepted in fact confirms his indebtedness.
- [29] The defence that the Plaintiff was not entitled to amend the pleadings whilst the parties were still in negotiations does not hold water. The particulars of claim, which would then reflect the correct position at that stage, would be

¹⁹ Pend: to await judgment or settlement - [Pend definition and meaning | Collins English Dictionary \(collinsdictionary.com\)](#)

²⁰ Pleadings, page 60, para 7

²¹ Pleadings, page 19, Clause 2.9 – 2.10

²² Pleadings, page 31

²³ Pleadings, page 60, para 7.2

²⁴ Pleadings, page 61, para 7.5

merely to ensure that nothing more is claimed than what the Defendant is indebted. This was fully justified in view of the fact that litigation was pending and the Plaintiff's pleadings and e-mails cannot be read as to nullify the action already instituted.

LEGAL PRINCIPLES AND ARGUMENTS

[30] Mr van der Merwe submits that Rule 32 gives the Court a discretion to refuse summary judgment. However, the discretion should be exercised judicially and should not be exercised in favour of the Defendant based on mere conjecture or speculation.²⁵ The Supreme Court of Appeal held:

“[14] *It is a different matter where the liability of the defendant is undisputed: the discretion should not be exercised against a plaintiff so as to deprive it of the relief to which it is entitled. Where it is clear from the defendant's affidavit resisting summary judgment that the defence which has been advanced carries no reasonable possibility of succeeding in the trial action, a discretion should not be exercised against granting summary judgment. The discretion should also not be exercised against a plaintiff on the basis of mere conjecture or speculation.*”(footnotes omitted) [my emphasis]

[31] On the Defendant's own evidence, he did not make payments as stipulated and agreed on by him. His debt remains undisputed. This addresses the first special plea and the third defence.

[32] In respect of the second special plea of mootness and *res judicata*, the Court in *Outeniqua Skydivers CC v Hartzler and Another*²⁶ held:

“[9] *It is trite that the expression res judicata means that the dispute raised for adjudication has already been finally decided. In terms of the common law, the three requisites of res judicata are: that the dispute to be adjudicated relates to the same parties, for the same relief and in relation to the same*

²⁵ *Jili v Firstrand Bank Ltd* (763/13) [2014] ZASCA 183 (26 November 2014) para [14]; *Breitenbach v Fiat SA (Edms) Bpk* 1976 (2) SA 226 (T)

²⁶ (H264/2019) [2022] ZAWCHC 9 (7 February 2022)

cause. This means that the exceptio can be raised by a defendant in a later suit against a plaintiff who is “demanding the same thing on the same ground”; or which comes to the same thing, “on the same cause for the same relief.” (footnotes omitted) [my emphasis]

[33] The Defendant not only pleaded that litigation was held in abeyance²⁷ and that the action was pended,²⁸ but also attached his attorneys’ letter that the action was suspended.²⁹ Mootness and *res judicata* cannot be raised unless there is a final order.

[34] I quoted from Rule 7 above. In *Janse van Rensburg v Obiang and Another*³⁰ it was held that a challenge to authority to represent has to be taken as soon as possible.³¹

“[17] *It has been held, rightly so in my respectful view, that the production of a power of attorney is ordinarily sufficient to answer a challenge in terms of rule 7(1) to an attorney’s authority to act; ... Implicit in such finding is that it behoves a party that alleges that the proffered power of attorney does not meet the challenge to timeously make its position clear. A failure to do so gives the impression that representation of authority constituted by the power of attorney has been accepted. Challenging the attorney’s represented authority only much later in the litigious process would be inimical to the efficient administration of justice - at the furtherance of which the rules in general are directed. Challenges to the authority of an attorney to represent a litigant, if they are to be raised at all, should be raised promptly at the earliest opportunity, and once raised, taken to a determination without delay. Indeed, that, no doubt, is why there is a 10-day time limit in terms of rule 7(1).* [my emphasis]

[35] I perused the Court file and could not find a notice to the attorneys of the

²⁷ Pleadings, p. 54, para 1.1

²⁸ Pleadings, p. 55, para 1.6

²⁹ Pleadings, p. 71 – 72; See also: p. 73

³⁰ (A338/2018, 22470/2015) [2019] ZAWCHC 53 (10 May 2019)

³¹ See also: *Kaap-Vaal Trust (Pty) Ltd v Speedy Brick & Sand CC* (23143/2020) [2021] ZAGPPHC 668 (18 October 2021)

Plaintiff challenging their authority. This does therefore not constitute an impediment to the attorneys' authority.

