REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 1106/2024

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO THE JUDGES: YES/NO
(3)	REVISED.
DATE…………	SIGNATURE:………….

In the matter between:

PEXMART CC **PLAINTIFF**

And

JOHANNES ALBERTUS TALJAARD **DEFENDANT**

JUDGMENT

KGANYAGO J

[1] The plaintiff (Pexmart) has issued provisional sentence summons against the defendant (Taljaard) seeking payment in the amount of R2 086 058.27. It is alleged that Taljaard has signed two separate deeds of suretyship which both incorporate acknowledgement of debt agreements. Taljaard had signed as surety and co-principal debtor for Whaleback Piping Specialist (Pty) Ltd (Whaleback). Taljaard is the sole director of Whaleback. Part of Pexmart business is the selling of HDPE piping and fittings to its clients. Whaleback was one of Pexmart clients. Pexmart and Whaleback had entered into a consignment stock agreement, for purposes of regulating the treatment of the consignment stock.

[2] According to Pexmart from 1st August 2021 up to 31st December 2021, it provided HDPE piping and fittings to Whaleback. Thereafter Pexmart rendered invoices to Whaleback in respect of the products sold and delivered. Whaleback failed to make full payments in respect of the invoices rendered by Pexmart. On 21st May 2021 and 30th June 2021 Taljaard entered into two personal deeds of suretyship in favour of Pexmart for the due and proper fulfilment of all the obligations of Whaleback, and for the payment on demand of any amounts which are or may become due by Whaleback. He also signed two acknowledgements of debts on the same dates that he had signed the two sureties.

[3] Taljaard had signed both the acknowledgement of debts and sureties that the amount owed to Pexmart was R3 243 811.28. After entering into the agreements, Whaleback made payments which did not extinguish the whole debt. Pexmart through its attorneys issued a letter of demand in terms of section 345(1) of the Companies Act 61 of 1973 demanding payment of

R2 212 057.27. Whaleback tried to make an offer of settlement which was rejected by Pexmart. Whaleback was disputing the amount it was alleged that it owed Pexmart. Despite disputing the amount, Whaleback made further payments which reduced the debt to R2 086 058.26. Pexmart is therefore claiming this amount from Taljaard as a surety and co-principal debtor.

[4] Taljaard is opposing Pexmart action and has filed his answering affidavit. In his answering affidavit Taljaard has submitted that Pexmart had instituted action against Whaleback under case number 1501/2022, which action is still pending. Whaleback under case number 1501/2022 has filed its plea and counter claim for damages in the amount of R3 000 000.00. In the counterclaim Whaleback is alleging that it had a verbal agreement with Pexmart. The terms of the verbal agreement were to the effect that if Pexmart secures a specific service level agreement with Dwarsrivier Chrome Mine it will appoint Whaleback as a subcontractor to render specific services to Pexmart and the mine on Pexmart specific request. After securing the specific service level agreement it is alleged that Pexmart breached the agreement by appointing another service provider as a subcontractor.

[5] Taljaard has pleaded that the arrangements and agreements between Pexmart and Whaleback was dependent on, alternatively, based on the verbal agreement between Pexmart and Whaleback regarding the securing of the service level agreement between Pexmart and Dwarsrivier Chrome Mine. Further that Whaleback has suffered damages in the amount of R3 000 000.00 as a direct result of Pexmart breach of the verbal agreement. Taljaard has specifically pleaded that the current action be stayed until the finalisation of the counterclaim under case number 1501/2022.

[6] Taljaard conceded that certain invoices were delivered but denies that Pexmart was entitled to payment, alternatively that he is not liable to effect payment to Pexmart. According to Taljaard he had signed the two acknowledgement of debts which were confined to specific purchase orders which were paid in full. Further that the amount reflected in the acknowledgement of debts and the amount reflected on the purchase orders do not correspond. Taljaard denies that Whaleback did not make sufficient payments, but that it had made certain payments directly to the member of Pexmart by the name Andre Jansen van Rensburg at his specific request during the time Pexmart was under business rescue. Taljaard concede that there were settlement negotiations by the parties in an attempt to minimize a lengthy and costly litigation, but that Pexmart failed to allocate payments towards the correct invoices, but yet demanded payment for invoices already paid.

