

REPUBLIC OF SOUTH AFRICA



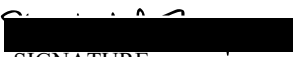
**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 2024-103074

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

31/8/2026

DATE


SIGNATURE

In the matter between:

SAPOR RENTALS (PTY) LIMITED

Plaintiff

and

TELCO GROUP (PTY) LIMITED

First Defendant

PRESTON MOODLEY

Second Respondent

JUDGMENT

WENTZEL -THOMPSON J

Introduction

[1] The plaintiff applies for summary judgment against the first and second defendants, jointly and severally, for payment of R218 104.78, interest at the rate of prime plus 6% per annum from the date of summons to date of final payment,

and costs on the attorney-and-client scale. The claim is brought under rule 32 of the Uniform Rules of Court.

- [2] The plaintiff is Sapor Rentals (Pty) Ltd (“Sapor”). The first defendant, Telco Group (Pty) Ltd (“Telco”), is the supplier under a written Supplier Agreement concluded with Sapor on 27 May 2020. The second defendant, Mr Preston Moodley (“Moodley”), is Telco’s director and the signatory to a document styled a continuing guarantee executed on the same date. Under the Supplier Agreement, Telco would refer transactions to Sapor, Sapor would provide finance for technology rentals, and Telco would supply equipment to end-user customers.
- [3] The claim concerns two transactions referred to Sapor by Telco, said to relate to St Augustine’s Catholic Church and St Francis Church (“the Church transactions”). It is now common cause, or at least no longer seriously disputed, that the transactions were fraudulent- the relevant signatures were forged and the equipment was never delivered to the Churches.
- [4] Sapor, unaware of the fraud, paid the amount owing by it to Telco pursuant to these transactions. Telco admits receiving R151 551.16 in relation to the church transactions. Its amended plea goes further and says that, after receipt of the money, it paid its freelance representative R57 471.83 in respect of the St Augustine transaction and R39 165.35 in respect of the St Francis transaction.
- [5] Sapor’s case is not, however, simply for restitution of the R151 551.16 paid. It alleges breach of the Supplier Agreement, particularly clause 4.3.2, and invokes the contractual remedies contained in clauses 7.3.3-7.3.6. It seeks R218 104.78, comprising R135 772.84 relating to the St Augustine transaction and R82 331.94 relating to St Francis transaction.
- [6] Under the provisions of the Supplier Agreement relied upon by Sapor, Telco warranted, so Sapor contends, that documentation furnished in relation to proposed transactions was genuine and accurate, that signatures were genuine and appropriately authorised, and that the equipment was properly delivered and installed. Sapor says that it was contractually entitled to demand that Telco repurchase the affected contracts and that the sum of R218 104.78 is payable in

terms of certificates of balance issued under the Supplier Agreement. It further contends that Moodley is liable under the guarantee he provided to Sapor.

- [7] The defendants resist the application. Their case is that the Church transactions were fraudulently procured by a rogue freelance representative acting without either defendant's knowledge, consent or authority. They contend that the purported end-user agreements were *void ab initio*, alternatively voidable or unenforceable, that the relevant conditions precedent were not fulfilled, that Sapor itself failed to undertake appropriate verification and due diligence and that the certificates of balance do not establish the amount claimed. Finally, it is argued that Moodley's liability under the guarantee is either absent or dependent on the existence of a valid principal obligation, of which there is none, it being void or voidable on the grounds of fraud.
- [8] The defendants' central factual allegation is that the alleged freelance representative secretly orchestrated the fraud without Telco's or Moodley's knowledge, consent or authority. They accept the underlying factual fraud, but deny responsibility for it; their case is that the representative was acting for his own purposes and outside any employment or agency relationship.
- [9] There is also an interlocutory issue raised by the defendants concerning Sapor's supplementary affidavit in support of summary judgment delivered after the defendants amended their plea. In this affidavit, Sapor has responded to the denial of the authority of the alleged freelance representative by raising issues of estoppel and ratification. The defendants contend that the supplementary founding affidavit was delivered late, that it introduced new matter outside the scope of rule 28(8), and that it should be disregarded, in whole or in part. Sapor has subsequently sought condonation for its late delivery.
- [10] Ultimately the question is whether the defendants have disclosed facts which, if proved, would constitute a *bona fide* defence, or defences, that are good in law and raise a triable issue warranting the refusal of summary judgment and the referral of the matter to trial.
- [11] This is an unduly long judgment, but I feel is necessary to explain to the parties that I have properly evaluated each of their contentions and to justify why,

although I am of the view that plaintiff's case is more certain on the probabilities on the evidence before me, that the defendants should be granted leave to defend.

- [12] This has not been a decision lightly taken, but after a full and complete consideration of the evidence and the relevant case law.

The chronology of events

- [13] The relevant chronology is substantially common cause. The Supplier Agreement and the guarantee were signed on 27 May 2020. Summons was delivered during September 2024 its declaration on 26 November 2024.

- [14] The defendants delivered their plea during February 2025. Sapor instituted this application for summary judgment on 4 March 2025. The defendants thereafter filed their affidavit resisting summary judgment on 11 June 2025. On 23 July 2025 they filed a notice in terms of rule 28 and a supplementary opposing affidavit. The latter corrected the description of the person responsible for the alleged fraud; whereas initial affidavit had referred to him as an employee, the supplementary affidavit stated that he was instead a freelance representative engaged by Telco from time to time. This indicated a deliberate attempt by Telco to separate themselves from the conduct of the person implicated.

- [15] Sapor then delivered a supplementary affidavit in support of summary judgment on 5 September 2025. The defendants delivered a further supplementary affidavit in response. They objected that Sapor's affidavit was delivered four court days after the 15-day period contemplated in rule 28(8), and that it advanced impermissible new matter. That new matter was to raise estoppel and ratification in response to the denial of authority in the amended plea.

- [16] Sapor thereafter instituted a condonation application. That application is opposed by Telco.

The terms of the Supplier Agreement

- [17] The Supplier Agreement regulated a relationship in which Telco would refer proposed technology-rental transactions to Sapor. Sapor would provide finance

solutions and Telco would supply the equipment. Clause 3.1 provided, in material part, that purchases of equipment by Sapor from Telco would be binding only if expressed in writing and subject to the condition precedent that an agreement on Sapor's prevailing terms had been concluded with the intending user.

- [18] Clause 4.3.2 required Telco to warrant that documents furnished to Sapor in respect of a referral or proposed agreement were genuine, true and correct in all respects, that signatures were, to the best of Telco's knowledge and belief, genuine, and that signatories purporting to sign on behalf of another were duly and properly authorised. Clause 4.3.4 required Telco to warrant that the equipment was fit for its intended purpose and was properly and fully delivered and installed.
- [19] Clauses 7.3.3 to 7.3.6 provided for a remedy at Sapor's election in the event of breach. These clauses entitle Sapor to require Telco to purchase the affected end-user agreement within 45 days, at a consideration calculated by reference to the collectible under the relevant contract and costs incurred. Against delivery of the contract, it is deemed ceded to Telco and Telco is required to accept and uplift the equipment on a voetstoots basis, and at its own cost.
- [20] The Supplier Agreement also makes provision for the amount owing to be *prima facie* established by way of a certificate signed by a Sapor manager or director regarding, among other matters, the value of collectables, a shortfall, damages or any amount owing by Telco, including for purposes of summary judgment.

The terms of the alleged guarantee

- [21] Moodley signed a continuing guarantee for the indebtedness of Telco. It records, in broad terms, that he guarantees Telco's payment and performance obligations to Sapor arising out of or incidental to the Supplier Agreement. It provides that his liability is to be absolute and unconditional notwithstanding circumstances which include an underlying cause of indebtedness having no legal effect, being capable of avoidance or being unenforceable due to a lack of authority. It also contains a provision restricting the liability of the guarantor to Telco's obligations to Sapor under the Supplier Agreement and any addenda.

[22] Moodley alleges that his obligations under the guarantee are, despite its description, akin to suretyship, rendering it dependent upon the validity of the underlying end-user agreement. Because he says that the end-user agreement was void for fraud, he maintains that he has no accessory obligation owing to Telco under the “guarantee.”

The test for summary judgment

[23] The principles applicable to summary judgment are settled. In *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*¹ the Supreme Court of Appeal explained that the procedure is directed at preventing delay through sham defences but is not intended to deprive a defendant with a triable issue or sustainable defence of a day in court. The remedy is accordingly drastic only for a defendant who has no defence to the action.

[24] A defendant must disclose the nature and grounds of the defence and the material facts on which it is founded with sufficient particularity. That is clear from *Maharaj v Barclays National Bank Ltd*², *Breitenbach v Fiat SA (Edms) Bpk*³. The lack of *bona fides* may be inferred from bald and bare denials. But the defendant is not required at this stage to establish the defence on a balance of probabilities. It is enough to disclose facts which, if established at trial, would constitute a defence that is *bona fide* and good in law.

[25] In *Tumileng Trading CC v National Security and Fire (Pty) Ltd*⁴, the Court observed that a summary-judgment court is concerned with whether a defence is genuinely advanced rather than a sham, not with determining the substantive merits or prospects of success of the main action. It should not ordinarily resolve disputed factual merits that properly belong to the trial court.

