

“ANNEXURE 11”

IN THE HIGH COURT OF NAMIBIA

Case Title: Northern Fuel Distributors CC vs Marina Toyota CC and One Another.	Case No: HC-MD-CIV-ACT-CON-2021/01714
	Division of Court: High Court, Main Division
Heard before: Honourable Justice Herman Oosthuizen	Date of hearing: 11 October 2021
	Delivered on: 8 November 2021
Neutral citation: <i>Northern Fuel Distributors CC vs Marina Toyota CC</i> (HC-MD-CIV-ACT-CON-2021/01714) [2021] NAHCMD 520 (8 November 2021).	
Result on merits: The Summary Judgment application is dismissed.	
<p>The order:</p> <p>Having heard Mr Van Vuuren, counsel for the plaintiff and Mr Steyn, counsel for the defendant(s):</p> <p>IT IS ORDERED THAT:</p> <ol style="list-style-type: none">1. The Summary Judgment application is dismissed.2. Costs shall be costs in the cause.3. Defendants shall deliver their plea and/or counterclaim on or before 23 November 2021.4. Plaintiff shall plea to the counterclaim and replicate to the plea on or before 2 December	

2021.

5. Defendants shall replicate to the plea to the counterclaim on or before **9 December 2021**.
6. The parties shall discover on or before **9 December 2021**.
7. The matter is postponed to **24 January 2022** at **14h30** for a case management conference.
8. The parties shall file their case management report on or before **20 January 2022**.

Reasons:

- [1] Plaintiff, a corporate entity, sues for a liquidated amount of money due to it in terms of numerous delivery notes and invoices issued in terms of a credit agreement and a suretyship.
- [2] Defendants opposed the summary judgment application brought by plaintiff against them and pointed out that the deponent to the summary judgment application did not comply with Rule 60(2)(a).
- [3] Deponent for plaintiff, defendants say, cannot verify the cause of action and the amount claimed, simply because of the fact that deponent cannot personally swear positively to any of the deliveries of the petroleum products.
- [4] This issue raised by the defendant goes to the crux of summary judgment application. It is a jurisdictional fact with which there was no compliance in the supporting affidavit for summary judgment.
- [5] Defendants clearly stated in their opposing affidavit that they will take issue with the deliveries due to the illegible status of the supporting documentation. Plaintiff will have to prove the several deliveries and the quantum thereof founding its monetary claim.
- [6] The alleged liquidated amount should be so expressed that the ascertainment of the amount of money would be a matter of mere calculation. This, it seems, is not possible without evidence.
- [7] In the premises, the summary judgment is refused and the defendants are allowed to

plead.

[8] I caution the defendants not to raise any exception. Defendants have already waived their opportunity to do so on 26 July 2021 by way of their consensual joint case plan.

[9] The following orders are issued:

[9.1] The Summary Judgment application is dismissed.

[9.2] Costs shall be costs in the cause.

[9.3] Defendants shall deliver their plea and/or counterclaim on or before **23 November 2021**.

[9.4] Plaintiff shall plea to the counterclaim and replicate to the plea on or before **2 December 2021**.

[9.5] Defendants shall replicate to the plea to the counterclaim on or before **9 December 2021**.

[9.6] The parties shall discover on or before **9 December 2021**.

[9.7] The matter is postponed to **24 January 2022** at **14h30** for a case management conference.

[9.8] The parties shall file their case management report on or before **20 January 2022**.

Judge's signature:	Note to the parties:
Oosthuizen Judge	
Counsel:	
Plaintiff(s)	Defendant (s)
Mr Van Vuuren Instructed by Fisher Quarmby & Pfeifer	Mr Steyn Instructed by Engling, Stritter & Partners