

SOUTH AFRICA / JUDGMENT

Makhabo v Viljoen and Others (2022/059140) [2025]

ZAGPPHC 688 (9 July 2025)

[2025] ZAGPPHC 688

COURT

North Gauteng High Court, Pretoria

BEFORE

MPD Chabedi

CASE / FILE NUMBER

2022/059140

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IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

Case number: 2022-059140

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: YES

(3)

REVISED: NO

9 June 2025

In the matter between:

FAITH

MAKHABO

Plaintiff

And

PEET

VILJOEN

First defendant

TAMMY TAYLOR NAILS SA

HOLDINGS

T/A TAMMY TAYLOR

NAILS

First defendant

This

judgment has been delivered by uploading it to the Court online

digital data base of the Gauteng Division, Pretoria and by email to the attorneys of record of the parties. The date of the delivery of the judgment is deemed to be 9 July 2025.

JUDGMENT

Chabedi AJ

Introduction

- [1] The plaintiff seeks summary judgment in terms of Rule 32(1) of the Uniform Rules in the amount of R500 000.00 against the first and second defendants, jointly and severally.
- [2] The plaintiff alleges that on 16 September 2022 she paid the amount of R500 000.00 to the second defendant, Tammy Taylor SA Holdings having been induced to do so by the first defendant, Mr Peet Viljoen, who at the time represented the second defendant. The payment followed negotiations between the plaintiff and the first defendant relating to a franchise agreement to be entered into between the plaintiff and the second defendant.
- [3] The plaintiff claims to have paid the R500 000.00 with the expectation that a valid franchise agreement would be concluded and in the event it was not, that the money would be refunded. The franchise agreement was subsequently not concluded. As a result the plaintiff demanded payment of the R500 000.00 from the defendants and the defendants refused to pay.
- [4] The plaintiff's claim against the first defendant is based on misrepresentation and the claim against the second defendant is based on undue enrichment. The defendants are defending the claims and have filed a joint plea thereto. The first defendant is opposing the summary judgment application and has filed an affidavit. There was no affidavit filed on behalf of the second defendant resisting the summary judgment application. At the hearing of the application though, one counsel filed heads of argument, appeared and submitted argument for both the first and second defendants.
- [5] In this judgment I shall refer to the first and second defendants, collectively, as the defendants and where context demands, I shall refer to the first defendant as Viljoen and the second defendant as Tammy Taylor SA.

Facts

- [6] In the affidavit filed in support of the summary judgment, the plaintiff alleges that on 15 September 2022 she met with Viljoen to negotiate a possible franchise

agreement, a copy of which was furnished to her for consideration. Viljoen represented to her that Tammy Taylor SA is the licensee of Tammy Taylor Nails USA, being the main holder of the franchise license.

- [7] According to the plaintiff Viljoen persuaded her to pay the amount of R500 000.00 so she could be in a better position for consideration as entering into a franchise agreement under the name and style Tammy Taylor SA was in demand.
- [8] After payment was made, the plaintiff established that the master license agreement between Tammy Taylor SA and Tammy Taylor USA, the main license holder, was terminated in February 2021. Therefore a sublicense with third parties by way of a franchise would not have been legally possible. She became concerned that Viljoen may have misrepresented Tammy Taylor SA's ownership of the trademark to her in that despite the termination of the master license agreement, Viljoen represented that Tammy Taylor SA was the licensee of Tammy Taylor Nails USA, and therefore legally entitled to enter into sublicensing agreements with third parties, in this case the plaintiff.
- [9] The plaintiff pleaded that the defendants were aware of the termination because Tammy Taylor USA issued a "cease and desist letter" against the defendants for the continued unlawful use of the trademark in May 2021. The plaintiff then decided not to proceed with the franchise agreement and because no agreement was entered into, the amount of R500 000.00 was not due and payable or owing by the plaintiff to the defendants. As a result, on 23 September 2022 the plaintiff demanded payment of the money from

the defendants and they refused to pay.

