

**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE DIVISION, MAKHANDA)**

**NOT REPORTABLE**

Case no: 537/2023

In the matter between:

**PIETER VAN ZYL**

**Applicant**

and

**HUMANSDORP CO-OPERATIVE LTD**

**First Defendant**

**MARIUS COETZEE**

**Second Defendant**

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**JUDGMENT**

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**Govindjee J**

[1] The plaintiff (Mr Van Zyl) obtained an overdraft and loan facility from the first defendant (HCL) during 2015. During November 2015, the trustees of the Pieter van Zyl Family Trust (the trust) resolved to bind the trust as surety for Mr Van Zyl's liabilities to HCL, authorising Mr Van Zyl to sign the necessary documentation on behalf of the trust to give effect to the resolution. Mr Van Zyl proceeded to bind the trust as surety for and co-principal debtor *in solidum* with him by way of an agreement signed in favour of HCL on 14 December 2015 (the suretyship). The trust also bonded its farming property in favour of HCL as security for Mr Van Zyl's obligations.

[2] Following an action instituted during August 2018, HCL obtained default judgment against the trustees, jointly and severally, in their capacity as trustees of the trust, on 13 November 2018.<sup>1</sup> The cause of action underpinning the default judgment was the provision to Mr Van Zyl of a 'monthly running account with a credit limit of R100 000', following an application for credit as well as a 'seasonal account facility' provided by HCL in favour of Mr Van Zyl in the sum of R2 500 000. Mr Van Zyl defaulted on his obligations under the credit facilities and HCL secured judgment against the trustees.

[3] Immovable property belonging to the trust was sold, enabling HCL to recover an amount of R2 656 800,02 on 20 July 2020. As of 25 March 2022, however, the remaining balance due amounted to R1 965 620,12, being a combination of unpaid capital, interest and cost amounts due (the outstanding amount).

[4] Towards the end of March 2022, the second defendant (Mr Coetzee), representing HCL, prepared a notice to appear in terms of s 65A of the Magistrate's Court Act, 1944. The remaining trustees of the trust, being Mr Van Zyl and his father, were required to attend the Magistrate's Court in Jansenville, in their representative capacities as trustees, for purposes of an enquiry into the financial position of the trust in respect of the outstanding amount due to HCL (the s 65A enquiry). It is pertinent to indicate that the notice issued required the trustees to submit a full statement to the Magistrate's Court, including various financial information and information pertaining to the workings of the trust.<sup>2</sup>

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<sup>1</sup> The order was in the following terms:

1. Payment in the amount of R253 448,39;
2. Payment of interest on R253 448,39, calculated from 1<sup>st</sup> August 2018 at a rate of 17% per annum compounded monthly in arrears to date of payment;
3. Payment in the sum of R2 679 303,46;
4. Payment of interest on R2 679 303,46 calculated from 1<sup>st</sup> August 2018 at a rate of 17% per annum compounded monthly in arrears to date of payment;
5. The immovable property, remainder of the farm Request No 234 in the Inkwezi Municipality, Division of Jansenville, Province of the Eastern Cape, held by Deed of Transfer T74211/1997, be and is declared executable;
6. Payment of costs of suit on the scale as between attorney and own client together with interest thereon calculated at the legal rate of interest of a date 14 days from *allocator* to date of payment.

<sup>2</sup> The notice required a statement including:

- a) The assets and liabilities of the trust;
- b) The monthly / weekly income and expenditure of the trust, supported by documentary proof inclusive of a statement by the trust's accountants giving full particulars of its emoluments and the latest financial statements;

[5] The present proceedings were occasioned by what transpired when, on 8 June 2022, Mr Van Zyl attended the s 65A enquiry unrepresented and encountered Mr Coetzee. Mr Van Zyl signed an acknowledgement of debt in which he assumed personal liability for the outstanding debt to HCL. He agreed to a payment plan requiring, initially, monthly instalments of R1000,00 per month. Mr Van Zyl now seeks an order cancelling or setting aside the acknowledgement of debt together with return of all monies paid to HCL in terms thereof. The alleged basis for this relief is that the agreement was concluded based on Mr Van Zyl's reliance on a false representation made by Mr Coetzee, alternatively that he was unduly influenced by Mr Coetzee in concluding the agreement.

