



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Reportable/Not Reportable

Case no: AR319/23

In the matter between:

TECHNOVAA PACKAGING INDUSTRIES (PTY) LTD

APPELLANT

(Defendant in the Court *a quo*)

and

MAIN STREET 1051 (PTY) LTD

t/a NASHUA DURBAN

RESPONDENT

(Plaintiff in the Court *a quo*)

Neutral citation: *Technovaa Packaging Industries (Pty) Ltd v Main Street 1051 (Pty) Ltd. t/a Nashua Durban* (AR319/23) [2024] ZAKZPHC 7 February 2025

Coram: Steyn and Masipa JJ, Gajoo AJ

Heard: 11 October 2024

Delivered: 7 February 2025

Summary: Commercial Law - whether authority, actual or ostensible present to bind the appellant to agreements - Core principles of corporate governance, the interpretation of authority in commercial transactions, and the application of the law on unjust enrichment and prescription considered - Importance of clarity and compliance in corporate delegations of authority, particularly in high-value commercial agreements

ORDER

On appeal from: KwaZulu-Natal Local Division of the High Court, Durban (Laing AJ, sitting as court of first instance):

1. The appeal succeeds.
2. The order of the court a quo is set aside and is replaced with the following:
 - '(a) The plaintiff's claim is dismissed.
 - (b) In respect of the defendant's claim in reconvention, the following order is made:
 - (i) The defendant is granted judgment against the plaintiff in the amount of R835 080.73.
 - (ii) Interest on the aforesaid amount is to run from 22 May 2015 to date of payment.
 - (iii) The defendant is to pay the plaintiff's costs for the action on scale B.'
3. The respondent to pay the appellant's costs including the costs in respect of the application for leave to appeal on scale C.

JUDGMENT

Masipa J (Steyn J and Gajoo AJ concurring):

Introduction

[1] This appeal concerns the validity of two purported Master Rental Agreements allegedly concluded between the appellant, Technovaa Packaging Industries (Pty) Ltd and the respondent, Main Street 1051 (Pty) Ltd t/a Nashua Durban, and the consequences arising from the alleged lack of authority on the part of the appellant's representative, Mr Steven Crowley (Mr Crowley), who purported to conclude the agreements. The central question on appeal is this: Did Mr Crowley possess the authority, either actual or ostensible, to bind the appellant to the Master Rental Agreements with the respondent? The facts are largely common cause. This appeal turns essentially on the inferences to be drawn from the facts.

[2] The court *a quo*, per Acting Justice Laing, found in favour of the respondent, effectively validating the agreements in question and determining that Mr Crowley had ostensible authority to bind the appellant. The court *a quo* ordered the appellant to pay the respondent the sum of R3 539 416.90 and return the leased equipment. The court's reasoning hinged primarily on the concept of implied actual authority, drawing inferences from the appellant directors' presumed knowledge of and acquiescence to Mr Crowley's actions over an extended period.

[3] The matter now comes before this court following the appellant's successful application for leave to appeal to the full court of this division, granted by the Supreme Court of Appeal. The appellant contends that the court *a quo* erred fundamentally in its reasoning and findings on corporate authority. Though overlapping in some respects, the appellant advances two principal challenges on appeal. The first concerns Mr Crowley's authority to bind the company through rental agreements – I shall refer to this as the authority challenge. The second relates to the court *a quo*'s understanding of corporate delegation – I shall refer to this as the delegation challenge.

Background

[4] The substantial dispute crystallised around events between 2011 and 2013. In November 2011, Bridoon Trade and Invest 197 (Pty) Ltd (Bridoon) initiated a series of agreements to lease office equipment from the appellant. These agreements were signed by Mr Crowley, an employee of the appellant. Subsequently, Bridoon entered into factoring agreements with Quince Capital (Pty) Ltd t/a Nashua Finance and Custom (Quince), ceding its rights stemming from the lease agreements. These ceded rights included the entitlement to receive rental payments and the ownership of the leased equipment. As a result, the respondent entered into a Master Rental Agreement with the appellant, pertaining to the continued lease of the office equipment. Both Bridoon and the respondent, in their respective agreements, mandated that either the appellant's directors sign the agreements or furnish a resolution that explicitly authorised a representative to sign on the company's behalf. In response to this requirement, the appellant purportedly presented a resolution that supposedly granted another employee, Mr Derek Cranston (Mr Cranston), the authority to act on behalf of the appellant. Subsequently, Mr Cranston issued a power of attorney to Mr Crowley, which ostensibly empowered him to sign the agreements in question.

