

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

1. REPORTABLE: ~~YES~~/ NO
2. OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
3. REVISED: YES / ~~NO~~

DATE: 18-11-2025
SIGNATURE OF JUDGES:

CASE NO: 2484/2022

APPEAL CASE NO: A200/2025

In the matter between:

3TA SERVICES (PTY) LTD

FIRST APPELLANT

TERTIUS VERMEULEN

SECOND APPELLANT
(Defendants *a quo*)

and

POLYWHIZ TRADING (PTY) LTD

RESPONDENT
(Plaintiff *a quo*)

This Judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be on this 18 day of 11 2025

JUDGMENT

T. STRYDOM AJ:

- [1] The Respondent issued summons against the First and Second Appellants, and its claim as per the particulars of claim attached to the summons, is summarised as follows:
- a. The Respondent pleaded that there was a written agreement entered into between the Respondent and the First Appellant in terms whereof a credit facility was given to the First Appellant to purchase goods on a credit account;
 - b. The Second Appellant signed as surety and co-principal debtor for the fulfilment of the First Appellant's obligations towards the Respondent;
 - c. The purchase price for the goods sold on credit would have been payable by the First Appellant within a period of 30 days from date of a monthly statement reflecting the purchases;
 - d. The Respondent referred to Annexure "C", a statement of account, showing the specific purchases/tax invoices for the period between 16 April 2018 until 8 August 2018, and claimed the total amount of R140,386.40.
- [2] The Appellants filed special pleas and a plea, which can be described as a bald denial. However, the plea is not relevant for present purposes, as the matter was set down for hearing of the special pleas only.
- [3] At the outset of the hearing, it was indicated that the first special plea, relating to *res judicata*, would not be proceeded with, and that the matter would proceed on the second special plea relating to prescription, and that legal argument will be addressed on the third and fourth special pleas relating to alleged excipiability of the particulars of claim, saying that last mentioned was vague and embarrassing.

- [4] *Ex-facie* the pleadings, it appeared that the summons was served on or about 26 July 2021 meaning that any liability that arose prior to 26 July 2018 expired by way of prescription, in terms of the provisions of the Prescription Act, 68 of 1969 (the Prescription Act).
- [5] It was common cause that a payment was made on 8 August 2018 in the amount of R 15,000.00 into the banking account of the Respondent, bearing the reference to First Appellant and the question was whether such payment had the effect of interrupting the running of prescription as envisaged in Section 14 of the Prescription Act.
- [6] Section 14(1) of the Prescription Act reads as follows:
- “The running of prescription shall be interrupted by express or tacit acknowledgement of liability by the debtor.”*
- [7] The onus of proving interruption of prescription lies on the Respondent.¹
- [8] This onus should be discharged on a balance of probabilities.
- [9] The first witness on behalf of the Respondent was Mr du Preez, and his testimony can be summarised as follows:
- a. Although the existence of the written agreement of the credit facility was disputed in the plea, Mr du Preez confirmed the existence of such agreement and credit facility.
 - b. Mr du Preez confirmed that there was an outstanding amount owing by First Appellant on the credit account of R140,386.40.
 - c. A statement was issued to First Appellant, on a monthly basis, bearing its name, VAT number and postal address.

¹ See *Absa Bank v De Villiers* 2001 (1) SA 481 (HHA)

- d. The First Appellant was liable for purchases on the credit account, as it was a credit facility in its name. The credit facility allowed purchases to be done, not for cash, but credit, in other words, to be paid on a later occasion.
- e. Payments were made, in rounded amounts, and payments were allocated to oldest outstanding invoices.
- f. Any payments made into the Respondent's banking account, in respect of the First Appellant's account (bearing its reference) would have resulted in the diminishing of the First Appellant's liability towards the Respondent.
- g. A payment was made into the Respondent's banking account on the 8 August 2018, bearing the reference of the First Appellant, thus earmarked to be allocated to the outstanding account of the First Respondent. It was so allocated.
- h. Mr du Preez could not comment from whom the payment originated, as it did not fall within his knowledge.