[7] In reply to Taljaard answering affidavit, Pexmart has conceded that it had instituted action against Whaleback under case number 1501/2022. The action instituted against Whaleback is for unpaid invoices in respect consignment goods supplied and delivered. Pexmart denies indebtedness to Taljaard as per Whaleback's counterclaim under case number 1501/2022. The current proceedings can still proceed and be determined as Taljaard had not been cited as a second defendant under case number 1501/2022; the counterclaim under case number 1501/2022 cannot avail or discharge Taljaard in these proceedings from his liability for the debt owed to Pexmart; Taljaard's counterclaim has no prospects of success; and Taljaard can demand security from Pexmart as a means to protect itself until such time as the matter under case number 1501/2022 has been adjudicated to finality.

[8] There is no reason to stay these proceedings until the final adjudication of the matter under case number 1501/2022 as Taljaard will not suffer any prejudice in these proceedings. Whaleback had made certain payments in reduction of its debt but were not sufficient to extinguish the outstanding amount due and owing to Pexmart. That resulted in Taljaard entering into the two acknowledgement of debts with Pexmart with accompanying suretyship agreements wherein he bound himself as surety and co-principal debtor for the due and proper fulfilment of all the obligations of Whaleback and for payment on demand of any amount which was or may be due by Whaleback. Payments made to Andre van Rensburg by Whaleback were credited to Whaleback's account. Pexmart denies that it was under business rescue when Whaleback made payments to Andre.

[9] Counsel for Pexmart has submitted that the matter before court concerns a provisional sentence summons brought by Pexmart against Taljaard in respect of two separate deeds of suretyship which incorporate two separate acknowledgement of debts. Taljaard had signed the two acknowledgement of debts for the amount of R3 243 811.28 and R976 288.82 which were in respect of goods sold and delivered by Pexmart to Whaleback.

[10] Counsel Pexmart further submitted that Taljaard has raised many bare denials in his answering affidavit and has not disputed his signature or the authenticity in respect of the acknowledgements of debts and the deeds of suretyship. Taljaard answering affidavit does not disclose a defence on a balance of probabilities that will succeed in the main case. The deeds of suretyship, which incorporate the respective acknowledgement of debts, are liquid documents upon which the court may grant provisional sentence against

Taljaard. Taljaard answering affidavit is contradictory in that he denies Pexmart provisional sentence summons in its totality but conceded to having signed the acknowledgement of debts.

[11] In relation Taljaard seeking the staying of the proceedings pending the adjudication of Whaleback counterclaim, counsel for Pexmart has submitted that Taljaard has provided a scant substantiation in respect of the facts surrounding the counterclaim averring that there was an oral agreement between Pexmart and Whaleback regarding Whaleback securing a service level agreement between Pexmart and an entity known as Dwarsrivier Chrome Mine. Even though a surety can put a counterclaim of the principal debtor as a defence, such counterclaim must disclose fully the nature and grounds of the defence and the material facts relied upon.

[12] For Taljaard in order to escape provisional sentence he must satisfy the court that it is unlikely (on a balance of probabilities) that Pexmart will succeed in the principal case. Taljaard has not discharged the burden cast upon him that he will be successful in the principal case against Pexmart. Taljaard will not suffer any prejudice as the provisional sentence proceedings are interlocutory in nature and he can still enter the main case.

[13] Counsel for Taljaard has submitted that Pexmart has instituted an action against Whaleback in which Taljaard has not been joined to the proceedings despite been the surety. Whaleback has defended Pexmart action and had filed a counterclaim in the amount of R3 000 000.00. In that action they are at the pre-trial stage and the matter remained unresolved. The trial court had to determine the liability of the main principal debt. If the main principal debtor is found not to be liable and in the current case provisional sentence has been

granted against Taljaard, there will be conflicting judgments. The principal debtor is ancillary to the surety. In avoiding a duplicating of processes, they are asking for a stay of the current proceedings pending the adjudication of the main case.