[26] Accordingly, I am not required to determine whether the defendant will ultimately succeed; the enquiry before me is whether the defences are genuinely advanced

¹ *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* [2009] ZASCA 23; 2009 (5) SA 1 (SCA) paras 31-33;

² *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 423G-426E

³ *Breitenbach v Fiat SA (Edms) Bpk* 1976 (2) SA 226 (T) at 227G-228F

⁴ *Tumileng Trading CC v National Security and Fire (Pty) Ltd* 2020 (6) SA 624 (WCC)

rather than manufactured to obtain delay and should not try and determine disputes that require oral evidence.

[27] Although the defendants have raised a number of defences, I need only find that one of the defences raised has been sufficiently disclosed to constitute a defence if proved at a trial in due course for me to refuse summary judgment, provided of course that I am satisfied that that defence has been genuinely advanced.

[28] Sapor submits that the defendants' case is internally inconsistent, inadequately pleaded and constitutes no more than an attempt to postpone an inevitable judgment. It relies in particular on the defendants' receipt of funds, Moodley's WhatsApp communications, the written warranties and the certificates of balance. Those issues may ultimately prove decisive. But the issue is whether they can properly be treated as determinative at the summary-judgment stage, notwithstanding the defences raised by the defendants.

The validity of the Church Transactions

[29] The defendants contend that the fraud rendered the Church transactions *void ab initio*. Sapor correctly relies upon *Pepkor Holdings Ltd v AJVH Holdings*⁵ for the proposition that a contract induced by fraudulent misrepresentation is ordinarily voidable at the election of the innocent contracting party, rather than automatically void.

[30] There is patently a distinction between a transaction induced by fraudulent misrepresentation and a transaction in which an alleged contracting party's signature is forged or the purported representative lacks authority. The defendants' allegation is not that the Churches were fraudulently induced to contract, it is that there was no genuine agreement by the churches at all as the signatures were fraudulent.

[31] There is a significant conceptual difference between a genuine contracting party being fraudulently induced to conclude a contract and a supposed contract bearing a forged signature of a person who never consented to contract at all.

⁵ *Pepkor Holdings Ltd and Others v AJVH Holdings (Pty) Ltd and Others; Steinhoff International Holdings NV and Another v AJVH Holdings (Pty) Ltd and Others* (205/2020) [2020] ZASCA 134; 2021 (5) SA 115 (SCA)

The latter raises the logically anterior question whether any agreement was ever concluded with the Churches. The defendants plead that the signatures were forged and no equipment was delivered; Sapor itself accepts those factual propositions. The proposition relied upon by Sapor in *Pepkor* does not conclusively resolve such a situation.

- [32] However, the legal character of the underlying Church contracts may not ultimately be decisive if Sapor proves an independently enforceable breach of Telco's warranties, that it says, were required to cover situations where the end-user agreement was a fraud.

The warranties contained in the Supplier Agreement

- [33] Sapor submits that the legal status of the end-user is ultimately irrelevant as it alleges that Telco breached warranties given in that agreement concerning the genuineness of referral documentation, signatures and authority, as well as delivery and installation of the equipment. It thus says that the ensuing fraud and non-delivery trigger its contractual repurchase remedy against Telco. This constitutes a substantial answer to the defendants' submission that the Church transactions were *void ab initio*.

- [34] If Telco independently warranted the integrity of documents furnished by it or on its behalf and warranted delivery and installation, the invalidity of the end-user agreements would not, in itself, necessarily defeat a claim based on Telco's breach of those warranties. On that construction, the absence of delivery and the falsity of the documents may well be the precise events which trigger Telco's contractual liability to repurchase the Church transactions.

- [35] The qualification in clause 4.3.2 that signatures were genuine "*to the best of [Telco's] knowledge and belief*" is material; its meaning cannot be determined in isolation and must be interpreted within the commercial context of the agreement and the other clauses contained in the agreement. Evidence as to how the transactions were processed may also be relevant. Thus, it may be that the clause places on Telco the risk of fraud by intermediaries used in the referral process; it may alternatively be that the knowledge-and-belief qualification

preserves a defence where Telco was itself deceived by a person acting outside its authority.

Lack of authority

[36] The defendants contend that the fraudulent documentation was created and submitted by a person who lacked actual or ostensible authority, that he acted independently and for his own benefit, and that the defendants neither knew of or authorised the fraud. They deny that the forged documents were submitted by the alleged representative within an employment or agency relationship with Telco.

[37] In this respect the defendants rely on *Brink v Humphries & Jewell (Pty) Ltd*⁶ that stated, after quoting from *Sonarep (SA) (Pty) Ltd v Pappadogianis*⁷ in support of the principle that:

“In my view, therefore, the decisive question in a case like the present is this: did the party who is actually intention did not conform to the common intention expressed, lead the other party, as a reasonable man, to believe that is declared intention represented his actual intention?”

[38] The defendants submit that the alleged freelance representative’s forgery and concealment from them means that there was no true consensus between the parties, creating a triable issue on the validity of the underlying Church transactions that cannot be resolved on affidavit.

[39] Whether the alleged freelance representative’s conduct is properly described as conduct by Telco, or by a person acting on its behalf for purposes of clause 4.3.2, will turn on facts concerning the nature and scope of his engagement and mandate, the manner in which he was held out to Sapor, his authority to source or submit transactions, and Telco’s knowledge of his actions and its conduct on acquiring such knowledge.

[40] But one must have regard to the fact that Telco corrected the description of its relationship with the individual accused of this fraud, or being a participant in this fraud in an amendment to its plea after summary judgment had been instituted.

⁶ [2005] 2 All SA343 (SCA) at paragraph 16

⁷ 1992 (3) SA 234 (A)

As I have said, the defendants initially described this person as an employee, but changed his status to being a freelance representative. Telco insists that he had no mandate to commit or participate in fraudulent conduct, and assert that Telco ended its relationship with him when the fraud was discovered.

[41] The significance of this evidence needs to be carefully weighed, as should this person in fact have been an employee as initially stated, making it difficult to argue that he did not act within the course and scope of his employment, this- and not the true facts, may have prompted the change to his status in the amended plea. If this change was made to avoid the legal consequences of what was originally stated, this in and of itself could be said to demonstrate a lack of *bona fides* in the defence now postulated by way of amendment. This change in the status of the alleged perpetrator (or co-conspirator) of the fraud may also amount to a withdrawal of an admission that would require a full and proper explanation.

[42] On the other hand, the motive behind the defendants change of the status of the individual concerned by way of amendment is not a matter that can be finally determined on the facts before me, and will require oral evidence and cross-examination; at most, the scenario postulated by me amounts to supposition and inference that may ultimately not be born out by the facts. It is, however, a matter that warrants further investigation and can only be decided after the hearing oral evidence, subject to cross-examination. Thus, although the amendment itself may ultimately bear adversely on the defendants' credibility, it is not an issue that I am in a position to decide demonstrates a lack of *bona fides* or that the defence has not been advanced genuinely. I thus cannot at this stage of the proceedings find that the amended defence is necessarily contrived and should be disregarded.

Estoppel and ratification

[43] In Sapor's supplementary affidavit it relies on estoppel, alternatively ratification to refute the defendants denial that the person who allegedly perpetrated or was complicit in the fraud was not authorised. It says that the freelance representative held himself out as authorised, that the defendants did not immediately challenge

his authority, that Telco accepted payment under the transactions, and that Telco paid funds onward to a third party. Sapor says it acted to its detriment in financing the transactions and that Telco and Moodley should accordingly be estopped from denying the authority of the alleged representative.

[44] The defendants rely on *Monzali v Smith*,⁸ *Glofinco v Absa Bank Ltd t/a United Bank*,⁹ and *Africast v Pangbourne Properties Ltd* and *Curtis v Dowdle*.¹⁰ Those cases affirm the elementary proposition that, for estoppel based upon ostensible authority, the representation must emanate from the principal; it cannot rest only on the alleged agent's own assertion that he has authority. The defendants' counsel argued that there was no representation by Telco or Moodley that the freelance representative possessed authority to forge documents or manufacture fictitious transactions.

[45] No principal ever ordinarily represents that an agent is authorised to commit fraud. The question is whether the principal represented that the person had authority to perform acts of the general character involved - for example, obtaining and submitting customer applications - so that the innocent counterparty was entitled to treat those acts as authorised.

[46] In *Minister of Finance and Others v Gore NO*¹¹ the SCA dismissed the state's defence that the officials acted outside the scope of their employment. It held that because the officials utilised their assigned roles to perpetrate deliberate fraud, the state was vicariously liable for the resulting economic loss suffered by the prejudiced tenderer.