### **Misjoinder**

[6] Mr Coetzee entered a special plea of misjoinder on the basis that he had at all times acted in his official capacity as the mandated attorney and agent of HCL. The inclusion of a party who is not a necessary party will typically constitute a misjoinder unless it can be justified on the ground of convenience or in terms of the Uniform Rules.<sup>3</sup>

[7] The factual basis of joining a party must be pleaded.<sup>4</sup> The applicable test has been described as follows:<sup>5</sup>

‘The test is whether or not a party has a “direct and substantial interest” in the subject matter of the action, that is, a legal interest in the subject matter of the litigation which may be affected prejudicially by the judgment of the court. A

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- c) The latest Letters of Authority;
  - d) Income statements;
  - e) Statement of expenses and liabilities;
  - f) Income tax assessments and returns for the years 2015 to 2022;
  - g) Resolutions of meetings of the trustees for the period 2015 to 2022;
  - h) Bank statements of bank accounts held with every financial institution for the period 2015 to 2022.

<sup>3</sup> *Crawford-Browne v Manuel and Another* [2008] ZAWCHC 29 para 38.

<sup>4</sup> *Hadjigeorgiou and others v Barak Fund SPC Limited; In Re: Barak Fund SPC Limited v Anchor Africa Holdings (Pty) Ltd and others* [2020] ZAWCHC 38.

<sup>5</sup> Van Loggerenberg *Erasmus: Superior Court Practice* (vol 2) (2<sup>nd</sup> Ed) at D-124 to D-125.

mere financial interest is an indirect interest and may not require joinder of a person having such interest. The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea. The rule is that any person is a necessary party and should be joined if such person has a direct and substantial interest in any order the court might make, or if such an order cannot be sustained or carried into effect without prejudicing that party, unless the court is satisfied that he has waived his right to be joined.'

[8] It is readily apparent that Mr Van Zyl's action, which centres around the validity of the acknowledgement of debt in favour of HCL, would be entirely unaffected by the removal of Mr Coetzee as a party to the litigation. As pleaded, there was simply no substantive relief sought against Mr Coetzee and no extant cause of action that was discernible pertaining to him. There was also no apparent question of law or fact justifying joinder. As Mr *Brown*, for the defendants, submitted, Mr Coetzee had no 'direct and substantial' legal interest in the outcome of the litigation which may be affected prejudicially by any judgment of this court. Any order that may be made in favour of Mr Van Zyl could be sustained or effected without prejudicing Mr Coetzee, given that it would operate directly against HCL. The evidence led confirms that Mr Coetzee's interest was at all times limited strictly to acting at the behest of HCL as its attorney. In the circumstances, he has been improperly joined as a party to the proceedings. The special plea of misjoinder is upheld so that the claim against the second defendant is dismissed. The issue of costs is dealt with elsewhere in this judgment.

## **Evidence**

[9] Mr Van Zyl conceded that he had misrepresented the extent of his assets by reflecting trust assets in his applications for finance from HCL. The farm 'Request No. 234', for example, was owned by the trust but reflected by Mr Van Zyl as his own property in the application for finance. Mr Coetzee had become aware of this when he spoke to Mr Van Zyl outside court in Jansenville. By that stage the farm, which had been attached for sale by auction, had been sold privately to South African National Parks. The proceeds of that sale went, in the first place, to Nedbank, the balance reducing the trust's debt to HCL.

[10] Mr Van Zyl accepted that he had attended court in Jansenville in his capacity as a trustee. Although he appeared unrepresented, he had instructed an attorney, Mr Martin Keevy (Keevy), when he received the s 65A notice. On 30 May 2022, Keevy had sought a postponement of the matter, indicating that the trust was dormant and not in any position to generate income. The correspondence indicated that an auditor had been instructed to provide a detailed report as to the current financial status of the trust. Keevy had also had a discussion with Mr Coetzee, who was of the view that much of the information stipulated in the notice could be provided without the need for a formal audit. When information from an auditor was not forthcoming, Mr Coetzee wrote to Keevy to explain that the trustees would not be excused from attendance at the s 65A proceedings. The response from Keevy indicated that the appointed auditor was unable to provide the requested information for various reasons.

[11] Mr Coetzee's version of what transpired at Jansenville accords, by and large, with a contemporaneous file note he prepared at the time, including the following information:

'Attending at court, meeting Mr van Zyl and discussing his indebtedness. Mr van Zyl explains that the trust is not possessed of any assets and that it has ceased trading. The assets listed in the application for credit traversed and it became apparent that certain assets were included under his personal [income] in circumstances where it did not belong to him.