[5] On 30 May 2013, the parties purportedly concluded another Master Rental Agreement. The appellant contested Mr Crowley's authority to sign the agreement, maintaining that the resolution authorising Mr Cranston to conclude agreements on behalf of the appellant did not extend to commercial agreements of this nature. The dispute intensified in October 2013 when the respondent discovered potential issues with Mr Crowley's authority and sought settlement negotiations. Mr Crowley's employment with the appellant was terminated in March 2014. Legal proceedings commenced on 23 April 2015, with the respondent claiming R78 110.42 for Claim A and R1 461 306.48 for Claim B based on the purported agreements.

[6] The appellant responded with an amended plea denying the validity of the agreements and tendering the return of any identifiable goods supplied. They also raised prescription against the alternative unjust enrichment claim. On 5 October 2015, the appellant filed a claim in reconvention seeking R1 235 088.73, representing

amounts drawn from their bank account via debit orders between November 2011 and February 2014. At a pre-trial conference on 18 May 2018, the parties identified Mr Crowley's authority and the validity of the Master Rental Agreements as the key issues.

The authority challenge

[7] The authority challenge centres on three contentions. The appellant submits that the court *a quo* made several distinct errors in its analysis of Mr Crowley's authority to bind it through rental agreements. It argues first that the court *a quo* incorrectly conflated the 'power of attorney' with the 'directors' resolution', treating these distinct legal instruments as interchangeable. Second, that the court *a quo* failed to recognise, so the argument goes, that only company directors have the authority to pass resolutions and delegate powers. Third, that the court disregarded clear evidence of Mr Crowley's limited authority, including a letter from the respondent specifically advising that contracts would only be valid if signed by directors or authorised individuals.

[8] My analysis must commence with the terms of the resolution and power of attorney itself. These terms were determined by the appellant and accepted by the respondents. They must be interpreted according to the well-established triad of text, context and purpose. The resolution, dated March 23, 2011, appointed Mr Cranston 'as the representative taxpayers/vendor for the Company' and granted him 'full power and authority to act on behalf of the Company in respect of all tax affairs'. The resolution further authorised Mr Cranston to 'act in the name of the Company in making any enquiries or to complete or sign the necessary returns or other documents regarding the affairs of the company'. In a document dated 20 June 2011, Mr Cranston purported to grant Mr Crowley a 'specific power of attorney'. This power of attorney authorised Mr Crowley 'to act as a representative taxpayers/vendor or of the Company with full power and authority to act on behalf of the Company in Respect of All Financial and Human Resource affairs'. This included, but was not limited to, 'auditing, accounting, banking and general financial administration'. Mr Crowley was also empowered to 'act in the name of the Company making any enquiries or to complete or sign the necessary returns or other documents regarding the said Financial and Human Resources affairs of the Company'.

[9] These provisions make plain a number of matters that bear upon the authority question. I agree with the appellant that the resolution advanced by the respondent to support Mr Crowley's authority is, on a plain reading, limited in its scope. It did not empower Mr Crowley to conclude commercial agreements like the Master Rental Agreements at issue, being strictly limited to matters concerning tax. The appellant advances three distinct arguments in this regard.

[10] Building on this, the appellant argues that Mr Cranston, even assuming broader authority, lacked the power to delegate this authority to Mr Crowley, as such delegation necessitates a specific resolution from the appellant's board of directors. Finally, and perhaps most fundamentally, the appellant maintains that the power of attorney used by Mr Cranston to delegate authority to Mr Crowley was invalid *ab initio*, being a personal power of attorney, which cannot transfer authority vested in the board of directors.¹