[47] The issue is therefore not simply whether the alleged freelance representative described himself as Telco's representative; the issue is whether Telco or Moodley, by words or conduct, created or permitted an appearance that he was authorised to submit these transactions or to bind Telco in relation to them. That

⁸ *Monzali v Smith* 1929 AD 382

⁹ *Glofinco v Absa Bank Ltd t/a United Bank* [2002] JOL 10159 (SCA)

¹⁰ *Africast v Pangbourne Properties Ltd* [2013] 2 All SA 574 (GSJ)

¹¹ *Minister of Finance and Others v Gore NO* 2007 (1) SA 111 (SCA); [2007] 1 All SA 309 (SCA)

enquiry is fact-specific: It calls for evidence regarding prior dealings, the representative's role, his access to Telco's materials, communications between the parties, any introductions or authorisations by Telco, the steps taken by Sapor to verify his status, and the timing of Telco's alleged discovery of the fraud.

The WhatsApp messages

[48] Sapor relies strongly on the WhatsApp messages. In these messages, Moodley said, amongst other things, that he was at the church trying to sort matters out; that "*Mario our manager*" was sorting out a problem with the client; that "*Sean and Thato*" appeared to have caused problems in his business; and asked Sapor to allow time to rectify the mess "*the reps created*".

[49] Sapor says those communications establish either that the persons concerned were Telco's authorised representatives or that Telco subsequently adopted what they had done. It says that Moodley's statements demonstrate knowledge of the transactions, acceptance that Telco would have to buy back the deals, and an acknowledgment that the matter should be settled.

[50] The defendants contend that the messages recorded an effort to investigate and address a fraudulent situation, not an informed admission of legal liability or an acknowledgment of their responsibility for the fraud committed.

[51] The WhatsApp messages are certainly damaging to the defendants' case. They make the defence considerably less straightforward than the defendant's counsel proffered in argument; they provide substantial evidence that the relevant persons were associated with Telco's business and that Moodley regarded the problem as one Telco was obligated to rectify. But they do not conclusively prove the proposition for which Sapor uses them.

[52] While the messages may be capable of supporting the inference urged by Sapor, they are also capable of a competing inference. Their meaning depends on their complete context, Moodley's prior knowledge and the circumstances under which he discovered the fraud, determination of the identity of the persons referred to, the relationship between Telco and the representatives. what they were engaged to do, how transactions were ordinarily generated, what authority

they possessed, what Telco represented to Sapor concerning their authority and how Sapor understood their status. In addition, evidence would need to be adduced as to the purpose of the communications and the surrounding conduct of the parties.

- [53] I cannot determine, in summary proceedings, whether the statements made amount to an admission, a representation giving rise to estoppel, or merely an attempt to contain the consequences of suspected wrongdoing for which Teco assumed responsibility. These are all quintessentially questions for trial.

Ratification

- [54] Similar considerations apply to the question of ratification. Ratification entails an informed and unequivocal adoption of an unauthorised act. Sapor says the defendants accepted the funds, paid a third party and subsequently attempted to “*sort out*” the Church transactions, as is evidenced from the WhatsApp messages.
- [55] The defendants say the funds were received and disbursed in good faith before discovery of the fraud and that the relationship with the representative was terminated once the fraud was uncovered. They say that they acted in good faith before discovering the fraud and deny any unequivocal adoption of the unauthorised acts.
- [56] Ratification ordinarily requires adoption of the unauthorised act with the requisite knowledge of the material circumstances. This requires an inquiry as to what Telco and Moodley knew when the money was received, when portions were paid to the representative, and when Moodley sent the WhatsApp messages?
- [57] The fact that Moodley attempted to repair the transactions after becoming suspicious may support ratification; but it may equally be consistent with an innocent principal attempting to repair damage caused by a rogue representative. Cross-examination may resolve the matter. It is arguable that whether Telco had the necessary knowledge, whether its conduct was unequivocally adoptive, and whether it can be characterised as ratification are matters requiring evidence. This thus also becomes an issue that supports referral of the matter to trial.

The supplementary affidavit and the provisions of Rule 28(8)

[58] There is also a procedural complication regarding the reliance upon the principles of estoppel and ratification. The defendants contend that these issues were introduced for the first time through a supplementary affidavit and fall outside the scope of a consequential adjustment under Rule 28(8).

[59] Generally, these are the type of issues raised in a replication following a plea in which authority has been denied.

[60] The defendants rely upon *City Square Trading 522 (Pty) Ltd v Gunzenhauser Attorneys*¹² for the proposition that Rule 28(8) permits a plaintiff affected by an amendment to make consequential adjustments, but does not permit the supplementary affidavit to become a disguised reply to the opposing affidavit or an opportunity to construct a materially new case in support of its application for summary judgment.

[61] However, it must be borne in mind that summary judgment proceedings do not generally permit the filing of a replying affidavit and there can be little doubt that the issues relating to estoppel and ratification were raised pursuant to the amendment to the description of the status of the person alleged to have committed or have been party to the fraud in the defendant's plea.

[62] Rule 28(8) provides:

“Any party affected by an amendment may, within 15 days after the amendment has been effected or within such other period as the court may determine, make any consequential adjustment to the documents filed by him ...”

[63] Rule 32(4), by contrast, provides that no evidence may be adduced by the plaintiff otherwise than by the affidavit contemplated in Rule 32(2).

[64] Ordinarily, therefore, there is no replying affidavit in summary judgment proceedings. That is deliberate. The amended Rule 32 was structured so that the plaintiff brings summary judgment only after delivery of the plea, and must in its founding affidavit explain briefly why the defence as pleaded does not raise a

¹² *City Square Trading 522 (Pty) Limited v Gunzenhausen Attorneys (Pty) Ltd and another* [2022] JOL 52220 (GJ)

genuine issue for trial. The procedural formulation of the amended Rule therefore gives the plaintiff one opportunity, knowing the defendant's pleaded defence, to address it in the Rule 32(2) affidavit.

[65] That general prohibition, however, creates an obvious difficulty when the defendant changes its plea after the Rule 32 affidavit has already been filed. Rule 28(8) addresses precisely that situation.

[66] In *City Square* the defendant amended its plea after the summary judgment application had been launched, and the plaintiff filed a further affidavit to deal with the amended defence. Fisher J held that Rule 32(4) does not extinguish the plaintiff's rights under Rule 28(8) and that a plaintiff whose opponent amends its plea is plainly a "*party affected*" by the amendment.

[67] The important qualification is that the adjustment must be consequential upon the amendment. Fisher J's formulation at para 29 is particularly useful: Rule 32(4) prohibits material in the nature of a reply or rejoinder which is not consequential upon the amendment. That final qualification is decisive. The judgment does not say that any matter which resembles a reply is inadmissible; it says that Rule 32(4) prohibits replying or rejoinder material not consequential on the amendment.

[68] Indeed, the purpose of Rule 28(8) would otherwise be defeated. If a defendant were permitted materially to change its defence after summary judgment had been launched while the plaintiff remained irrevocably tied to an affidavit drafted against the former plea, the plaintiff could never perform the very function Rule 32(2)(b) requires of it - explaining why the pleaded defence actually before the court does not raise a triable issue.

[69] That reasoning has subsequently been followed in *ABSA Home Loans Guarantee Company (RF) (Pty) Ltd v Erf 1404 Dainfern CC*,¹³ where the court held that a supplementary affidavit addressing an additional defence introduced

¹³ *Absa Home Loans Guarantee Company (RF) (Pty) Ltd and Another v ERF 1404 Dainfern CC and Others* (41403/2019) [2022] ZAGPJHC 490

by amendment was permissible because it was consequential and was not merely an attempt to reply to the original opposition.

[70] Similarly, *Mncube v Wesbank*¹⁴ confirms that where the plea is amended after summary judgment has been instituted, the plaintiff is an affected party under Rule 28(8) and may adjust the Rule 32 affidavit, provided the adjustment is truly consequential.

[71] The more recent *Gotori NO v FirstRand Bank*¹⁵ also confirms the distinction; supplementary affidavits in summary judgment proceedings are generally exceptional, but *City Square Trading* represents the particular case where an amended plea activates Rule 28(8).

[72] That substantially answers the defendants' procedural objection

[73] *City Square Trading* is in point: In the defendants' original resisting papers, the individual implicated in the fraudulent church transactions had been characterised as an employee of Telco. In their supplementary affidavit of 23 July 2025 the defendants expressly stated that this was factually inaccurate and sought to change that position. The individual, they said, was not an employee, but someone engaged from time to time as a "freelance representative" operating independently.

[74] The defendants now alleged that the freelancer:

- a. acted entirely outside his mandate;
- b. acted without the defendants' knowledge, authorisation or consent;
- c. was not ratified by them;
- d. had his engagement terminated immediately upon discovery of the fraud;
and
- e. could not generate vicarious or contractual liability for Telco.