[10] The second witness for the Respondent was Mr Wellsted, and his testimony can be summarised as follows:

- a. He was introduced by the Second Appellant, Mr Vermeulen, to Mr Maynard, as the operational manager of the First Appellant.
- b. He referred to the customer information sheet, which accompanied the application for credit.
- c. He also referred to and confirmed the written agreement of the credit facility entered between the First Appellant and Respondent.

- d. He then confirmed the statement in the name of the First Appellant, showing the amount of approximately R140,000.00 outstanding and owing.
 - e. The payment of R15,000.00 received was allocated to First Appellant's outstanding account and allocated to older invoices (debts).
 - f. Mr Wellsted referred to invoices that were issued, in respect of the items as per the statement of account. The invoices were issued to the First Appellant.
 - g. Mr Wellsted testified that it was not possible for him to say where a specific payment indicated on the Respondent's banking account originated from, but it was marked 3TA, otherwise it could not be allocated.
- [11] The only witness for the Appellants was Mr Maynard, and his testimony can be summarised as follows:
- a. Mr Maynard describes himself as an informal contractor involved with the First Appellant.
 - b. Initially he testified that he purchased the goods for himself, on credit account of First Appellant. The goods were purchased to trade. This version was later changed, as it appears below.
 - c. He made a payment of R15,000.00 from his personal funds, which payment was earmarked for payment into the First Appellant's credit facility account, as it had the reference "3TA".
 - d. On the question of why he paid the R 15,000.00 from his personal funds in the First Appellant's credit account held with the Respondent, he stated that Mr Vermeulen (the Second Appellant) was not available and he did not have signing powers on the First Appellant's banking account.

- e. He failed to explain the relevance of Second Appellant's unavailability and the fact that money could not be withdrawn from the First Appellant's banking account.
- f. The truth and context came to the fore in cross-examination when it was conceded by Mr Maynard that he purchased the goods for the company (and not for himself). The goods were purchased "*while operating 3TA*".
- g. This explains why the payment into the First Appellant's account with the Respondent was made. The lump sum payment of R15,000.00 (not a specific amount as per any invoice) was necessary to enable the First Appellants to purchase goods necessary for the First Appellant (the company) to trade.
- h. Although the money came from another source, the payment was made on behalf of the First appellant into the First Appellant account held with Respondent.
- i. He conceded that any invoices for purchases would have been issued to the First Appellant by the Respondent.
- j. Other payments, such as salaries, were also paid by Mr Maynard on behalf of First Appellant.

[12] With reference to what a tacit acknowledgement of debt is, the following is stated in **Madibeng Local Municipality v Public Investment Corporation Ltd**:²

"[28] In *Cape Town Municipality v Allie NO*, Marais AJ identified what he described as a number of self-evident aspects of the section. They were:

"Firstly, I do not think the acknowledgment of liability need amount to a fresh undertaking to discharge the debt. "I admit I owe you

² (955/2019) [2020] ZASCA 157 (30 November 2020)

R100" is manifestly an acknowledgment of a liability to pay R100 but it is not a fresh or new undertaking to pay it . . .

Secondly, full weight must be given to the Legislature's use of the word "tacit" in s 14(1) of the Act. In other words, one must have regard not only to the debtor's words, but also to his conduct, in one's quest for an acknowledgment of liability. That, in turn, opens the door to various possibilities. One may have a case in which the act of the debtor which is said to be an acknowledgment of liability, is plain and unambiguous. His prior conduct would then be academic. On the other hand, one may have a case where the particular act or conduct which is said to be an acknowledgment of liability is not as plain and unambiguous. In that event, I see no reason why it should be regarded in vacuo and without taking into account the conduct of the debtor which preceded it. If the preceding conduct throws light upon the interpretation which should be accorded to the later act or conduct which is said to be an acknowledgment of liability, it would be wrong to insist upon the later act or conduct being viewed in isolation. In the end, of course, one must also be able to say when the acknowledgment of liability was made, for otherwise it would not be possible to say from what day prescription commenced to run afresh . . .

Thirdly, the test is objective. What did the debtor's conduct convey outwardly? I think that this must be so because the concept of a tacit acknowledgment of liability is irreconcilable with the debtor being permitted to negate or nullify the impression which his outward conduct conveyed, by claiming ex post facto to have had a subjective intent which is at odds with his outward conduct .