[36] In respect of the second defence that the particulars of claim does not align with the notice in terms of s 129, Mr van der Merwe refers to *Amardien and Others v Registrar of Deeds and Others*.³² The Constitutional Court held:

[61] *It is thus a necessary requirement to specify the amount and nature of the default in the section 129 NCA notice. As section 129(1) specifically requires the credit provider to "draw the default to the attention of the consumer" it is clear that this will only be met if the amount of arrears is specified in the notice, since the consumer's attention will not have been drawn to the amount of the default otherwise. If the basis of the default is that the debtor has fallen into arrears, it must follow axiomatically that "drawing the default to the attention of the consumer" entails that the consumer should be advised of the amount in arrears. It is only when this has been done that it can be said that notice of the "default" has been drawn to the attention of the consumer.*

[62] *If the consumer is not advised of the arrear amount she will be left none the wiser. The referral by the consumer of the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction presupposes that the consumer has been apprised of the facts to enable her to, amongst others, develop and agree on a plan to bring the payments under the agreement up to date. One may rhetorically ask: how is the consumer to agree on a plan to bring payments under the agreement up to date if she is not notified of the amount in arrears?*

[63] *This Court in Nkata held that the onus is on the credit provider to take appropriate steps if it wants to recover the cost for enforcing an agreement with the consumer. The creditor is in a better position to determine the amount of the debt and must be required to stipulate the amount owed by the debtor. The burden of determining the amount is an onerous one to place upon the consumer, as the consumer may not be aware of complex calculations that are to be taken into account while calculating interest. On the other hand, it will be significantly easier for the creditor to state the*

³² (CCT212/17) [2018] ZACC 47; 2019 (2) BCLR 193 (CC); 2019 (3) SA 341 (CC) (28 November 2018)

amount concerned. After all, it is the credit provider itself that claims that the consumer is in arrears with her payments.”

[37] I quoted extensively from the judgment to satisfy the Defendant that the principles were considered by me. When the Court stated that the burden of determining the amount is an onerous one to place upon the consumer, as the consumer may not be aware of complex calculations that are to be taken into account while calculating interest, it should be considered in the context of the circumstances surrounding the Plaintiff's case against the Defendant in these proceedings. The Defendant did not deny the initial amount in arrears. He did also not dispute the certificate of balance to the extent that it lost its status as *prima facie* proof, at least in respect of his default and the amount at that stage. When he entered into the e-mail agreement (payment plan), he was aware of the exact amount. There was thus compliance with the requirements set by the Constitutional Court.

[38] In respect of Mr van der Merwe's submission that s 129 does not constitute a defence to summary judgement proceedings, I understand *Standard Bank of South Africa Limited v Rockhill and Another*³³ not to mean that non-compliance with section 129 is irrelevant, but that a Defendant has to show, at the minimum, that he has a defence or triable issue³⁴ to the substance (merits) of the claim. Section 129 is procedural. This answers the second defence.

[39] Mrs Pieterse argued that an e-mail agreement was approved to be a valid agreement even in the presence of a non-variation clause as it reflects the true intention of the parties. I do not take issue with that. It is, however, clear to me that the negotiation and agreement provides for the payment of the arrears and the instalment. It did not amend the terms of the loan agreement,

³³ (09/56251) [2010] ZAGPJHC 10; 2010 (5) SA 252 (GSJ) (11 March 2010)

³⁴ *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* [2009] 3 All SA 407 (SCA)

nor did it bring finality to his obligations. The facts differ from those in *Spring Forest Trading 599 CC v Wilberry (Pty) Ltd t/a Ecowash and Another*³⁵ where it was held:

“[12] *The respondent's contention that the emails merely record a negotiation and do not amount to an agreement to cancel is utterly without merit. The emails say emphatically and unambiguously that once the appellant settles the arrear rental and returns the respondent's equipment it may 'walk away' without any further legal obligation. This can only mean – and did mean – that the parties considered that all agreements between them (the master and subsidiary rental agreements) would be cancelled once the appellant had satisfied two obligations: payment of the arrear rental and return of equipment. The obligations were met and the agreements therefore do evince a consensual cancellation. Whether this cancellation by email fulfilled the requirements of the non-variation clauses to be in writing and signed by both parties requires a consideration of the relevant provisions of the Act.”*

[40] She also refers to *Amardien supra*. I dealt with the essence of the judgment and found that the Plaintiff complied with s 129.

[41] For the contention that there is no requirement that a Defendant should prove a defence but merely has to satisfy the Court, she refers to *Marsh v Standard Bank of South Africa* where the Court, with reference also to *Breitenbach v Fiat*³⁶ and *Maharaj v Barclays National Bank Ltd* stated³⁷:

“1. ... *The rule requires the defendant to set out in his affidavit sufficient facts which, if proved at the trial, will constitute an answer to the plaintiff's claim (Breytenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T); District Bank Ltd v Hoosain 1984 (4) SA 544 (C).*

2. *At the summary judgment stage of the proceedings it is not for the court to decide any balance of probabilities or determine the likelihood of the deponent's allegations being true or false. Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A) at 426 where at A–E the position is succinctly summarised by Corbett JA*

³⁵ (725/13) [2014] ZASCA 178; 2015 (2) SA 118 (SCA) (21 November 2014)

³⁶ 1976 (2) SA 226 (T); District Bank Ltd v Hoosain 1984 (4) SA 544 (C)

³⁷ 1976 (1) SA 418 (A)

(as he then was) as follows:

“Where the defence is based upon facts in the sense that material facts alleged by the plaintiff in his summons or combined summons are disputed or new facts are alleged constituting a defence, the Court does not attempt to decide these issues or determine whether or not there is a balance of probabilities in favour of the one party or the other. ...”