¹⁴ *Mncube v Wesbank* [2023] ZAGPJHC 895

¹⁵ *Gotori N.O. and Others v FirstRand Bank Limited t/a First National Bank* [2026] ZAGPJHC 563

- [75] Most significantly, the proposed substituted paragraph 7 expressly alleged that he possessed neither actual nor ostensible authority to bind Telco.
- [76] That case was then incorporated into the amended plea. The amended plea says that the individual was not an employee but a freelance representative, that the fraudulent transactions were orchestrated by him without the defendants' knowledge, consent or authority, and that the defendants therefore bore no liability for the transactions.
- [77] Thus the amendment did not merely correct "employee" to "freelancer"; it introduced a material juridical proposition, namely that notwithstanding that this person sourced and submitted the transactions through Telco's business, he had no authority - actual or ostensible - to bind Telco, and Telco never adopted what he had done. That substantially changed the defence confronting the plaintiff.
- [78] This explains why estoppel is usually pleaded in a replication. The Constitutional Court's discussion in *Makate v Vodacom (Pty) Ltd*¹⁶ is directly relevant. It recognises the conventional pleading sequence: Where the plaintiff knows from the outset that actual authority does not exist and relies upon ostensible authority, the relevant case may appropriately be pleaded initially. But where the plaintiff alleges authority and the defendant thereafter denies authority in its plea, ostensible authority or estoppel is ordinarily raised in replication. As the Court explained, if the plaintiff pleaded actual authority and the defendant then pleaded its absence, the plaintiff could rely upon estoppel in replication.
- [79] That is of particular relevance to the matter before me: It would be procedurally anomalous to criticise Sapor for not anticipating in its original summary judgment affidavit an estoppel case which, according to ordinary pleading principles, arises responsively when authority is denied.
- [80] The defendants themselves created the need for that response when they amended their case from one involving an employee to one involving an independent freelancer who allegedly possessed no authority of any kind.

¹⁶ 2016 (4) SA 121 (CC)

- [81] The purpose of the supplementary affidavit is significant. Badenhorst expressly says that the affidavit is filed because the defendants amended their plea after the summary judgment application, and that its purpose is to deal with the amended pages rather than to repeat the original cause of action. Badenhorst then goes on to plead estoppel, and alternatively ratification to the amended pages on the basis already outlined above. That seems to me entirely consequential within the meaning of Rule 28(8).
- [82] The defendants submit that the amendment introduced “*no new facts or defences*” and that estoppel and ratification are therefore impermissible new material. This cannot be the case. Their supplementary affidavit itself says that the distinction between employee and freelancer is “*material*”, because it means, according to them, that Telco cannot be held vicariously liable. It also adds that the freelancer acted outside his mandate, lacked actual or ostensible authority, and that the defendants did not ratify his acts.
- [83] It is impermissible for the Defendants to simultaneously contend that the change was so material that it destroys Telco’s liability; but at the same time that it was so immaterial that Sapor was not entitled to respond to it.
- [84] Indeed, the defendants’ proposition would permit a defendant, after seeking the summary judgment application, to amend its plea materially by denying authority and then invoke Rule 32(4) to prevent the plaintiff from addressing that new defence. That would be contrary both to *City Square Trading* and to the patent intention behind the amended Rule itself.
- [85] Accepting the affidavit does not mean Sapor necessarily establishes estoppel. There is at least one potential weakness in the pleaded estoppel case. Paragraph 22.2.1 relies in part on the freelancer having identified himself as an authorised representative. Ordinarily an agent cannot manufacture his own ostensible authority merely by asserting that he possesses it. The representation must ultimately be attributable to the principal. That is the point made in *Glofinco* and the other agency authorities relied upon by the defendants. The defendants’ counsel correctly emphasises that a representation sufficient for estoppel must be rooted in the words or conduct of the principal.

- [86] However, Sapor does not rely only upon the freelancer's own assertion. It also relies on Telco's conduct, that is, its acceptance of the transactions, receipt of the proceeds, onward payments, Moodley's subsequent communications referring to the persons involved as "*reps*", and his attempts to rectify the church transactions.
- [87] Whether those circumstances establish ostensible authority or estoppel is a merits question. It is not a reason to strike the allegations from the supplementary affidavit.
- [88] The position concerning ratification is perhaps stronger; the amended defence expressly says there was no ratification.
- [89] Once that allegation is made, Sapor must surely be entitled under Rule 28(8) to point to facts which it says establish the contrary. Again, whether the facts actually amount to ratification depends on knowledge and unequivocal adoption. But the issue itself was directly generated by the amendment.
- [90] I therefore consider the defendants' argument that ratification is an impermissible "new cause of action" to be conceptually incorrect. Ratification is not a new cause of action; it is a juridical answer to the amended contention that the person who generated the transactions lacked authority to bind Telco.
- [91] Similarly, estoppel is ordinarily not itself a cause of action; it operates to prevent a party from relying upon a state of affairs inconsistent with a representation upon which another acted.

Conditions precedent

- [92] The defendants rely on clause 3.1. They contend that the procurement of equipment by Sapor was subject to the conclusion of valid agreements with the intending users, that the Church documents were forged, and that no valid agreements with the Churches came into existence. Sapor answers that the relevant agreements were, at most, voidable, that the defendants have not instituted a collateral challenge seeking to set them aside, and that payment was in fact made to Telco.

- [93] Whether the condition precedent in clause 3.1 was fulfilled depends in part on the legal effect of the Church documentation. It also depends on the correct construction of the clause. It may regulate when Sapor becomes bound to purchase equipment from Telco, it does not necessarily govern the availability of Sapor's remedy where Telco's warranties relating to the proposed transaction are alleged to have been breached. Conversely, Telco may seek to show that the condition was a substantive precondition to triggering of its obligation to buy back the transactions.
- [94] This issue cannot be disposed of by saying that payment was made. Payment may be evidence that Sapor treated the conditions as satisfied, it does not conclusively establish that a genuine end-user agreement was concluded. Nor does the defendants' reliance on the clause itself necessarily provide a complete defence to a claim for breach of Telco's separate representations and warranties. This is an issue of construction linked to disputed facts.
- [95] Clause 3.1 does not make the entire Supplier Agreement conditional upon the valid conclusion of an end-user agreement. It regulates whether a particular purchase of equipment by Sapor from Telco becomes binding. The real question is whether failure of the clause 3.1 condition precedent also prevents Sapor from enforcing the Supplier Agreement's warranties and clause 7 remedies where the very reason the condition was apparently satisfied was false information or forged documentation furnished through the supplier's referral process?
- [96] Clause 4.3.2 is directed precisely at the risk which materialised. This clause contains Telco's warranty that documents furnished by it to Sapor concerning the referral of an intending user, or any proposed agreement to be entered into, or entered into, by Sapor with that intending user, are genuine, true and correct in all respects. It also warrants, to the stipulated standard, the genuineness of signatures and the authority of signatories. The breadth of that formulation is important: It does not apply only to an ultimately valid end-user contract; it expressly encompasses documents concerning a "proposed agreement to be entered into".

[97] That makes considerable commercial sense. The warranty operates at the referral and approval stage - before Sapor can know whether the apparent end-user documents are genuine.

[98] If the defendants' construction of clause 3.1 were accepted, clause 4.3.2 would lose much of its practical operation in precisely the circumstances in which it is most needed. Sapor's case is that Telco warranted the genuineness of documents and signatures. The signatures were forged. The defendants then rely on the forgery to say that no end-user agreement existed and therefore that the condition precedent was not fulfilled.

[99] Sapor's case is that Telco warranted the genuineness of documents and signatures. The signatures were forged. The defendants then rely on the forgery to say that no end-user agreement existed and therefore that the condition precedent was not fulfilled.

[100] But if the supplier's breach of the documentary warranty is what caused the apparent satisfaction of the condition precedent, the supplier cannot ordinarily rely upon the consequences of that very defect to render the contractual warranty and remedy nugatory.

[101] The argument raised by the defendants is circular and commercially implausible as it would make the warranty least effective where the breach of the warranty is most serious. Indeed, the defendants' construction would allow the breach itself to defeat the remedy.

[102] Properly construed in the circumstances, Clause 3.1 protects Sapor from becoming bound to purchase equipment before there is an end-user rental transaction. It was not designed to protect the supplier from liability where false documentation submitted through the supplier's own referral channel falsely represented that the end-user transaction existed. That interpretation gives commercial efficacy to both clauses 3 and 4.

[103] Clause 3.4 substantially provides that where Sapor enters into an agreement pursuant to a supplier referral, the condition precedent is regarded as fulfilled and an equipment sale is deemed concluded between Sapor and the supplier.

[104] There is admittedly a textual complication: if the church contracts were forged, can Sapor properly be said to have “entered into an agreement” with the churches?

[105] At the level of ordinary consensual contract formation, perhaps not.

[106] But clause 3.4 cannot be interpreted in isolation from clause 4.3.2. The latter expressly imposes upon Telco warranties concerning documents supplied for proposed agreements. Thus the Supplier Agreement contemplates the risk that Sapor will act upon documents submitted in relation to a transaction which later proves defective.

[107] Moreover, once estoppel or ratification is taken into account, the defendants' ability to rely upon the absence of a valid underlying transaction becomes still weaker.

[108] If Telco is precluded from denying the representative's authority, or if it subsequently adopted the transactions, it is difficult for it simultaneously to assert, as against Sapor, that the transactions cannot count for purposes of the contractual machinery because they originated through unauthorised conduct.