Fourthly, while silence or mere passivity on the part of the debtor will not ordinarily amount to an acknowledgment of liability, this will not always be so. If the circumstances create a duty to speak and the debtor remains silent, I think that a tacit acknowledgment of liability may rightly be said to arise .

Fifthly, the acknowledgement must not be of a liability which existed in the past, but of a liability which still subsists.'
[My emphasis]

- [13] The Respondent pleaded in its replication that the First Appellant made a payment on 8 August 2018, and that such payment interrupted prescription.
- [14] The Respondent's case was that considering all the circumstances of the case, and the outward impression created, objectively, it is a case where the debtor tacitly acknowledged its liability.
- [15] For the first time during cross-examination of the Respondent's witnesses, the Appellants raised the issue that it was Mr Maynard, and not the First Appellant, that made the payment to the Respondent from Mr Maynard's personal funds.
- [16] The Appellants' case is that the intention of Mr Maynard to acknowledge the indebtedness of the First Appellant towards the Respondent was never proved. The Appellants' case is that payment under such circumstances could not interrupt prescription.
- [17] In ***Investec Bank v Erf 436 Elandsfontein (Pty) Ltd and others*** the SCA³ referred to the following:

"[30] Pentz v Government of the Republic of South Africa concerned whether an admission made by a person to a policeman constituted an acknowledgement of liability for purposes of interrupting prescription in respect of a claim by a government department. The court found, in the first place, that the person had not acknowledged liability. Secondly, the court held that, in any event, for an acknowledgement of liability to interrupt prescription, it had to have been given by a debtor to a creditor or the creditor's agent; and the policeman was not the agent of the government department concerned

*[31] Unsurprisingly, the converse also holds true. The acknowledgement of liability, in order to effectively interrupt prescription, can be made by either the debtor or his or her agent. In *First Consolidated Leasing Corporation (Pty) Ltd v Servis SA (Pty) Ltd* and Another payments were made by a third party to the*

³ 2021(1) SA 28 (SCA)

creditor to reduce what was owed by the debtor concerned as well as other creditors of the third party. It had been assumed that the third party had acted as the debtor's agent but, as Goldstone J found, there was no evidence to establish that agency. Indeed, the only evidence was that of the second defendant who said that he had had no knowledge of the payments and that no arrangement was in place to the effect that the third party would pay on behalf of the debtor. That being so, the creditor had failed to discharge the onus to prove that the payments constituted an acknowledgement of liability by the debtor, with the result that prescription had not been interrupted"

[My emphasis]

- [18] The Appellants argued that the Respondent must be strictly confined to its pleadings, and insofar as Respondent alleged that a payment of R 10,533.73 was made by the First Appellant, no evidence or case contrary to same was susceptible and could be considered.
- [19] The Appellants argued that should the Respondent rely on agency, the Respondent had to allege it in its pleadings to say that the payment was made for or on behalf of the First Appellant. The argument goes that insofar as it was not alleged by the Respondent in its pleadings, the Respondent was precluded from relying on agency in response to the Appellants' defence raised in cross examination of the Respondents witnesses for the first time.
- [20] The whole debate of what the parties should have pleaded, is of no consequence, considering what occurred during the trial. Firstly, it was common cause between all witnesses that the amount of R 15,000.00 was paid. Secondly, insofar as the Appellants raised the issue that the payment was made by Mr Maynard, in his personal capacity, the parties enlarged the issues and dealt with it by ventilating the issue whether Mr Maynard was the agent of the First Appellant, during trial without any party objecting or suffering prejudice as a result thereof.⁴

⁴ See *Shill v Milner* 1937 AD 101; *Vos v Cronje and Duminy* 1947(4) SA 873 C at 880; *PAF v SCF* 2022 (6) SA 162 (SCA) para [31]