I explained to him that we will end up investigating the affairs of the trust to ensure that there had not been any dispositions without value or circumstances which are questionable upon which the assets were disposed of. He understands and assures me that nothing untoward occurred and that all sales had always been for value or the best possible value.

I thereafter explained to him that the Co-op will not cease to chase the money. I explained to him that a personal undertaking to pay the amount due by means of instalments would be acceptable to the Co-op, to which Mr van Zyl agreed. I thereafter prepared to draft an acknowledgement of debt within incorporated payment terms and discussed it with him at length. I went

through each clause of the acknowledgement of debt and the annexures thereto and explained it to him, and informed him that he has the opportunity to discuss it with his attorney would he so require. He said that the document appears standard and that he is properly informed.

I presented the final version of the document to him, and he signed it before two witnesses, one being the court manager and the other myself.

I obtained instructions from the Co-op in the interim and they were agreeable to the terms thereof.

We thereafter returned to the Magistrate in Chambers where the Section 65 proceedings were postponed for 6 months to 28 November 2022, and a warrant of arrest of Mr van Zyl Senior authorised, however held over pending his appearance on 28 November 2022. The Magistrate recorded that the parties had reached agreement and that Mr van Zyl had undertaken to make payment personally, and that the postponement is done on the basis that payments will be monitored, and in the event of non-compliance therewith, the proceedings on 28 November 2022 will be used for the purposes of the further interrogation.'

[12] Much of this is undisputed by Mr Van Zyl. The evidence reveals that Mr Van Zyl was made aware, at the time, that HCL would insist to sequestrate the trust unless an arrangement was made, and that an agreement with the trust would be unhelpful as it was not trading. Ultimately, Mr Van Zyl felt he 'had to agree to give something ... had to sign it', bearing in mind that he accepted some responsibility for the debt to HCL. He recalled that Mr Coetzee was concerned that the monthly amount he initially tendered as payment would be difficult to maintain, and had suggested a lower initial payment amount. He also had specific recollection of Mr Coetzee's suggestion that he contact Mr Kevvy before signing the acknowledgement of debt, which he did outside court in Jansenville on 8 June 2022.

[13] The acknowledgement of debt was couched in the following terms:

'I, the undersigned Pieter Du Toit Van Zyl ... (hereafter referred to as "the Debtor") ... do hereby admit that I am liable, and hereby held bound to Humansdorp Landbou Co-operative Limited ... for the due and proper

payment of the amount of R1 966 312,41 ... by reason of monies lent and advanced to the Debtor by the Creditor at the Debtor's special instance and request, (hereafter referred to as "the Principal Debt") ...'

[14] Mr Van Zyl accepted, during cross-examination, that the reference to 'monies lent and advanced' was linked directly to his personal application for credit and inability to pay the outstanding amount. He conceded that he had felt guilty having received money from HCL that had not been reimbursed. Mr Coetzee sent a copy of the signed agreement to Mr Van Zyl the following day, drawing attention to the fact that Mr Van Zyl had given a personal undertaking to make payment in terms of the acknowledgement of debt. Mr Van Zyl explained that he had contacted Keevy telephonically after signing the acknowledgement of debt the previous day, having not been able to reach him while discussing matters with Mr Coetzee, and sent him a copy of this document when it was received. Keevy wrote to Mr Coetzee on 9 June 2022, noting that 'our instructions are Mr Van Zyl and the Pieter van Zyl Family Trust has no income at this stage' and requesting an 'indulgence' in respect of payment increases contained in the acknowledgement of debt as well as interest. No mention was made of any misrepresentation, compulsion or undue influence exerted in the process resulting in the acknowledgement of debt, and no further correspondence was received from Mr Van Zyl's attorneys for almost four months.

[15] On 6 October 2022, Mr Van Zyl's attorney queried the quantification of the balance due to HCL. By this time various payments had been made by Mr Van Zyl pursuant to the acknowledgement of debt. Again, there was no mention of misrepresentation or undue influence linked to the signing of the acknowledgement of debt. Mr Coetzee responded with a detailed explanation, including various attachments, on the same day. Remarkably, despite proper discovery having been made, Mr Van Zyl testified that he had not seen this information until it was presented to him in court during cross-examination.