[42] This begs the question whether the principles apply when the Defendant sets up a defence of which he will carry the onus. In the matter before me, the Defendant pleads an agreement which he allegedly complied with by making payment and also raised *res judicata*. In respect of these issues he would, in my view, carry the onus. In *Jugwanth v MTN*³⁸, albeit in the context of prescription in an exception, the Court confirmed the principle with reference to *Gericke v Sack*.³⁹ In *Van Niekerk*⁴⁰ it is noted:

“[The] onus of proving the payment rests on the defendant. Nothing should be easier than proving payment by, for example, disclosing the above particulars or attaching the paid cheque. The unsubstantiated allegation of payment is, for that reason, suspect and summary judgment ought to be granted.” (footnotes omitted)

[43] If I am wrong on this score, *Van Niekerk*⁴¹ also states that:

“More is expected of a defendant who bears the onus of proving his defence in the main action (for example, if his defence is one of payment). He must then go further than a simple allegation that he has paid to the plaintiff everything he owes. Such an allegation lacks the frankness and particularity expected of a defendant in summary judgment proceedings. A court may also doubt the defendant’s bona fides when he deals vaguely and scantily with facts which clearly fall within his knowledge. A defence in respect of which the onus rests upon the defendant must, in order to comply with the requirements of comprehensiveness and bona fides, be disclosed with greater particularity than would be acceptable in other instances.”

[44] She argues that in *Transvaal Spice Works v Conpen Holdings*⁴² it was held

³⁸ (Case no 529/2020) [2021] ZASCA 114 (9 September 2021)

³⁹ 1978 (1) SA 821 (A) at 825H.

⁴⁰ Para 11.4.2

⁴¹ Para 11.4.4

that if *ex facie* the document upon which the claim is founded there appears to be a defect in the cause of action, the Court must refuse summary judgment whether or not Defendant has filed an affidavit to oppose it. As the Plaintiff's cause of action relies on the first agreement (loan agreement) and it alleges a breach stemming from the second agreement it would justify a refusal of the summary judgment. I do not agree. The cause of action has consistently been the loan agreement. The second (e-mail) agreement was meant to bring the arrears p to date. There was therefore no defect in the cause of action. It was also not necessary to issue a fresh s 129 notice as the Defendant himself liquidated the debt and knew what the origin of the debt was.

CONCLUSION

- [45] I carefully considered each of the defences even before I had to decide whether condonation should be granted. As summary judgment is a speedy remedy and as it may close the doors to a defendant who has a *bona fide* defence, I am not inclined to dismiss the condonation application. I hurry to state that the prospects for success, even measured in terms of summary judgment, is not convincing. I, however, elected to consider his papers dispassionately.
- [46] In my view, none of the defences is *bona fide*. If the test in respect of on which elements the Defendant carries the onus is applied, the Defendant failed to pass the bar. Even if the onus is not applied. He still did not pass the bar. The Plaintiff's summary judgment application has to succeed.
- [47] The Defendant sought condonation. I grant condonation. It is trite that the party who seeks condonation is asking for an indulgence. The Defendant has to pay for the indulgence and the opposition was not unreasonable. The

⁴² 1959 (2) SA 198 (W) at 200 A; See also *Nedbank Limited v Rinor Civils (Pty) Ltd and Others* (5696/2021) [2022] ZAFSHC 224 (15 September 2022)

Plaintiff is successful in its application for summary judgment and is entitled to its costs.

[48] I therefore make the following order:

ORDER

1. Condonation is granted to the Defendant for the late filing of his plea and opposing affidavit.
2. The Defendant pays the costs of the condonation application.
3. Defendant pays R1 986 964.70 (one million nine hundred and eighty six thousand nine hundred and sixty four rand and seventy cents) to the Plaintiff.
4. Defendant pays interests on the amount of R1 986 964.70 at a variable rate of 10.15% from 15 October 2019, nominal per annum, calculated daily and compounded monthly, to date of payment (both days inclusive), which rate is linked to the prime interest rate on overdrafts of the Plaintiff.
5. Defendant pays the costs of suit on the scale as between attorney and client.

P R CRONJÉ, AJ

On behalf of the Plaintiff: Adv H J Van Der Merwe
Symington & De Kok
Bloemfontein

On behalf of Defendant: Adv M C M Pieterse
Horn & Van Rensburg
Bloemfontein