[11] The respondent's position rests upon different foundational principles. First and foremost, they contend that the court *a quo* correctly determined that actual authority can manifest in either express or implied form. Given that the appellant's directors must have had knowledge of Mr Crowley's actions; their lack of intervention strongly indicates implied authority. This interpretation gains particular force when considering that no evidence suggests any fraudulent intent or conspiracy in the actions of either Mr Cranston or Mr Crowley. Second, the respondent emphasises the temporal aspect, arguing that from November 2011 to May 2013, there was authority to conclude the rental agreements as they were consolidated. Their position is fortified by what they characterise as a significant evidentiary gap in the appellant's case, namely, the failure to call any of the expected witnesses such as the directors, Mr Cranston, or Mr Nair. This omission, they argue, left the respondent's case largely uncontested. In advancing these arguments, the respondent placed reliance upon the decisions of

¹ The appellant draws support for these propositions from *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); *University of Johannesburg v Auckland Park Theological Seminary and another* [2021] ZACC 13; 2021 (6) SA 1 (CC); 2021 (8) BCLR 807 (CC); and the authoritative text of F H I Cassim *et al Contemporary Company Law* 3 ed (2021) at 571.

Northern Metropolitan Local Council v Company Unique Finance (Pty) Ltd,² which draws upon the principles established in *NBS Bank Ltd v Cape Produce Company (Pty) Ltd and others*.³ The following sentence from the resolution bears repetition: 'Derek Cranston, is hereby appointed to act as the representative of the representative taxpayer/vendor for the Company with full power and authority to act on behalf of the Company in respect of all tax affairs . . . '

[12] This provision requires careful interpretative analysis because while it grants authority to Mr Cranston, it explicitly confines this authority to tax-related matters. As I see it, Mr Cranston's authorisation must be read within these strict parameters. Such authority cannot be interpreted broadly within its sphere, but what then of matters falling outside it? There are two interpretative indicators of value. The first is textual. The resolution contains the following limitation: 'all matters relating to tax affairs'. An employee granted such authority is required to act within these prescribed boundaries. But if they act beyond these boundaries, then such actions fall outside their mandate. This regulates what actions are permissible within the scope of the granted authority. That is to say, within the sphere of tax affairs, Mr Cranston enjoys full authority, but actions beyond this sphere exceed the authorisation. No equivalent terms are to be found in the resolution that extends this authority to commercial agreements or general business operations. Nowhere does the resolution state that a director authorised for tax matters may also conclude commercial agreements or delegate such authority to others. If that was the intended consequence, it is reasonable to suppose that this would have been stated, given what is expressly provided for in the case of tax-related matters. I therefore find that the authority granted to Mr Cranston did not encompass commercial agreements such as the lease agreements in question. Mr Cranston thus lacked the necessary authority to bind the appellant to the agreements, the absence of which, renders them void. It follows that the authority challenge must succeed.

The delegation challenge

[13] The delegation challenge rests on fundamental principles of company law. The appellant contends that the court *a quo* failed to differentiate between delegation as a

² *Northern Metropolitan Local Council v Company Unique Finance* [2012] ZASCA 66; 2012 (5) SA 323 (SCA).

³ *NBS Bank Ltd v Cape Produce Company Pty Ltd and others* [2001] ZASCA 107; [2002] 2 All SA 262 (A).

management tool and resolution as a formal act of the board of directors. This error led the court to overlook the principle of *ultra vires*, as individuals cannot delegate or exercise powers they do not possess. The culmination of these errors, the appellant argues, was the court *a quo*'s problematic conclusion that the appellant was bound by a non-existent contract based on an invalid corporate guarantee issued by a Dubai company on a South African letterhead.

[14] The respondent advances a materially different position. It contends that the court *a quo* correctly found that Mr Crowley had actual authority to conclude the agreements. In support of this position, the respondent highlights several points: Mr Crowley was introduced to the respondent as the appellant's financial representative; the appellant provided the respondent with a collection of documents, including the aforementioned resolution and power of attorney; and Mr Crowley successfully signed multiple Master Rental Agreements without encountering any objections from the appellant. Alternatively, they argue that Mr Crowley was, at minimum, ostensibly authorised to conclude the agreements, relying on established principles of ostensible authority in case law. Notably, the respondent relies on the case of *Makate v Vodacom (Pty) Ltd*,⁴ where the court recognised a novel form of actual authority – authority by representation. On the delegation challenge, the respondent maintains that proper corporate procedures were followed and that the court *a quo* correctly interpreted the interplay between management authority and board oversight.

