REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 39324/2021

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

29/09/2025 _____
DATE SIGNATURE

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED Plaintiff

and

OLYMPIA DEVELOPMENT CC First Defendant

DEIRDRE YVETTE O'REILLY *N.O.* Second Defendant

ANTONIOS KAVAKOS Third Defendant

DIMITROS KARAKIZOS Fourth Defendant

MELETIOS KOUFIS Fifth Respondent

JUDGMENT

Mahosi, J

Introduction

[1] This is an application for summary judgment brought by the plaintiff in terms of Rule 32 of the Uniform Rule against the third defendant for payment of the sum of R717 201.93, together with interest and costs, arising from an alleged breach of a suretyship agreement. The plaintiff also seeks an order to declare the immovable property described as: Erf 1494 Noordheuwel Extension 4 Township Registration Division I.Q., The Province Of Gauteng, measuring 1760 (One Thousand Seven Hundred and Sixty) square metres, held by Deed of Transfer number T47737/2005 ("*the Property*") executable.

[2] The defendants, all represented by the same attorneys, entered an appearance to defend. However, only the third respondent filed a plea. Consequently, the plaintiff is pursuing summary judgment solely against him and default judgment against the first, second, fourth and fifth respondents.

Background facts

[3] The facts, as gleaned from the particulars of the claim and the affidavit resisting summary judgment, are largely common cause. On 08 August 2005, the plaintiff and the first defendant, a close corporation, entered into a written home loan agreement. In this regard, the plaintiff advanced a sum of R785 000.00 to the first defendant to finance its core business of property development.

[4] As security for the debt, a mortgage bond was registered in favour of the plaintiff. Crucially, as a further condition of the loan, the members of the close corporation were required to execute deeds of suretyship. The second, third, fourth, and fifth defendants, being members at the time, signed an unlimited deed of suretyship in favour of the plaintiff, binding themselves as co-principal debtors for the obligations of the first defendant.

[5] It is not disputed that the first defendant has defaulted on its repayment obligations, resulting in the outstanding balance claimed. The third defendant admits to signing the suretyship agreement and does not dispute the terms of either the principal home loan agreement or the suretyship.

Defence raised

[6] The third defendant's defence to the claim is singular. He avers that at the time of signing the suretyship (and presently), he was married in community of property and was unaware of the legal requirement for his spouse's consent to the suretyship. He alleges that he was not requested to indicate his marital status, and the document presented to him for signature did not contain a line for indicating his marital status at the time of signing. He asserts that the word "unmarried", which appears under his name on the suretyship document, was inserted, seemingly with a typewriter, after he had signed it. He denies any knowledge of when or by whom this insertion was made. In conclusion, he argues that in the absence of his spouse's written consent, the suretyship is void and unenforceable against him.

Legal framework

[7] The principles governing summary judgment applications are trite. The Court must determine whether the defendant has disclosed a *bona fide* defence. The defendant need not deal fully with the merits of the case or set out a defence that would probably succeed at trial. It is sufficient if the defendant swears to a defence which, if established at trial, would constitute a good defence to the action. The defence must be stated with sufficient clarity and completeness to enable the Court to conclude that it is not "vague or sketchy" or "inherently and seriously unconvincing". [1]

[8] The legal issue at the heart of the third respondent's defence is the application of section 15(2)(h) of the Act, which provides that a spouse married in community of property requires the written consent of the other spouse to enter into a suretyship agreement. In *Strydom v Engen Petroleum Limited*[2]

> "The requirement that spousal consent be obtained before concluding certain defined financial transactions as set out in ss 15(2) and (3) of the Act cannot be read in isolation. Section 15(6) says expressly that in respect of certain of those transactions, including binding oneself as surety, section 15(2) does not apply if the act in question is performed in the ordinary course of the spouse's

[1] See: *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A); *Breitenbach v Fiat SA (Edms) Bpk*
[2] [2013] 1 ALL SA 563 (SCA).