[109] The summons invokes clauses 7.3.3–7.3.6. Clause 7.3.3 provides that, upon a breach by the supplier of any warranty, indemnity, condition or term of the Supplier Agreement, Sapor may require the supplier to purchase the contract in respect of which the breach occurred. Clause 7.3.4 determines the consideration by reference to the amount collectible under the relevant contract. That is crucial: The trigger is not expressed as, “provided that every condition precedent in clause 3.1 has been validly fulfilled”. On the contrary, the trigger is a breach of a warranty, indemnity, condition or term of the Supplier Agreement. And the pleaded breach - forged documentation and false signatures - falls squarely within the subject matter of clause 4.3.2.

[110] The better interpretation is therefore that clause 7 provides the remedial machinery when a referred transaction turns out to have been defective because a supplier warranty was untrue.

[111] But it must be conceded that there is some inconsistency in the drafting of the Supplier Agreement. Clause 3.1 contemplates a genuine end-user agreement as a condition precedent to an individual equipment purchase. Clause 7.3.5 contemplates delivery or cession of the relevant contract back to the supplier upon payment of the buy-back consideration. The defendants say that an agreement founded on forged signatures cannot meaningfully be ceded.

[112] But clause 7.3.5 appears to describe the reciprocal consequence of the buy-back remedy, not to create a further prerequisite to the supplier's liability for breach. Where the "contract" proves unenforceable because the documents supplied through the referral were fraudulent, Sapor may obviously be unable to transfer an enforceable claim against the supposed end-user. But that is precisely the loss which the supplier warranty protects Sapor against. Otherwise, the more worthless the underlying contract, the less effective the contractual warranty would become.

[113] That cannot readily have been the commercial purpose of the agreement.

The fact that the equipment was not delivered

[114] The defendants also rely on the admitted fact that no equipment was delivered or installed. Again, however, this is not naturally a defence to clause 4.3 liability. Clause 4.3.4 itself warrants that the equipment was properly and fully delivered and installed. The summons expressly pleads breach of that obligation in addition to the false-document warranty.

[115] If non-delivery defeated the remedy altogether, clause 4.3.4 would be remarkably ineffective; the supplier could breach the very warranty that equipment had been delivered and then say that because equipment was not delivered, the transactional conditions were not satisfied and therefore no remedy lies.

[116] *The payment to Telco*

[117] This is not a case in which Sapor merely processed a fraudulent application but never acted upon it. Sapor actually paid Telco. Telco admits receiving R151 551.16 in relation to the church transactions and thereafter admits making transaction-specific onward payments to the freelance representative.

[118] That means the commercial transaction contemplated by the Supplier Agreement was in fact implemented between Sapor and Telco. The defendants cannot convincingly characterise it as though no transactional relationship ever arose at all. The factual implementation of the end-user agreement is significant when construing clause 3.1 alongside the later warranty and remedy provisions.

The distinction between a condition precedent and a warranty

[119] A genuine suspensive condition prevents the conditional obligation from becoming enforceable until the uncertain future event occurs. If clause 3.1 were the only relevant provision and no end-user contract were ever concluded, Telco could plausibly say no obligation arose under the particular equipment purchase.

[120] But Sapor's claim does not depend simply upon enforcing that equipment purchase as if nothing had gone wrong; it relies upon a separate, antecedent warranty contained in the Supplier Agreement concerning the truth and genuineness of the information used to procure the transaction. That warranty does not logically depend on the success of the transaction; on the contrary, its purpose is to regulate the risk that the transaction is defective. That is why I consider the defendants' suspensive-condition argument to misidentify the obligation which Sapor seeks to enforce.

[121] Clause 3.1 provides that purchases by Sapor from the supplier "*shall only be binding on SAPOR*" if the prescribed requirements are met. The clause is cast as a limitation upon when Sapor becomes bound to purchase equipment from the supplier; it does not constitute an exclusion of the supplier's warranties and liabilities whenever the transaction turns out to contain defective or fraudulent documents. Indeed, a condition imposed for Sapor's protection should not lightly be transformed into an immunity for Telco from its independent warranties. That is particularly so where Telco is attempting to invoke the absence of a valid end-user agreement after having itself accepted payment pursuant to the purported transaction.

The commercial purpose of the Supplier Agreement

[122] The commercial purpose of the Supplier Agreement is of some relevance. In the preamble to the agreement its purpose is recorded, and that purpose is that Telco refers users to Sapor for financing, Sapor concludes finance agreements with those users, and Telco supplies the equipment.

[123] Clause 4.3.2 is directed squarely at dealing with the origin of the commercial risk Sapor inevitably faces in concluding the end-user agreement. The obvious credit risk that the end-user fails to honour its finance arrangement and that the customer or the supporting documentation are not genuine. The clear intention behind clause 4.3.2 is for Sapor to transfer the latter risk to Telco. In terms hereof, Telco warrants the truth and genuineness of documentation emanating from the supplier-referral process. The defendants' construction would shift that origination risk back to Sapor notwithstanding the express warranty.

Due diligence

[124] The defendants argue that Sapor was required independently to verify the churches and should have discovered the fraud. They contend that Sapor failed to undertake basic due diligence in that it did not verify the purported church end-users, the identities and authority of the signatories, the supporting documents or actual delivery of the equipment. They place reliance on the due-diligence obligations arising under the Financial Intelligence Centre Act and the FIC's Guidance Note 7A. They submit that Sapor's own failures caused or materially contributed to its alleged loss.

[125] The plaintiff responds that an alleged failure to mitigate was not properly pleaded, that no contractual source for such a duty has been identified, and that Telco's contractual warranties cannot be displaced by a general allegation that Sapor should have detected the fraud. It also relies on the communications in which it says the defendants undertook to address the difficulty.

[126] An express warranty is ordinarily an allocation of contractual risk. Unless the agreement makes Sapor's independent verification a qualification upon Telco's warranty, negligent verification does not simply extinguish the warranty.

[127] The defendants' reliance on "mitigation" is not, in its present formulation, a clearly established complete answer to a contractual claim. Mitigation concerns steps reasonably available after a breach or loss to reduce loss. An allegation that Sapor failed to verify the transaction before payment more directly raises questions of contractual risk allocation, causation, reasonable reliance for estoppel and, potentially, a separate claim. Likewise, a regulatory duty under FICA does not without more create a private-law defence to a claim under a contract.

[128] Moreover, Moodley himself seems to have accepted Telco's buy-back obligation. He did not allege that no equipment purchase had ever come into existence; instead in his WhatsApp messages he spoke of fixing and rectifying the transactions, said Sapor need not be concerned, and referred to the representatives as having created the problem within his business. There was also a later message in which Moodley responded to the buy-back figures by saying that they appeared "excessively high versus payout amount" and proposed discussing them. He did not then take the position that the contractual buy-back mechanism was wholly inapplicable because clause 3.1 had never been fulfilled.

[129] That is not necessarily a contractual admission decisive by itself, but it diminishes the *bona fides* of the later clause 3.1 defence.

[130] Nonetheless, the alleged absence of verification may be material in more than one respect. It may bear on whether Sapor reasonably relied on any alleged appearance of authority. It may bear on causation if Sapor's claim is ultimately one for damages rather than a fixed contractual repurchase amount. It may also be relevant to the meaning and application of the contractual provisions. The evidence required to resolve these questions has not been ventilated. That does not mean that the due-diligence allegation itself necessarily defeats the claim; it does mean that it cannot be dismissed at this stage as having no possible bearing on the matters raised.

The fraudulent nature of the end-user agreements and the liability to buy back liability

[131] The question is whether the fraudulent end-user rental agreements are incapable of supporting the clause 7 calculation?

[132] Clearly, as between Sapor and the churches, a forged signature may well mean that the churches never consented and cannot be held liable under the supposed rental agreements. The principle that these contracts are valid until set aside set out in *Pepkor* does not address the case where the signature of a supposed contracting party who never assented at all was forged.

[133] But that does not resolve Telco's liability. Sapor is not asking the court to enforce the rental agreements against the Churches; it is simply using the contractual rental schedules to determine the measure of Telco's buy-back liability under the separate Supplier Agreement.

[134] But there is contrary interpretation that requires consideration before a decision is made whether to grant summary judgment. Clause 7.3.3 requires Telco to "*purchase the contract*". Clause 7.3.4 measures the price by what is "*collectible under the relevant contract*". If the church signatures were forged, there is no enforceable contract and therefore nothing collectible under it. The amount collectible is arguably zero.

[135] This argument considerably stronger than merely invoking clause 3.1.

[136] But I have that it would prevail when the agreement is read as a whole. The words "*collectible under the relevant contract*" establish a valuation formula. They should not be interpreted so literally that a supplier whose breach of warranty made the contract worthless can say that its buy-back obligation is therefore zero. Such an interpretation would invert the contractual risk allocation. The sensible and businesslike construction is that the buy-back price is calculated by reference to the contractual rentals which would have been collectible had the supplier's warranties been true, and do not depend on the enforceability of the end-user agreement.

[137] This is also consistent with the settlement calculations Sapor prepared.

[138] The very reason for a buy-back obligation is often that the underlying asset or receivable is defective.

[139] When the supplier warrants the integrity of the underlying transaction and promises, upon breach, to buy it back at the outstanding contractual value, it would defeat the bargain to value the defective receivable at zero precisely because the warranted defect has materialised.