[15] I have set out above the relevant terms of the resolution that bear upon the delegation challenge. The authority granted to Mr Cranston was personal in nature, specifically tied to his role and expertise in tax matters. This raises fundamental questions about the validity of any subsequent delegation to Mr Crowley. The power to delegate authority within a corporate structure must flow from proper board authorisation. The distinction between operational delegation, a management tool, and formal delegation of board-authorised powers, requiring resolution, is fundamental to company law. This is not merely a technical distinction but goes to the heart of corporate governance. When Mr Cranston purported to delegate authority to Mr Crowley through a power of attorney, he attempted to transfer powers he himself

⁴ *Makate v Vodacom* [2016] ZACC 13; 2016 (4) SA 121 (CC); 2016 (6) BCLR 709 (CC).

possessed only for limited purposes. This engagement with the *ultra vires* principle reveals the fundamental flaw in the court *a quo*'s reasoning: it failed to recognise that powers granted for tax purposes cannot transform into general commercial authority through the mechanism of delegation.

[16] The respondent's counter-arguments require careful consideration. First, they advance the position that actual authority existed through the conduct of the board and management over time. This argument rests on the premise that the directors' knowledge of and acquiescence to Mr Crowley's actions created implied authority. Second, and perhaps more compellingly, the respondent advances an alternative argument founded on ostensible authority. They argue that even absent actual authority, Mr Crowley possessed ostensible authority sufficient to bind the company. However, the evidence reveals a fatal difficulty: the respondent did not rely on ostensible authority but instead insisted upon proof of actual authority through board resolution. Having specifically required and relied upon actual authority, which proved defective, the respondent cannot now seek refuge in ostensible authority. Tangentially, the existence of a contract, as counsel submitted, and the necessary authority to enter into it, must be established before the delivery of goods, not after. Thus the respondent cannot rely on any subsequent authorisation to validate Mr Crowley's actions.

[17] In addition, as best I can understand the resolution, which regulates what actions are permissible within the scope of the granted authority, it does not state that Mr Cranston may delegate such authority to others, nor is there any equivalent terms to be found that extends Mr Cranston's authority to commercial agreements or general business operations. Rather, the resolution clearly outlined the scope of authority granted, specifically limiting it to tax matters, which advances the appellant's assertion that the resolution furnished to the respondent only authorised Mr Cranston to act on behalf of the company concerning its tax affairs. As a fundamental principle of agency law, being that an agent cannot delegate more power than they possess, meaning Mr Cranston, even if empowered to sub-delegate his powers, could not have granted Mr Crowley more authority than the resolution itself provided, the court *a quo* ought to have found that the respondent failed to establish either actual or ostensible authority on the part of Mr Crowley to conclude these agreements.

[18] The resolution cannot be read as encompassing the conclusion of commercial agreements of the kind at issue here. The deficiency on this score manifests in several ways. First, Mr Cranston enjoyed no power to delegate authority to conclude these agreements to Mr Crowley. Second, no resolution directly delegated authority from the board to Mr Crowley. Third, Mr Cranston's purported delegation via the power of attorney was incompetent – the authority vested in the board cannot be transferred through this mechanism. I do not understand modern corporate practice which requires flexibility in delegation to warrant an unbridled interplay between management authority and board oversight. It follows that the delegation challenge must also succeed.

The unjust enrichment

[19] The final matter requiring attention is the alternative claim for unjust enrichment. This claim presents distinct considerations from the authority and delegation challenges. The respondent argues that payments were made in good faith to Quince, the designated recipient, and that these payments enriched the appellant. While the appellant raises prescription as a defence, pointing to the claim's institution on 7 December 2016, the underlying question is whether the invalidity of the authority, as I have found, affects the equitable claim for enrichment. In my view, it does.

[20] The respondent's reference to settlement negotiations, while technically inadmissible, points to a practical recognition of benefit received. The respondent's claim upon which the unjust enrichment is based arises from the rental agreements which were concluded between November 2011 and November 2012. The subsequent settlement negotiations were finalised and agreed to during 30 May to 6 June 2013. According to the respondent, if this court finds that the contracts were invalid, the appellants received the goods and benefited from utilising them during the rental period. Additionally, pursuant to the settlement, the appellants effected payment On 4 June 2013, 7 June 2013 and 14 June 2013. According to the respondent, the payments it made to the various finance companies was made sine causa on behalf of the appellants and were as a result impoverished.