## **Analysis**

### ***The misrepresentation claim***

[16] In order to succeed in setting aside a contract on the basis of a pre-contractual misrepresentation, a plaintiff must plead and prove, *inter alia*, that a representation was made which was false. A negligent misstatement may, depending on the circumstances, give rise to a delictual claim for damages on the part of the person to whom it was made, even though the misstatement induced that person to enter into a contract with the party who made it.<sup>6</sup> To succeed, the plaintiff must prove, *inter alia*, that the statements attributed to the defendant, or its representative, in the pleadings were made and that these statements were materially false.<sup>7</sup>

[17] Mr *Kleyn*, counsel for Mr Van Zyl, premised the first basis for the claim on the argument that Mr Coetzee had represented to Mr Van Zyl, at their meeting, that Mr Van Zyl was personally liable for the judgment debt of the trust. That argument does not accord with my understanding of the evidence as to what transpired.

[18] It must be accepted that Mr Van Zyl was a layperson, albeit that he had served as a trustee of the trust, conducted business as a farmer, transacted in respect of the sale of the farm and been involved in the proceedings that led to judgment being taken against the trust. He had played a dual role in transacting both in his own name as well as the representative trustee of his family trust. The evidence reveals that he had conflated the two when it was convenient to do so, notably in order to secure finance from HCL.

[19] Mr Van Zyl had clearly taken legal advice upon receipt of the s 65A notice. On his way to court in Jansenville, he could not have been in any doubt that he was proceeding in his representative capacity as a trustee. The s 65A notice made this apparent and each of the components of the information requested pertained explicitly to the trust. Mr Van Zyl arrived with none of this documentation, resulting in Mr Coetzee basing their discussion on the documents already in his position, including Mr Van Zyl's application for personal finance from HCL, dating back to 2015. It was Mr Van Zyl who explained that some of the assets depicted actually

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<sup>6</sup> *Bayer South Africa (Pty) Ltd v Frost* 1991 (4) SA 559 (A) at 570.

<sup>7</sup> *Ibid.*



belonged to the trust. Bearing in mind that the purpose of the appearance in Jansenville was to enquire into the financial position of the trust and its ability to satisfy the judgment debt, this would have been music to the ears of Mr Coetzee. He had been briefed by HCL to recover the balance of the judgment debt and had settled on the s 65A process as the optimal mechanism for this purpose.

[20] Mr Van Zyl would undoubtedly have been aware that the proceedings were of a serious nature. He had placed his attorneys in possession of the s 65A notice and instructed them to advise Mr Coetzee that the trustees would cooperate with the process. He had also instructed an auditor to provide a detailed report as to the financial state of the trust at the time. That undertaking and explanation was conveyed by Keevy, coupled with a request for postponement of the proceedings of 8 June 2022, and buttressed by the written submission that the trust was dormant and in no position to generate any income or to make any offer towards payment of the judgment debt. In drafting that correspondence, Keevy clearly consulted with Mr Van Zyl and acted on his instructions. It must be accepted that he and his client had discussed the implications of the s 65A enquiry against the backdrop of the 'dormant', incomeless trust. When Mr Coetzee responded by requesting supporting documentation to verify Keevy's description of its financial position, and subsequently refused the request for a postponement based on the failure to provide the documentation requested, Keevy and Mr Van Zyl decided that he would appear unrepresented, seemingly due to funding constraints. Nonetheless, Keevy must have provided some indication of what was to be expected at the s 65A process.

[21] Considered in its entirety, Mr Coetzee's file note reflects that his discussion with Mr Van Zyl was orientated around the indebtedness of the trust in respect of the judgment debt. The probabilities favour the conclusion that at all material times Mr Van Zyl was aware of the judgment debt against the trust as well as the fact that this debt arose from its obligations as surety in respect of the loan agreement concluded by Mr Van Zyl in his personal capacity. Matters only took a turn when Mr Van Zyl sought to avoid the continuation of the s 65A process in light of the possible sequestration of the trust, either out of concern as to the past activities of the trust or in order to protect assets still in the name of the trust. At least one such asset was being utilised by a family member. The threat and likelihood of possible

sequestration was a direct consequence of the outstanding judgment debt and the information provided verbally by Mr Van Zyl in respect of existing trust assets. The only viable alternative in Mr Coetzee's mind was a personal acknowledgement of debt.