[140] Viewed that way, clause 7.3.4 is not a market-value provision; it is a contractual formula for restoring Sapor to the position represented by the apparently valid rental stream. That interpretation also explains why the claimed amount exceeds the amount paid to Telco.

The certificates and quantum

[141] Sapor relies on certificates of balance which reflect a total indebtedness of R218 104.78, comprising R135 772.84 for the St Augustine's transaction and R82 331.94 for the St Francis transaction. It submits that the certificates are contractually agreed to constitute prima facie evidence and that the defendants have failed to advance a cogent evidential basis to refute them.

[142] The governing principles are not in dispute. In *Senekal v Trust Bank of Africa Ltd*,¹⁷ the Appellate Division recognised that a certificate may, by agreement, constitute *prima facie* proof of the indebtedness certified. In *SASFIN Bank Ltd v Makatsang Cleaning Services (Pty) Ltd*,¹⁸ the Court held that a certificate may become sufficient proof when no evidence is presented to disturb it. That does not mean that every challenge will suffice; but a concrete factual challenge may require a trial.

[143] The defendants identify particular matters said to disturb the certificates. They allege that the documentation and underlying transactions were fraudulent, that no equipment was delivered or installed, that Telco received R151 551.16 only, and that the difference of R66 553.62 between that figure and the total claim is not adequately explained. They additionally contend that the certificates do not satisfactorily explain the calculation of R13 294.38 as arrears or the attribution of R204 810.40 to future payments.

¹⁷ *Senekal v Trust Bank of Africa Ltd* 1978 (3) SA 375 (A)

¹⁸ *Sasfin Bank Limited and Another v Makatsang Cleaning Services (Pty) Ltd and Others* (5691/2019) [2021] ZAFSHC 6

[144] The defendants place considerable emphasis on the fact that Telco received only R151 551.16 from Sapor and say that the difference between that amount and R218 104.78 is unexplained. Their amended plea expressly alleges that only R151 551.16 was received and that the balance claimed is unsupported by evidence of loss or performance.

[145] that argument proceeds, however, from the wrong contractual measure: Sapor is not suing simply for repayment of the capital amount advanced to Telco; its pleaded cause of action invokes the buy-back mechanism in clauses 7.3.3–7.3.6 of the Supplier Agreement.

[146] Clause 7.3.3 entitles Sapor, upon breach of a warranty or other term of the Supplier Agreement, to require the supplier to purchase the relevant contract within 45 days. Clause 7.3.4 then specifies the price; the consideration payable is the amount collectible under the relevant contract purchased as at the date Sapor receives the consideration, together with specified costs and expenses. Clause 7.3.5 provides that upon payment the contract is delivered/ceded to the supplier, and clause 7.3.6 requires the supplier to uplift the equipment at its own cost.

[147] Thus the contractual measure is not how much Telco originally received from Sapor; it is what amount remained collectible under each rental contract when Sapor invoked the buy-back remedy. That is a materially different inquiry.

[148] The pleaded amount precisely corresponds with the contractual election made by Sapor. The summons pleads breach of clauses 4.3.2 and 4.3.4: Telco warranted, amongst other things, that the documents supplied in respect of intending users were genuine and correct, that signatures were genuine and authorised, and that the equipment had been properly delivered and installed. Sapor then expressly pleads its election under clauses 7.3.3-7.3.6 and claims R135 772.84 rental that would have been accrued under the St Augustine's Catholic Church and R82 331.94 that would have from the St Francis Church, totalling R 218 104.78.

Are these amounts liquidated?

[149] The amounts can be precisely calculated from the end-user rental agreements.

[150] With regard to St Augustine, the amount of R135 772.84 claimed can be reconstructed exactly inasmuch as the St Augustine's settlement calculation records a monthly rental of R2 000, with 56 rentals remaining, and no escalation. The calculation records an arrears component of R6 972.84. This accounts for 56 rental payment of R2000 per month and VAT at 15 percent and arrears of R6 972.84.

[151] The same applies to the St Francis end-user agreement. The St Francis worksheet sets out the future rentals in three escalation bands, namely, 9 rentals at R1 800, 12 rentals at R1 980 and 12 rentals **at** R2 178. It records arrears of R6 321.54.

[152] The outstanding future rentals can be calculated, having regard to the arrears and VAT as totalling R76 010.40 without any extrinsic evidence. Both amounts can thus be regarded as liquidated and not simply as unliquidated damages. The figure in the settlement calculation is accordingly internally verifiable and mathematically consistent with the rental schedule.

[153] There is thus no residual amount as claimed by the defendants. The total of the amount that would have been due by St Augustine of R135 772.84 and that by St Francis of R82 331.94 accounts for the total amount claimed of R218 104.97; there is no unexplained residual amount.

[154] The certificate of indebtedness independently confirms the same figure.

[155] The defendants' principal response is that it only received R151 551.16. But that does not answer clause 7.3.4. Once the contractual buy-back obligation is triggered, the consideration is not restricted to what Telco received. It is the amount collectible under the rental contract at the relevant date.

[156] Sapor financed an income-producing rental stream. If Telco breaches warranties which cause that rental stream to fail, the contractual buy-back provision restores Sapor by requiring Telco to purchase that remaining contractual stream.

[157] The defendants correctly rely upon *Senekal v Trust Bank* for the proposition that a certificate which is *prima facie* evidence can be rebutted. Their heads similarly rely upon *Sasfin Bank v Makatsang Cleaning Services* to say that *prima facie* evidence becomes sufficient only where it is not displaced. That proposition is unobjectionable.

[158] But the question is whether these defendants have actually disturbed the *prima facie* proof of quantum. They have not. Instead, they rely principally upon the fact that Telco received only R151 551.16. That does not rebut a calculation based upon clause 7.3.4.

[159] The certificate contains *prima facie* evidence against Moodley. The guarantee expressly contains a certificate clause providing that a certificate under the hand of an authorised person is, on its face, proof of the supplier's and/or guarantor's indebtedness. But vis-à-vis Telco the Supplier Agreement itself provides the substantive formula in clause 7.3.4, and the settlement schedules demonstrate the calculation.

[160] There is an additional contemporaneous communication in which Moodley says, after reading the settlement schedules in which he complains that the figures reflected were "*excessively high verses payout amount.*" A statement that the figures are too high, without more, does not satisfy the requirements in order to oppose summary judgment set out above requiring that a full explanation be provided for a denial; this is particularly so where the plaintiff has provided the rental schedules and the calculation is objectively reproducible. The defendants would need to identify some factual or computational basis for disputing the amount claimed.

Are the defences bona fide?

[161] What remains is to determine whether, notwithstanding the conclusions reached above concerning the apparent strength of the plaintiff's case, the defendants have disclosed a *bona fide* defence of the kind contemplated in Rule 32(3)(b) at this stage of the inquiry and for summary judgment purposes. That enquiry is important because the conclusion that one party's case appears considerably

stronger on the papers is not equivalent to a conclusion that the opposing case is a sham.

[162] The principles are well established. In *Maharaj* the Appellate Division held that a defendant resisting summary judgment is required to disclose fully the nature and grounds of the defence and the material facts upon which it rests. “Fully” does not mean that the defendant must prove the defence on a balance of probabilities. The disclosure must instead be sufficient to satisfy the court that, if the facts alleged are established at trial, they would constitute a defence which is bona fide and good in law. *Breitenbach* similarly recognises that the court may have regard to the manner in which the defence is disclosed in determining its *bona fides*, particularly where the allegations are unnecessarily bald, vague or sketchy.

[163] Those principles survive the amendment of Rule 32. In *Tumileng Trading CC* Inns-Ward J emphasised that the enquiry remains whether the defence pleaded is *bona fide* rather than a sham. The court is not charged with deciding its substantive merits or prospects of eventual success. The fact that the plea discloses something which may loosely be described as an issue for trial is not itself sufficient; the defence must genuinely be advanced. Conversely, where it is genuinely advanced, the summary judgment court should not resolve the merits of the factual dispute under the guise of determining *bona fides*.

[164] The Supreme Court of Appeal has subsequently confirmed that approach in *Cohen NO and Others v D*.¹⁹ The Court held that a defendant need only disclose a genuine, as opposed to sham, defence; prospects of success are irrelevant, and if the defence is legally cognisable in the sense that it would constitute a defence if proved at trial, summary judgment should ordinarily be refused. Significantly, *Cohen* itself concerned a defence which required interpretation of a trust instrument. The SCA held that the interpretation advanced by the defendants could not properly be characterised as unreasonable or *mala fide*.

a. *Contractual interpretation and the need for contextual evidence*

¹⁹ *Cohen NO and Others v D* (368/2022) [2023] ZASCA 56 (20 April 2023) paras 22-27

[165] The caution sounded in *Cohen* assumes particular significance in the present case because an important component of the dispute concerns the proper interpretation and interaction of clauses 3, 4 and 7 of the Supplier Agreement. As explained above, the plaintiff's construction is persuasive. It gives the warranties concerning the genuineness of the documentation and delivery of the equipment substantial commercial efficacy and avoids the seemingly anomalous result that the supplier might rely upon the very falsity constituting the breach of warranty to contend that the contractual remedy never arose.