[21] While the respondent contends that the settlement negotiations endured from October 2013 to February 2014, the appellant argued that payments which were

subject to the claim and were made between May and June 2013. The respondent's alternative for unjustified enrichment was instituted on 7 December 2016. All things considered, the appellant contended that the respondent's claim prescribed. No defence was raised by the respondent suffice to say that it had not contemplated that the appellant would challenge the validity of the agreement when it initially instituted the action. Therefore, the introduction of the claim of unjustified enrichment could only have arisen after it received the appellant's plea. While the parties are entitled to amend their cases, they run the risk of being hit with defences from the opponent which may be prejudicial to them. Section 12 of the Prescription Act 68 of 1969 is clear as to when prescription starts to run. On the facts of this case, I am satisfied that the respondent's claim prescribed.

The claim in re-convention

[22] What remains is the appellant's claim in re-convention. Arising from the same facts in respect of the conclusion of the main agreement, the appellant contended that if it is found that the agreements are invalid, then the respondent is not entitled to rely on them to found a cause of action. The respondent had drawn, through a debit order presented to the appellant's bankers, various amounts totalling R1 235 088.73 when there was no obligation on the appellants to pay the amount and the respondent was in law not entitled to such payment. Accordingly, the appellant claimed repayment of the aforesaid amount plus interest from date of mora.

[23] The appellant accepted that the respondent was entitled to reasonable compensation for the use of the goods from date of delivery of such goods to the appellant to the date when the appellant tendered the return of the goods being no later than 21 May 2015. According to the appellant, the reasonable compensation amounts to R400 000. That being so, the appellant is indebted to the respondent in the amount of R835 080.73 together with interest from 22 May 2015. The only defence raised by the respondent in respect of the claim in re-convention was that the agreements were valid. Having already found the converse to be the case, the appellant's claim must succeed.

[24] As regards costs the appellant submitted that these should follow the result and that in the event it was successful on the appeal and on the counter claim, it should

be awarded costs for the counterclaim. It was submitted that the appellant's endeavoured to truncate the record which was unnecessarily prolix but that the respondent had insisted on a lengthy record on the basis that in its view, the appeal included the issue of cession. In view of this, it was necessary to include all documents which were before the court *a quo*. This was conceded by the respondent who submitted that the matter raised complex issues and that in view of the numerous issues which arose, the respondent had to ensure that all relevant evidence was placed before court. Therefore, that in the event they were unsuccessful, the respondent argued that due to the nature of the matter, the appropriate scale would be scale B.

[25] The issues on appeal were set out in the notice of appeal and were limited to locus standi, authority and delegation, unjustified enrichment and the counter claim. It was apparent from the start that not all the documents, which were before the court *a quo*, were relevant. The record could and should have been truncated to include only those parts necessary to determine the issues. Arising from the respondent's concession, it was at the respondent's insistence that the record was prolix and included irrelevant material. I have considered this in arriving at the conclusion that the respondent be held liable for costs at scale C to reflect the court's displeasure in how the respondent dealt with the issue of the record. No opposition was advanced on the appellant's submission on the reserved costs for the application for leave to appeal.

[26] Having considered the matter and upon hearing counsel, the order that I make is accordingly the following:

1. The appeal succeeds.
2. The order of the court *a quo* is set aside and is replaced with the following:
 - (a) The plaintiff's claim is dismissed.
 - (b) In respect of the defendant's claim in reconvention, the following order is made:
 - (i) The defendant is granted judgment against the plaintiff in the amount of R835 080.73.
 - (ii) Interest on the aforesaid amount is to run from 22 May 2015 to date of payment.

(iii) The defendant is to pay the plaintiff's costs for the action on scale B.'

3. The respondent to pay the appellant's costs including the costs in respect of the application for leave to appeal on scale C.



MBS MASIPA J

Appearances

For the appellant:

D J Saks

Instructed by:

Livingstone Leandy Inc., La Lucia Ridge

For the respondent:

J Van Rooyen

Instructed by:

J Mothibi Inc., Rosebank

Date of Hearing:

11 October 2024

Date of Judgment:

7 February 2025.