[14] Counsel Taljaard has further submitted that the acknowledgement of debts which Pexmart is relying on are for the specific purchase orders which Whaleback has paid. The acknowledgement of debt is a liquid document whilst the surety agreement is not. The court is called upon to interpret the agreement. The acknowledgement of debts which Taljaard have signed were for specific orders which have been paid. These acknowledgement of debts were not general to embrace every outstanding debt. Whaleback is linked to the current matter hence they are seeking for a stay of the proceedings.

[15] Pexmart is relying on the continuing security of the suretyship which is not a liquid document. It will not be in the interest of justice to shut the door of Taljaard. This matter is not suitable for the granting of the provisional sentence. The two agreements needed to be interpreted.

[16] The court is called upon to determine whether Pexmart has satisfied the requirements for the granting of provisional sentence. Provisional sentence is a speedy remedy to the plaintiff whose claim is based on a liquid document. It enables the plaintiff to a quick payment of an amount acknowledged to be owing pending the finalisation of the principal case. It is a provisional or interlocutory order as the principal case is still to be determined. Should the court grant the provisional sentence, the defendant had the option of entering the principal case and even to request security from the plaintiff for amount that the defendant might have paid as a result of the provisional sentence. A

defendant who denies liability is required to set out the grounds for that denial in an answering affidavit by satisfying the court on a preponderance of probability that the plaintiff is unlikely to succeed in the principal case.

[17] In *Twee Jonge Gezellen v Land and Agricultural Development Bank*[1] Brand JA said:

> "It has been said that the balance of probability which the defendant must raise must be substantial before the court will refuse provisional sentence. However, as was pointed out in *Rich and Others v Lagerwey*, our law knows only of two standards of proof, namely, proof beyond reasonable doubt which applies in criminal cases, and the civil standard of proof on a preponderance of probability. In order to escape provisional sentence, the defendant must therefore satisfy the court on a preponderance of probability that the plaintiff is unlikely to succeed in the principal case".

[18] Pexmart provisional sentence is based on the two acknowledgment of debts signed by Taljaard. An acknowledgement of debt qualifies as a liquid document. For an acknowledgement of debt to qualify as a liquid document it must be an unconditional acknowledgement of indebtedness in a fixed or ascertainable amount of money due to the plaintiff. The person who had signed the acknowledgement of debt must also acknowledge his/her signature or that of the person he/she has authorized to sign on his/her behalf. In *Ndamase v Functional 4 ALL*[2] it was held that it is the essence of the of a liquid document that, standing on its own, it establishes the indebtedness of the debtor without the necessity for any evidence extrinsic thereto.

[1] 2011 (3) SA 1 (CC) at para 22
[2] 2004 (5) SA 602 (SCA) at 607A-B

[19] In terms of the first acknowledgement of debt, Taljaard had acknowledged that he was indebted to Pexmart in the sum of R3 243 811.28 being in respect of goods sold and delivered by the supplier. Purchase order: 2346 (Q20202179). In the deed of surety that accompanied the acknowledgement of debt which Taljaard had signed as surety and co-principal debtor, he had agreed that he will be liable for the due and punctual payment of all sums and the due and proper performance of all obligations which the principal debtor may in the past or now or in future owe to Pexmart or Pexmart's successor in title or assigns and for the due and proper performance by the principal debtor of all its obligations, whether actual, contingent or potential which it may be in the past, or now or may in the future owe to Pexmart or Pexmart's successor's in title or assign, arising out of or in connection with any cause of indebtedness whatsoever whether now existing or which may come into being in the future.