[166] But the modern approach to interpretation requires me to distinguish between concluding that the construction advanced by the plaintiff is more persuasive one and concluding that the defendants' competing construction is not genuinely advanced. In *University of Johannesburg v Auckland Park Theological Seminary and Another*,²⁰ the Constitutional Court confirmed that interpretation is a unitary exercise in which text, context and purpose are cumulatively considered. Context is relevant whether or not the language appears ambiguous. The factual matrix, purpose of the agreement, circumstances surrounding its conclusion and material known to those responsible for its production may all legitimately bear upon interpretation.

[167] Of particular relevance is the Constitutional Court's observation that parties will frequently have to adduce evidence establishing the context and purpose of contractual provisions. The Court nevertheless cautioned that interpretation remains a question of law for the court and that contextual evidence cannot be used without limit to alter the written agreement. Where reasonable minds may differ concerning the admissibility of contextual evidence, however, the unitary approach favours its admission, leaving its weight to be assessed thereafter.

[168] The approach taken by the Constitutional court is important to the matter before me. The defendants contend, in substance, that clause 3 establishes the prerequisites before an individual equipment purchase and corresponding repurchase obligation can arise, that no genuine end-user agreement ever existed because the signatures were forged, and that the language in clause 7

²⁰ 2021 (6) SA 1 (CC)

concerning the purchase of “*the contract*” and the amount “*collectible*” under it presupposes an existing contract capable of enforcement. The plaintiff, on the other hand contends that clauses 4 and 7 allocate to Telco the very risk that a referred transaction proves to be fictitious (as the signatures of the end-user were forged) or is unenforceable due to fraud.

[169] Although I prefer the interpretation proffered by Sapor, which construction will ultimately prevail may more properly be determined by evidence concerning the commercial setting in which the Supplier Agreement operated, including the ordinary process by which transactions were referred, the respective functions of Telco and Sapor in verifying prospective users, the role ordinarily performed by Telco’s representatives, the commercial purpose of the documentary warranties, and whether the repurchase mechanism was intended to encompass a transaction which appeared to exist because of documentation subsequently discovered to have been forged.

[170] The existence of potentially relevant contextual evidence does not mean that every dispute about contractual interpretation must be referred to trial. Interpretation remains for the court and a defendant cannot avoid summary judgment merely by asserting that evidence might later emerge to support its version. But where a competing interpretation is reasonably tenable and the proper contextual matrix has not yet been fully established, the court should be slow to decide the issue finally merely because one construction presently appears preferable.

b. Estoppel and ostensible authority

[171] Similar caution is required in relation to the plaintiff’s reliance upon estoppel or ostensible authority. In *Makate v Vodacom (Pty) Ltd*,²¹ the Constitutional Court explained that where actual authority is alleged and subsequently denied, the third party may plead estoppel by way of replication. The Court identified the factual components of estoppel in the agency context, including a representation

²¹ *Makate v Vodacom (Pty) Ltd* 2016 (4) SA 121 (CC)

attributable to the principal, reasonable reliance upon it and consequent prejudice.

[172]The importance of those requirements in the present matter is that the contemporaneous WhatsApp communications, although strongly supportive of the plaintiff's case, do not necessarily resolve every element of estoppel. Moodley's references to "*our manager*", "*these reps*" and persons who had caused problems "*in my business*", coupled with his repeated undertakings to rectify the transactions, provide powerful evidence that the persons concerned operated within Telco's commercial structure. They materially undermine the later attempt to portray the person first described as an employee as a freelancer. The difficulty is that these WhatsApp messages were sent ex post facto and did not constitute a representation to Sapor by Telco that the person who committed the fraud was authorised to act on its behalf.

[173]The estoppel enquiry concerns, amongst other things, what representation attributable to Telco existed before Sapor acted to its prejudice, what Sapor understood the representative's authority to encompass, whether that understanding was induced by Telco rather than merely by the representative himself, and whether Sapor reasonably relied upon that representation when it financed the transactions.

[174]*Makate* emphasises that a representation founding estoppel must emanate from the principal, whether through words or conduct, and that the representee must reasonably have acted upon it to its prejudice. It also recognises that the appearance of authority may arise from the position in which the principal has placed the supposed agent and the course of dealing which the principal has permitted. These are inherently fact based enquiries.

[175]The WhatsApp communications appear principally to concern events after difficulties with the Church transactions had arisen. They may permit a powerful inference concerning the antecedent relationship between Telco and its representative, but they do not necessarily disclose the entire course of dealing existing when Sapor decided to advance the funds. Evidence from the persons

involved concerning the ordinary referral process and the parties' previous dealings may therefore legitimately bear upon the question.

c. *Ratification*

[176] Ratification presents a related difficulty. The plaintiff relies upon Telco's receipt of the transaction proceeds, its onward payments to the freelance representative, Moodley's personal intervention at the churches and his repeated assurances that Telco would resolve the problem. Those circumstances provide substantial evidence from which ratification might ultimately be inferred.

[177] The defendants' answer is that the money was received and disbursed before the fraud was discovered and that, once the true position became known, the representative's relationship with Telco was terminated. As indicated earlier, that version is inadequately particularised in important respects. The precise chronology of discovery, payment and subsequent conduct has not been satisfactorily explained.

[178] Yet the weakness of the explanation does not necessarily answer the distinct question whether ratification has been conclusively established. That enquiry depends upon what Telco knew when the relevant acts occurred and whether its subsequent conduct, with knowledge of the material facts, objectively manifested an adoption of the unauthorised transactions. Whether Moodley's assurances that he would "*sort out*" or "*rectify*" the transactions constituted adoption, rather than an attempt to mitigate the consequences of a fraud committed through Telco's business, is an inference which may properly be informed by oral evidence and cross-examination.

d. The analogy between estoppel, ratification and rectification

[179] The approach adopted in cases concerning rectification is instructive, although rectification itself is not a defence presently advanced. In *Lombaard v Droprop CC and Others*,²² the SCA dealt with detailed factual allegations that the written agreement did not reflect the parties' true agreement. It held that those allegations could not simply be rejected on the papers and recognised the

²² 2010 (5) SA 1 (SCA)

appropriateness of oral evidence where a genuine dispute existed concerning the true contractual position. The Court reiterated that a referral to oral evidence presupposes a genuine dispute of fact; oral evidence is not available merely to enable a litigant to search for a defence which has not been properly disclosed.

[180][] *Lombaard* is relevant by analogy because disputes concerning rectification, estoppel and ratification frequently turn upon communications, knowledge, intention, reliance and the inferences properly to be drawn from conduct. The fact that such an issue ordinarily benefits from oral evidence does not relieve the party relying upon it of the obligation to establish a genuine dispute. But where that threshold has been crossed, a court should be cautious about finally resolving competing inferences from affidavits alone.

e. *Assessment of bona fides*

[181] There are formidable difficulties in the defendants' case. The initial description of the person implicated in the fraud as an employee was subsequently altered to that of a freelance representative. Moodley's contemporaneous communications describe the relevant persons as "*reps*", place their activities within his business and involve Telco's manager and Moodley personally in attempts to rectify the transactions. Telco admittedly received the plaintiff's money and made transaction-specific onward payments to the representative. The defendants' attack upon the quantum is substantially answered by the settlement calculations, which reconcile with the contractual rental schedules and the certificates of indebtedness. The FICA and due-diligence arguments do not, without more, displace Telco's express contractual warranties.

[182] Those considerations may ultimately cause a trial court to reject the defendants' evidence. They may even make the plaintiff's case substantially more probable than on the material presently available. But neither *Maharaj* nor *Breitenbach* permits a summary judgment court to substitute an assessment of comparative probabilities for the enquiry prescribed by Rule 32. *Tumileng* draws the line at whether the defence is genuinely advanced rather than a sham; it does not authorise the court to decide the substantive merits of a genuinely disputed defence.

[183] There is particular significance in the fact that, once actual authority is denied, the plaintiff itself relies upon alternative juridical routes to establish Telco's responsibility, including actual authority, ostensible authority or estoppel, and ratification. Each depends upon a somewhat different factual enquiry: Actual authority concerns the scope of the representative's antecedent mandate; estoppel concerns representations attributable to Telco and Sapor's reasonable reliance upon them before acting to its prejudice. Ratification concerns Telco's knowledge and subsequent adoption of acts initially performed without authority.

[184] The contemporaneous documents provide substantial evidence bearing upon all three enquiries, but they do not necessarily eliminate the factual distinctions between them. In particular, the post-transaction WhatsApp communications are powerful evidence of the relationship between the representatives and Telco and of Telco's subsequent conduct, but they do not necessarily establish what representation concerning authority had been made to Sapor before it funded the transactions, nor precisely when Telco acquired knowledge sufficient to make its subsequent conduct an unequivocal ratification.

[185] The contractual interpretation question has a bearing upon those factual enquiries. The evidence concerning how representatives ordinarily procured transactions, how Sapor and Telco divided responsibility for verification, and how the repurchase mechanism functioned in practice may legitimately inform the context and commercial purpose against which clauses 3, 4 and 7 must be interpreted in accordance with *University of Johannesburg*.