[22] Mr Coetzee would have appreciated that suretyship is a contract in terms of which a third party agrees to pay, while there is in existence an obligation due by a debtor to a creditor, the whole or part of that obligation to the latter. Significantly, this is not in lieu of the debtor, but jointly and severally with the debtor so that the debtor remains bound to the creditor in terms of the principal obligation, while the surety is bound to the creditor in terms of the contract of suretyship.<sup>8</sup> The reality of the matter was that the key event underpinning the judgment debt was Mr Van Zyl's own application for overdraft and loan facilities from HCL during 2015. Significantly, this is reflected in the acknowledgement of debt itself: Mr Van Zyl formally admitted liability for the balance of the money due to HCL as a consequence of 'monies lent and advanced' to him personally by HCL. He felt obligated to settle that debt and agreed to an acknowledgement of debt absent any misrepresentation as to the basis for this obligation. On the evidence, Mr Coetzee never suggested that Mr Van Zyl was a joint judgment debtor and did not make a false representation that influenced Mr Van Zyl to conclude the contract or actually induced the conclusion of the contract. Mr Van Zyl himself conceded, during cross-examination that Mr Coetzee had not indicated to him that he was personally liable for the judgment debt.

[23] Mr Kleyn properly conceded that such a finding on the evidence is dispositive of the first leg of the claim. Because the answer to the pleaded case is clear on the facts, it is unnecessary to consider and analyse the juridical basis of each of the necessary elements in any detail. I might add, however, that I am unable to conclude that any representation made by Mr Coetzee at the time was wrongfully made. The SCA has confirmed that the attorney-client relationship imposes a duty on an attorney to advance the interests of his client, even where that course will cause

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<sup>8</sup> Visser *et al Gibson's South African Mercantile & Company Law* (8<sup>th</sup> ed) (2003) (Juta) at 532. A judgment taken against either a principal or a surety does not novate the original obligations; it is an additional confirmation or continuation of a previous obligation, so as to perpetuate a right of action: *Sawdif (Pty) Ltd v Dyke NO* [1978] 2 All SA 121 (A).

harm to the opposite party; and in general, an attorney will incur no liability to the party on the other side in doing so:<sup>9</sup>

‘In broad terms, a solicitor’s duty to his client is to do for him all that he can properly can, with, of course, proper care and attention. Subject to giving due weight to the adverb “properly”, that duty is a paramount duty. The solicitor owes no such duty to those who are not his clients. He is no guardian of their interests. What he does for his client may be hostile and injurious to their interests; and sometimes the greater the injuries the better he will have served his client. The duty owed by a solicitor to a third party is entirely different. There is no trace of a wide and general duty to do all that properly can be done for him.’

[24] The question of wrongfulness in cases where a plaintiff relies on a negligent misrepresentation inducing a contract (here the acknowledgement of debt) in circumstances when the attorney is performing a duty owed to their client is, essentially, one of legal policy.<sup>10</sup> The enquiry is infused by constitutionally enshrined values and norms in South Africa.<sup>11</sup> Mr Coetzee acted on the basis of his instructions from HCL and explained his client’s position during the discussion. Mr Van Zyl could reasonably have been expected to understand the context within which the acknowledgement of debt was being concluded. In the circumstances, it must be concluded that Mr Coetzee’s representations to Mr Van Zyl were not wrongfully made. To the extent that the basis of the claim is an omission, in the sense of Mr Coetzee’s alleged failure to express full details in respect of matters such as the balance due and the legal basis for the acknowledgement of debt, our law does not recognise a general duty to act positively to remove from the mind of a co-contracting party each and every wrong impression by disclosing every fact which may be material.<sup>12</sup>

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<sup>9</sup> *Road Accident Fund v Shabangu and Another* [2004] ZASCA 23; 2005 (1) SACR 349 (SCA); [2004] 2 All SA 356 (SCA) (*Shabangu*) para 11, quoting *Ross v Caunter* [1980] 1 Ch 297 at 322 B–C.

<sup>10</sup> *Bayer v Frost* above n x at 570D–F and J.

<sup>11</sup> *Shabangu* above n x para 14.

<sup>12</sup> *ABSA Ltd v Fouche* [2002] ZASCA 111; 2003 (1) SA 176 (SCA); [2002] 4 All SA 245 (SCA) paras 4, 5.