[20] With regard to the second acknowledgement of debt, Taljaard had acknowledged that he was indebted to Pexmart in the sum of R976 288.82 being in respect of goods sold and delivered by the supplier. Purchase order 2362 (Q20202908)-Consignment stock. In the deed of surety that Taljaard had signed, and which had accompanied the acknowledgement of debt, Taljaard had agreed as a surety and co-debtor that he will be liable for the due and punctual payment of all sums and the due and proper performance of all obligations which the principal debtor may in the past or now or in the future owe to Pexmart or to Pexmart's successors in the title or assigns and for the due and proper performance by the principal debtor of all its obligations, whether actual, contingent or potential which it may in the past or now or may in the future owe to Pexmart or Pexmart's successor's in title or

assign, arising out of or in connection with any cause of indebtedness whatsoever whether now existing or which may come into being in the future.

[21] The deed of surety on its own do not amount to a liquid document as there is no unconditional acknowledgement of indebtedness in a fixed or ascertainable amount of money that is due to Pexmart. According to Pexmart, after Taljaard had signed the two acknowledgement of debts, Whaleback made some payments in reduction of its debts but did not pay in full. The outstanding balance as per Pexmart reconciliation record stand at R2 086 058.27. Taljaard in his answering affidavit has pleaded that the purchase orders as they appear in the two acknowledgement of debts have been paid for by Whaleback and has attached several proof of payments for the period 17th June 2021 to 22nd June 2022. Taljaard in his answering affidavit has stated that the amount reflected in the acknowledgement of debts and the amount reflected on the purchase orders did not correspond. Further that certain payments were made by Whaleback to Jansen van Rensburg, and that Pexmart had failed to allocate some payments towards the correct invoices.

[22] Pexmart in its replying affidavit had attached a detailed reconciliation of all the payments which Taljaard had attached to his answering affidavit for the period 17th June 2021 to 22nd June 2022, and it leaves a balance of R2 086 058.27. Taljaard does not dispute having signed the two acknowledgement of debts. Therefore, their authenticity is not placed in dispute. It will be immaterial whether the amount as they are reflected on the purchase orders and acknowledgements of debts correspond or not. Taljaard elected to sign the two acknowledgement of debts well aware of those discrepancies that he tries

to raise now. In my view, what Taljaard is raising is not a good ground to resile from the two acknowledgement of debts which he had conceded to having signed.

[23] The reconciliation as prepared by Pexmart provides an ascertainable amount that is due and owing by Taljaard. This amount flows from the capital amount of the two acknowledgement of debts which Taljaard had signed in his capacity as surety and co-debtor for the due and proper fulfilment of all the obligations of, and for the payment on demand of any amounts which are or may become due to Whaleback. The two acknowledgement of debts which Taljaard had signed are unconditional acknowledgement of debts, and he also undertook to pay the outstanding amount owed by Whaleback to Pexmart.

[24] Taljaard had failed to show the court that the probability of success, in the principal case is against Pexmart. There is no likelihood that there is a probability that if the matter proceed to trial Taljaard will be successful with his defence. It will therefore not be in the interest of justice to stay the provisional sentence pending the determination of the counterclaim in the principal case. Taljaard will not suffer any prejudice if provisional sentence is granted as he is still having the option to pay the amount claimed, request security from Pexmart and enter into the principal case. The mere fact that provisional sentence has been granted is not automatic that Pexmart will succeed in the principal case. Pexmart principal case may still be dismissed. Therefore, the argument by counsel for Taljaard that there will be conflicting judgments has no merit. The balance is in favour of Pexmart and it is therefore entitled to be granted provisional sentence. The two acknowledgements of debts provides for costs on attorney and own client scale.

[25] Accordingly the following order is made

25.1 Provisional sentence is granted in the sum of R2 086 058.27 with interest thereon at the rate of 24% from 1st January 2022 to date of payment.

25.2 Defendant is ordered to pay the plaintiff's costs on attorney and own client scale.

KGANYAGO J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA, LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

Counsel for the plaintiff	**: Adv M Dames**
Instructed by	**: Hahn & Hahn Attorneys**
Counsel for the defendant	**: Adv MM de Jager**
Instructed by	**: Kirk Twine Attorneys**
Date heard	**: 23rd July 2026**
Electronically circulated on	**: 7th August 2026**