- [21] Mr Vermeulen, the Director of the First Appellant, failed to testify and explain the relationship between the First Appellant and Mr Maynard, and the circumstances and reasons for the payment by Mr Maynard of the lump sum amount of R 15, 000.00 into the First Appellant's credit facility account held with Respondent, and how it was captured in the books of account of the First Appellant. As director of the First Appellant, these facts would have been within his personal knowledge and domain. There is no evidence of the First Appellant ever having rejected the conduct of Mr Maynard in making the payment in question.
- [22] From the uncontested evidence of Mr Wellsted, it appeared that Mr Maynard was introduced by Mr Vermeulen to the Respondent as "*the operational manager*" of the First Appellant. The reason for the introduction could only be to facilitate interaction between Mr Maynard, on behalf of the First Appellant, and the Respondent.
- [23] Mr Maynard was managing the business of the First Appellant (whether called an independent contractor or operational manager, being irrelevant), with the First Appellant's knowledge and approval.
- [24] The true purpose of the lumpsum payment was to allow the First Appellant to purchase goods from the Respondent, on behalf of the First Appellant, for the benefit of the First Appellant. The deliberate choice was made to pay the amount into the credit facility account of the First Appellant, held with Respondent, which action would have allowed the purchase of goods in the name of First Appellant.
- [25] The reason presented by Mr Maynard for the payment made from Mr Maynard's personal account was that he was unable to make payment from the funds of the First Appellant, as he did not have signing powers to the First Appellant's banking account, and could not get hold of Mr Vermeulen. It implies that if Mr Maynard had signing powers on the First Appellant's banking
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account, or could have been successful in reaching Mr Vermeulen, he would have used the First Appellant's resources.

- [26] Most important of all, Mr Maynard conceded in cross examination that he was purchasing the goods for the company, in direct contrast to his earlier version of buying the goods for himself. If he wanted to buy goods for himself, as earlier suggested, it was not explained why he paid the lump sum into the First Appellant's credit facility with the Respondent.
- [27] All invoices for the goods purchased were issued to the First Appellant, being the principal, in whose name the purchases were made, and who had the credit facility with the Respondent.
- [28] The conspectus of facts, on a balance of probabilities, clearly indicated that Mr Maynard acted on behalf of the First Appellant, with the approval of First Appellant, and the payment of the lump sum was made under such circumstances on behalf of the First Appellant into the First Appellant's credit facility account.
- [29] Under the circumstances the payment, on the credit facility account, for the benefit of the First Appellant, had the consequences of expressly or tacitly acknowledging the indebtedness of the First Appellant to the Respondent. It does not matter whose funds were utilised, the intention of the payment was to be payment on behalf of the First Appellant.
- [30] The matter is distinguishable from the **First Consolidated Leasing Corporation (Pty) Ltd v Servis SA (Pty) and Another** ⁵ *scenario*, as there was evidence that Mr Maynard acted on the First Appellants' behalf in making payments into the credit account for purposes of enabling the purchasing of goods for the First Appellant's business. Even if one accepts that there was an onus on Respondent to proof agency, the onus was discharged on a balance of probabilities.

⁵ 1981 (4) SA 380 (W)

- [31] Allowing a payment to be made on behalf of the First Appellant, in the credit facility account of the First Appellant held with the Respondent, had the result that the existing liability of the First Appellant to the Respondent was acknowledged and diminished. It does not matter where the payment on behalf of the "company" came from. It is not disputed that the actual allocation of the payment to the First Appellant's credit facility account with the Respondent was correctly done.
- [32] It is noted that the learned Magistrate dismissed the special pleas of the excipiability of the Respondent's claims, and that the Appellants' notice of appeal is not aimed at such findings.
- [33] Accordingly, the following order is made:
1. The Appeal against the dismissal of the Special Pleas are dismissed with costs, which costs are to be taxed in accordance with scale B;
 2. The trial action instituted by Respondent against the Appellants in the Magistrate Court for The District of Tshwane Central, Pretoria, case number 2848/2021, is to proceed with on the merits thereof.

 19-11-25
STRYDOM AJ

ACTING JUDGE OF THE HIGH COURT

I Agree.


STRIJDOM J

JUDGE OF THE HIGH COURT

Appearances

Counsel for the Appellants:
Instructed by:

Adv A Coertze
Machobane Kriel Inc

Counsel for the Appellants: Adv A Coertze
Instructed by: Machobane Kriel Inc

Counsel for the Respondent: S Kok
Instructed by: Evans Incorporated

Date of Hearing: 13/11/2025

Date of Judgment: 18/11/2025