

**REPUBLIC OF SOUTH AFRICA**



**SOUTH GAUTENG HIGH COURT  
JOHANNESBURG**

**CASE NO: 12/24068**

In the matter between:

**INVESTEC BANK LIMITED**

Applicant

and

**DEAN GILLIAN REES**

First Respondent

**EDWARD CHRISTOPHER JOWITT**

Second Respondent

In re

**INVESTEC BANK LIMITED**

Plaintiff

and

**DEAN GILLIAN REES**

First Defendant

**BENJAMIN HENRY JOWITT N.O.**

Second Defendant

EDWARD CHRISTOPHER JOWITT

Third Defendant

DOMINIQUE REES N.O.

Fourth Defendant

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## SUMMARY

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***Practice** – Judgments and orders – Summary judgment – Verifying affidavit – Requirement that deponent able to swear positively to the facts – What is required for affidavit to pass muster – Personal knowledge of every fact not required – Uniform Rules of Court, rule 32(2).*

Rule 32(2) of the Uniform Rules of Court requires an affidavit in support of a summary judgment to be deposed to by a person who can swear positively to the facts verifying the cause of action and the amount claimed. The question arises as to what degree of knowledge such person must demonstrate in order to pass muster.

Excessive formality is to be eschewed. The substance of the dispute, together with the purpose of summary judgement, needs to be taken into account in the evaluation of the papers placed before the Court in order to determine whether the summary form of relief should be granted.

A measure of commercial pragmatism needs to be taken into account in that many summary judgment applications are brought by large corporations. Accordingly, first-hand knowledge of every fact cannot and should not be required. Each case must be assessed on the facts which are placed before the Court and the matter must be

viewed “*at the end of the day*”. It follows that the nature of the defence becomes the starting point.

*Held*, that the affidavit of a recoveries manager of the applicant bank, who stated that she had acquired personal knowledge of the respondents’ financial standing with the applicant by virtue of (1) her position in the applicant, (2) the ordinary course of her duties and (3) her recourse to the applicant’s records, accounts and other documents relevant to the claims instituted against the respondents was sufficient, in the light of what was disclosed in the affidavit opposing summary judgment, to pass muster.

*Held*, this was particularly so when there was no serious challenge in the affidavit opposing summary judgment to the existence of the many agreements relied upon by the applicant and the respondents’ defences had been largely raised and traversed in correspondence between the respondents and the deponent to the affidavit in support of the application for summary judgment.