- [10] Viljoen and Tammy Taylor SA filed one plea. In the plea the defendants admit the negotiations, that Viljoen represented Tammy Taylor SA and that the plaintiff paid the amount of R500 000.00 to Tammy Taylor SA. The defendants denied the rest of the allegations and specifically that there were any misrepresentations on the part of Viljoen. They pleaded that the R500 000.00 was a deposit in terms of the franchise agreement and deny as a result, that they have derived any benefit from the payment.
- [11] The affidavit resisting summary judgment is deposed to by Viljoen. He admits that he negotiated the franchise agreement with the plaintiff representing Tammy Taylor SA, but stated that he no longer does. Viljoen also admits that following the negotiations the plaintiff paid the amount of R500 000.00 to Tammy Taylor SA. He explained that the R500 000.00 was a deposit and in partial payment of the full price in terms of a franchise agreement that the plaintiff has then reneged from.
- [12] Viljoen denied that the R500 000.00 was paid to Tammy Taylor SA without proper cause and specifically that there were any misrepresentations made by him to the plaintiff. Viljoen denied, in particular, having derived any benefit from the payment because, as he argues, the money was not paid to him but to Tammy Taylor SA, he was never in possession of the money and therefore was not enriched thereby.

Legal principles

[13] Rule 32(1) provides that the plaintiff may, after the defendant has delivered a plea, apply to court for summary judgment on a claim

based on a liquid document; for a liquidated amount in money; for delivery of specified movable property; or for ejectment. A liquidated amount in money is an amount which is either agreed upon or which is capable of speedy and prompt ascertainment[1]

[14] Rule(2)(a) and (b) provides that an affidavit made by the plaintiff in support of summary judgment or by any other person who can swear positively to the facts shall, in addition to verifying the cause of action and the amount claimed and identifying the facts upon which the plaintiff's claim is based, explain briefly why the defence as pleaded does not raise any issue for trial.

[15] In *Standard Bank v Rahme and Similar Cases*[2] the court stated the following, in relation to the new requirement in Rule 32(1) that the plaintiff must briefly explain why the defence as pleaded does not raise any issue for trial:

‘The amended rule appears to raise the bar and onus for securing summary judgment. By implication, a plaintiff must satisfy the court that the defendant has no defence on the merits when under the old rule, it was enough to show a defendant lacks a bona fide defence.’

[16] Rule 32(3)(b) provides that the defendant may satisfy the court by affidavit that the defendant has a bona fide defence to the action. Such affidavit shall disclose fully the nature and grounds of the defence and the material facts relied upon.

[17] In *Joob Joob Investments (Pty) Ltd*[3] the court stated that Summary judgment proceedings are not intended to deprive a defendant with a triable issue or a sustainable defence of their day in court. The court went to state that “After almost a century of successful application in our courts, summary judgment proceedings can hardly continue to be described as extraordinary. Our courts, both of first instance and at appellate level, have during that time rightly been trusted to ensure that a defendant with a triable issue is not shut out.”

[18] The well-established principle in the *Maharaj*[4] is that the Court must consider, first, whether there has been sufficient disclosure by a defendant of the nature and grounds of his defence and the facts upon which it is founded, and second whether the defence so disclosed is both bona fide and good in law. If this threshold has been crossed the court is then bound to refuse summary judgment.