[25] Even if I err in these respects, Mr Van Zyl's first claim also falls short in respect of the test for negligence. Bearing in mind the correspondence with Keevy, it has not been proved that a reasonable person in the position of Mr Coetzee, acting as HCL's agent, would have foreseen the possibility of his discussion misleading Mr Van Zyl in any way, so that he ought to have taken further steps to guard against this. As to causation, the evidence establishes that Mr Van Zyl's real reason for entering into the acknowledgement of debt agreement was his underlying obligation to HCL, as well as his determination to stave off the s 65A proceedings.

[26] To conclude the point, the result is that the purported misrepresentation upon which Mr *Kleyn* placed reliance, during closing arguments, never occurred. The nature of the correspondence from Keevy and his firm, who were again engaged, subsequent to the signing of the acknowledgement, supports this conclusion. Any other alleged misrepresentations relied upon in the pleadings were neither false nor inaccurate. To the extent that a negligent misrepresentation was made, Mr Van Zyl has, on his own concessions, failed to prove the various requisite elements of an application for cancellation of the acknowledgement of debt and / or the return of what has been paid in terms thereof.

### ***Undue influence***

[27] Mr Van Zyl claims in his particulars of claim that Mr Coetzee repeatedly urged and influenced him to accept his advice and, as a result thereof, he signed the acknowledgement of debt. He highlights the fact that he was unrepresented as being the basis for the alleged undue influence.

[28] To succeed in a claim for undue influence, a plaintiff is typically required to plead and prove that the other party had influence over him that weakened his resistance and made his will pliable, and that this influence was used unscrupulously to prevail upon him to enter into a prejudicial transaction which otherwise he would have avoided.<sup>13</sup>

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<sup>13</sup> *Ferrari and others v Gunner* [2015] JOL 32958 (SCA); *Hofer and others v Kevitt NO and others* [1997] 4 All SA 620 (A) at 626.

[29] Mr Van Zyl's lack of representation must be understood in its proper context, as already described. He appears to have received independent legal advice in respect of the s 65A proceedings and its aftermath both before and after the trip to court in Jansenville. He chose not to incur the expense of a representative at the s65A proceedings, and also ignored Mr Coetzee's suggestion that he take legal advice before signing the acknowledgement of debt. The evidence in that respect is important, reflecting Mr Coetzee's state of mind during his engagements with Mr Van Zyl. The suggestion was particularly appropriate given the correspondence from Keevy during the previous few days and supports the finding that Mr Coetzee was not over-eager to secure a favourable outcome for his client. It is also notable that Mr Coetzee took the additional step of bringing Mr Van Zyl before the magistrate to explain the developments, including the signing of the acknowledgement of debt, in his presence.

[30] That Mr Van Zyl had already proceeded to sign the acknowledgement of debt without taking legal advice was, ultimately, his own decision, rather than due to any undue influence exerted by Mr Coetzee. He exerted his own will in negotiating its terms, rather than merely capitulating when confronted with a draft prepared by Mr Coetzee. There is simply no evidence to support the claim that Mr Coetzee utilised any influence he may have had in an unconscionable or unscrupulous manner.<sup>14</sup>

[31] As to the contents of the document itself, there could be no misunderstanding as to the terms of the acknowledgement, given the evidence that Mr Coetzee explained it, that he and Mr Van Zyl discussed it at some length and that it was amended after discussion. There was no evidence that this engagement occurred in a heavy-handed manner. As an aside, the subsequent correspondence suggest that little would have changed had he in fact reached Keevy before appending his signature. In these circumstances, the outcome in respect of the second claim is the same as the first.

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<sup>14</sup> *Geromolou Construction (Pty) Ltd v Van Wyk* 2011 (4) SA 500 (GNP); *Preller v Jordaan* 1956 (1) SA 483 (A) at 492H; *Patel v Grobbelaar* 1974 (1) SA 532 (A).

[32] Both counsel were of the view that the matter was of sufficient nature to justify a costs order on scale B of the applicable tariff. I am in agreement with this approach.

## **Order**

[33] The following order is issued:

1. The plaintiff's claim is dismissed with costs, with the costs of counsel to be taxed in accordance with Scale B, as set out in Uniform Rule 69(7).

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**A GOVINDJEE**  
**JUDGE OF THE HIGH COURT**

**Heard:** 29, 30, 31 July 2024

**Delivered:** 13 August 2024

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