> business, trade or profession. What one knows therefore is that ss 15(2) and (3) operate in respect of some, but not other, financial transactions depending on whether or not they are performed in the ordinary course of the spouse's business, trade or profession. Accordingly it does not suffice for a person seeking to rely on s 15(2)*(h)* to say that they were married in community of property and that their spouse did not consent to the transaction to bring themselves within the ambit of the section. That is because the section only operates in certain limited circumstances. If they wish to rely upon it they must bring themselves within the full range of operation."

[9] It is apparent from the above authority that being married in community of property does not invalidate a suretyship signed by a spouse without the requisite consent of the other spouse. The Court will examine the substance of the transaction and its relevance to the signatory's business context.

Evaluation

[10] The plaintiff's claim is founded squarely on the written suretyship agreement. The third defendant does not deny signing the document. His defence turns entirely on the state of the document when he signed it, and specifically, whether it indicated his marital status. If his version that the document was "doctored" after he signed it to falsely reflect him as unmarried, thereby circumventing the protective provisions of the Act, is proven at trial, it would undoubtedly constitute a complete defence. A creditor cannot, after the fact, alter a contract to remove a statutory impediment to its enforceability. Additionally, if he was and/or is married in community of property, the Court still needs to determine whether the surerytiship was signed in the ordinary course of his business, trade or profession.

[11] Considering the above, I do not find the defence to be "inherently and seriously unconvincing". It raises a triable issue of fact that is central to the validity of the plaintiff's cause of action. The credibility of the third defendant's assertion and the resolution of the factual dispute it creates are matters for the trial court. They require *viva voce* evidence, cross-examination, and possibly expert evidence regarding the document itself.

Conclusion

[12] In the circumstances, I am satisfied that the third defendant has disclosed a *bona fide* defence. Whether his version will ultimately prevail is not for this Court to determine at this stage. Therefore, the requirements for granting summary judgment have not been met.

[13] Concerning the application for default judgment against the first, second, fourth, and fifth defendants, I have taken into consideration the pleadings and evidence, and I am satisfied that the plaintiff has established a case for the application to be granted.[3]

Order

[14] Accordingly, the following order is made:

1. The application for summary judgment against the third respondent is refused.
2. The third respondent is granted leave to defend the main action.
3. The costs of the summary judgment application shall be costs in the cause of the main action.
4. The application for default judgment against the first, second, fourth and fifth respondents is granted in the following terms:

    4.1. Payment of the amount of R717 201.93;

    4.2 Interest on the aforesaid amount at the rate of 6.820% per annum from *19 July 2021* to the date of payment, both dates inclusive;

    4.3 The immovable property described as: Erf 1494 Noordheuwel Extension 4 Township Registration Division I.Q., The Province Of Gauteng, measuring 1760 (One Thousand Seven Hundred

[3] Rule 31(2) (a) provides:

> "Whenever in an action the claim or, if there is more than one claim, any of the claims is not for a debt or liquidated demand and a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in subrule (4) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such order as it deems fit."

and Sixty) square metres held by Deed of Transfer number T47737/2005 ("*the Property*"), is declared executable for the aforesaid amount;

4.4 The issuing of a writ of execution in terms of Rule 46 as read with 46A for the attachment of the property is authorised;

4.5 The reserve price is set at R700 000.00 for the sale of the property at a sale in execution; and

5.5 The first, second, fourth and fifth respondents must pay the plaintiff's costs on the attorney and client scale, jointly and severally, the one paying the other to be absolved.

D. Mahosi
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of Hearing: 04 August 2025
Date of Judgment: 29 September 2025

Appearances:

For the Applicants: Adv. Z Raqowa
Instructed by: Ramsay Webber Attorneys

For the third respondent: Adv JW Kloek
Instructed by: Blake Bester De Wet & Jordaan Incorporated Attorneys