[19] In *Maharaj*, the court continued to state that 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 should not attempt to decide these issues or to determine whether or not there is a balance of probabilities in favour of the one party or the other. The defendants must fully disclose the nature and grounds of their defence and the material facts 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.[5]

Analysis

- [20] The defendants have admitted that the plaintiff paid Tammy Taylor SA the amount of R500 000.00 and have refused to pay the plaintiff the money despite demand. The plaintiff's claim is therefore for a liquidated amount and it was agreed and therefore easily determinable.
- [21] The question for determination is therefore whether the defendants have disclosed a bona fide defence to the plaintiff's claims.
- [22] Viljoen filed an affidavit resisting summary judgment in which, while admitting that he represented the second respondent at the time, he now stated that he no longer does. Given the nature of the claims in this action and the fact that Tammy Taylor SA is a corporate entity, Viljoen did not give any particularity as to when exactly he ceased to represent Tammy Taylor SA. In so doing Viljoen appeared to attempt to separate himself from Tammy Taylor SA.
- [23] I say attempted because Viljoen and Tammy Taylor SA were represented by the same counsel briefed by the same attorney. In the heads of argument and during oral argument joint legal submissions were made for both defendants. Viljoen himself also submitted statements and argument in his affidavit in defence of Tammy Taylor SA. The attempt to separate himself from Tammy Taylor SA in those circumstances, does not appear bona fide but devised solely to avoid liability.
- [24] For his part, Viljoen admitted that he held the negotiations with the plaintiff in relation to the franchise agreement. He however, denies that he made any misrepresentations to the plaintiff and inducing her to pay the the amount of R500 000.00. Just as pleaded by the defendants in the plea, Viljoen argued that the payment was made as a deposit in terms of the franchise agreement.
- [25] It is a well-established principle of our law that the party relying on misrepresentation must prove that the representation relied on was made, that the representation was false in that what was shown as fact was not as represented. What the plaintiff must show is not merely that it was, or turned out to be, erroneous, but that it did not represent the bona fide view, at the time when it was expressed, of the person who expressed it. The plaintiff must then prove that the representation was material to defendants' representations and that the representations were intended to induce the person to whom it was made to enter into the transaction sought to be avoided[6]
- [26] In this case, although the plaintiff has pleaded details of the misrepresentation relating to Tammy Taylor SA's license to trade as such, the defendants, particularly Viljoen, have failed to plead or submit any evidence to show otherwise. Viljoen has failed to attach to his affidavit the license or any document showing Tammy Taylor SA's entitlement to enter into

the franchise agreement, as he represented. Viljoen also did not attach the franchise agreement on the basis of which the deposit was purportedly paid, nor did he state the full franchise price to which the R500 000.00 was the deposit. In those circumstances, Viljoen also failed to state the reason for accepting an offer of a deposit, as he claims, on behalf of Tammy Taylor SA for no legal basis whatsoever.

- [27] Viljoen could not have been of the bona fide view that the representations were fact and true. The representations were material to the negotiations relating to the franchise agreement and the payment of R500 000.00 was made by the plaintiff to Tammy Taylor SA as a direct result of those representations.
- [28] The fact that Viljoen in his affidavit has now stated that he does not know the reason why Tammy Taylor SA has not paid back the R500 000.00 to the plaintiff, also indicates that he similarly could not have bona fide regarded the R500 000.00 as not refundable in the event the franchise agreement was not concluded.
- [29] It was argued on behalf of the defendants that allegations of misrepresentation were ill-suited for summary judgment and must appropriately be referred for trial. It was argued that Summary judgment is an extraordinary remedy, granted only where it is manifest that the defendant has no bona fide defence and has entered an appearance to defend merely to delay the plaintiff's claim. It is not intended to short-circuit disputes that ought to be properly ventilated at trial.
- [30] I disagree. The above defences of the defendants leave nothing for determination at trial. In *Tumileng Trading CC v National Security and Fire (Pty) Ltd* the court stated that the fact that there is a triable issue does not mean summary judgment must be refused only on that basis. This is because the enquiry is not whether the plea discloses "an issue for trial" in the literal sense of those words, it is whether the ostensible defence that has been pleaded is bona fide or not. It is for these reasons that the rule-maker decided to leave subrule 32(3) substantively unamended. That is demanding from the defendant to show that its defence to the action is bona fide; i e that its ostensible defence is not a sham.[7]
- [31] As stated above, Tammy Taylor SA is a corporate entity and at all relevant times was represented by Viljoen who, beyond denying some of the material averments relating to his role, did not ascribe any of the misrepresentations made to the plaintiff to anyone. His attempts to diassociate himself from Tammy Taylor SA in those circumstances in my view points to the lack of bona fides in his own defence.
- [32] Viljoen has simply failed to show bona fide defence to the plaintiff's claims of misrepresentation on his part and most importantly, to set out fully, the facts and evidence on which the defence that "the representations were true" is based on.

- [33] Tammy Taylor SA on the other hand, did not file an affidavit resisting summary judgment. Having admitted in the plea that it has received the R500 000.00 and refusing to refund the money notwithstanding that there was no franchise agreement, Tammy Taylor SA had the duty under Rule 32(3) to show that it has a bona fide defence to the claim of undue enrichment and set out fully the nature and grounds of its defences, if any, and the material facts relied upon. Tammy Taylor SA has failed to do so.
- [34] I therefore find that the representations made by Viljoen to the plaintiff were false, constituted misrepresentations and therefore unlawful. Viljoen's misrepresentations in turn induced the plaintiff to pay the amount of R500 000.00 to Tammy Taylor SA and as a result of which the plaintiff suffered a loss. Viljoen is therefore personally liable for the plaintiff's loss and damages in the amount of R500 000.00.
- [35] Because there was no franchise agreement subsequently entered into between Tammy Taylor SA and the plaintiff, the payment of R500 000.00 was not due and payable, Tammy Taylor was unduly enriched thereby and there is no legal basis for Tammy Taylor SA to refuse to pay the money to the plaintiff.
- [36] In line with the principle in the Maharaj[8] there has not been sufficient disclosure by the defendants of the nature and grounds of their defence and the facts upon which it is founded. Their bare denials, particularly of material allegations are simply not defences that are bona fide and good in law. Significantly, the defendants have not established a case for matters for determination at trial. Accordingly, the defendants have failed to cross the threshold required for the refusal of summary

judgment.

- [37] On the other hand, I am satisfied that the plaintiff has sufficiently explained her cause of action and the reasons why the defence as pleaded does not raise any issue for trial, as required in terms of Rule 32(1)(b). I find consequently that the plaintiff has made out a proper case for summary judgment to be granted in her favour. I also find no reason to depart from the regular principle as to cost, that costs must follow the course.

Conclusion

- [38] In the premises, I make the following order:

1. Summary judgment is granted in favour of the plaintiff in the amount of R500 000.00.
2. The first and second defendants are ordered to pay to the plaintiff, jointly and severally:
 - 2.1 The amount of R500 000.00.
 - 2.2 Interest on the amount of R500 000.00 at the rate of 7,75% per annum from the date of demand on 23 September 2022 to the date of payment.

3. The first and second defendants are ordered to pay the costs of this application and the main action on party and party basis.

MPD Chabedi

Acting Judge of the High Court

Gauteng Division, Pretoria

APPEARANCES

For the plaintiff:

Adv D Gana

ES & Associates Inc

For the applicant:

Adv EDL Jacobus

Wiese & Wiese Inc

Date of hearing:

2 June 2025

Date of

Judgment:

9 July 2025

- [1] Lester Investments (Pty) Ltd v Narshi 1951 (2) SA 464 (C); Fatti's Engineering Co (Pty) Ltd v Vendick Spares (Pty) Ltd 1962 (1) SA
- [2] Unreported, GJ case nos 17/46904; 27740/2018; 27741/2018; 3765/2019; 11912/2018 dated 3 September 2019, at paragraph [8].
- [3] Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009
- (5) SA 1 (SCA) at 11G– 12D.
- [4] Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A) at 425G–426E.
- [5] Fn5 Supra,.
- [6] Novick and another v Comair Holdings LTS and Others [1979] 3 All SA 73 (W) at 149
- [7] 2020
- (6) SA 624 (WCC) at para [40]
- [8] Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A) at 425G–426E.

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