[186] I must therefore guard against converting a conclusion that the plaintiff's case is presently the more persuasive into the different conclusion that *the defendants have disclosed no bona fide defence*. The former involves an assessment of apparent strength and probabilities; the latter is the question Rule 32 requires me to decide.

[187] In *Cohen NO*, the SCA's formulation is particularly apposite: Prospects of success are irrelevant if the defendant has disclosed a genuine and legally cognisable defence which, if proved at trial, would answer the claim. The defendants' case may be vulnerable, and their explanation of the

contemporaneous documents may ultimately prove unsatisfactory, but I am unable to conclude that the interrelated disputes concerning the representative's mandate, the representations attributable to Telco, Sapor's reliance, the knowledge necessary for ratification and the contextual interpretation of the Supplier Agreement are merely contrived or advanced for delay.

The conditional application to be granted the admitted amount paid to Telco

[188] There is one final aspect that I need to deal with and that is Sapor's claim for partial summary judgment in the amount it has been admitted as owing by Telco.

[189] Sapor argues in the alternative that it is at least entitled to summary judgment for R151 551.16, said to be admitted. That submission encounters two difficulties. First, the defendants admit receipt of the sum, but not unequivocally an indebtedness in that amount. They say it was received and disbursed in circumstances later revealed to be fraudulent. Second, the alternative claim was advanced through Sapor's supplementary affidavit rather than clearly as part of the original cause of action and relief.

[190] It was argued by Telco's counsel that without first determining whether or not it was permissible for these issues to be raised in a supplementary founding affidavit, there is no unambiguous admission of a presently enforceable debt that would justify partial summary judgment.

[191] Telco is current that this application was only raised in the supplementary founding affidavit; it was not raised in response to the amended plea. This was thus not a consequence of changing the representative's status from employee to freelancer.

[192] However, it may be argued that the claim for summary judgment in the admitted amount is implicit in the original claim. But, at the same time, Rule 28(8) cannot be used to create an entirely new cause of action for restitution or unjust enrichment simply because Telco amended its allegations regarding the agency of the person responsible for or participating in the fraud.

[193] There are also disputes as to whether the statements made by Moodley indeed amount to an admission.

[194] That being said, I accept that the defendants' account concerning the R151 551.16 is not entirely consistent. The original opposing affidavit describes the payments as connected to separate legitimate transactions unrelated to the Church agreements. The amended plea describes the same sum as received in relation to the Church transactions. Sapor is entitled to rely on that inconsistency. It may well be a matter of considerable forensic significance at trial, especially because the payment records appear to make reference to St Augustine's and St Francis, and Telco admits paying substantial portions to the alleged freelance representative.

[195] But the inconsistency does not convert the defendants' account into a bare denial.

[196] As I have found that Telco has done enough to get over the bar in resisting the application for summary judgment, it seems prudent that the trial court determine the question of quantum and whether amounts owing were or were not admitted.

Alleged reputational harm

[197] The defendants allege that Sapor made or caused defamatory communications to third parties which characterised Telco as a fraudulent or "dodgy" supplier. They say that this caused commercial and reputational loss and contributed to Telco ceasing to trade. They reserve the right to institute a counterclaim or to invoke set-off.

[198] However, no counter-claim has been instituted, a fact that may serve to indicate that the defendants are aware that their claim has no prospects; it may also be that at this stage, it is a claim that the defendants are not able to quantify.

[199] In any event, a reservation of a right to claim damages in the future does not amount to a defence or a presently operative set-off against Sapor's claim, particularly where damages claims are not liquidated. These allegations do not, on their own, preclude summary judgment. They may be relevant at a later stage

if properly pleaded, but they do not presently provide a defence to the plaintiff's claim.

The guarantee provided by Moodley

[200] Moodley's defence requires separate consideration. The defendants rely on *PG Group (Pty) Ltd v Amoretti*²³ and *Neon and Cold Cathode Illuminations (Pty) Ltd v Ephron*²⁴ for the proposition that a suretyship is accessory to the principal obligation. The fact that a person binds himself as co-principal debtor does not, without more, render him a primary debtor on an independent obligation.

[201] Sapor submits that the guarantee is deliberately framed in broader terms. It is described as continuing and absolute and unconditional. It also provides, in express language, that Moodley's liability is not affected by circumstances in which the underlying cause of Telco's indebtedness lacks legal effect, is voidable or is unenforceable due to lack of authority. Sapor says that the guarantee accordingly meets the defence advanced by Moodley head on.

[202] The guarantee cannot simply be assumed to be a conventional suretyship to which the ordinary accessory principle applies without qualification. Its language requires close consideration. At the same time, clause 15 confines Moodley's liability to Telco's obligations to Sapor under the Supplier Agreement and its addenda. The meaning and effect of that limitation must be reconciled with the "absolute and unconditional" language and the specific provisions relating to lack of legal effect and lack of authority.

[203] The ultimate enquiry is one of construction. Did Moodley undertake an autonomous obligation to pay Sapor on demand, independent of any enforceable indebtedness of Telco? Or did he undertake to secure Telco's obligations under the Supplier Agreement, albeit on terms that exclude particular suretyship defences? The answer may depend on the wording, context and commercial purpose of the guarantee. It also cannot be wholly divorced from the proper characterisation of the principal claim.

²³ *PG Group (Pty) Ltd v Amoretti* [2023] ZAGPJHC 6

²⁴ *Neon and Cold Cathode Illuminations (Pty) Ltd v Ephron* [1978] 2 All SA 1 (A)

[204] The defendants' separate plea that Moodley signed under a material misapprehension is weakly pleaded. No clear misrepresentation by Sapor is identified, and a subjective misunderstanding alone would ordinarily not avoid a written obligation. Nevertheless, that weakness does not remove the genuine construction issue arising from the guarantee read as a whole, particularly while the nature and extent of Telco's principal liability remains unresolved.

[205] Thus it is appropriate that the question of Moodley's liability also be referred to trial.

Conclusion

[206] Sapor has set out a coherent *prima facie* case based on a written Supplier Agreement, alleged contractual warranties, the contractual repurchase provisions, certificates of balance and a guarantee executed by Moodley. Its case is one of considerable merit.

[207] The defendants, however, have disclosed defences that may not be considered bald unsubstantiated denials. Their defence is that the Church Transactions were procured by a rogue freelance representative operating outside his authority, that neither Telco nor Moodley represented that he possessed the requisite authority, that Sapor independently dealt with and verified the purported end-users, that Sapor's reliance, if any, was not reasonable, that there was no informed ratification, that the amount claimed is disputed on specific factual grounds, and that the proper construction of the Supplier Agreement and the guarantee remains contested.

[208] Some aspects of the defendants' case are of questionable merit: Their explanation of the R151 551.16 requires clarification and their reliance on the end-user transactions being *void ab initio* does not automatically defeat a claim founded on Telco's own warranties. Their due-diligence and FICA submissions do not, without more, establish a complete defence. Their reputational-harm allegation does not justify any set off the liquidated amount said to be owing. In addition, Moodley's alleged material-misapprehension concerning the legal effect of the guarantee he signed has not been supported by any material facts and circumstances surrounding its conclusion.

[209] The material disputes include the nature and scope of the alleged freelance representative's authority, whether Telco made a representation sufficient to establish an estoppel, whether Telco ratified the transactions, the meaning and significance of the WhatsApp communications, the parties' respective roles in verification, approval, payment and delivery; of the end-user transactions, the construction and application of the warranties and repurchase provisions, the calculation and evidential effect of the certificates, and the proper construction of Moodley's guarantee.

[210] A determination of these disputes will require evidence. The Court would be required to decide contested inferences, evaluate credibility, construe communications in context and reconcile disputed versions regarding the payment and the conduct of the representative. That is not the function of summary judgment.

[211] Thus, although the plaintiff has demonstrated substantial difficulties in the defendants' version, and although its documentary case may ultimately prove compelling, Rule 32 does not require the defendants to establish that they will probably succeed at trial. The court must distinguish between a defence which appears improbable and one which is not genuinely advanced.

[212] Thus, although several of the defendants' arguments are weak or legally misconceived, the papers disclose a genuine factual dispute about who procured the fraudulent transactions, the capacity in which that person acted, what Telco and Moodley knew or authorised, and whether their subsequent conduct amounted to adoption or ratification of the transactions. Those questions go directly to Telco's liability under the Supplier Agreement and cannot safely be resolved by treating the WhatsApp exchanges as dispositive.

[213] Moreover, the proper interpretation of the Supplier Agreement in its commercial context, the antecedent scope and appearance of authority of the representative, the representations attributable to Telco upon which Sapor acted, and the knowledge and conduct said to constitute ratification remain genuinely contestable matters. Their determination would require me to decide substantive factual and interpretative issues rather than merely determine whether the defence is bona fide.

[214] I have already found that the defendants have discharged the burden resting upon them under rule 32(3)(b) to disclose facts which, if proved, would constitute *bona fide* defences that are not untenable in law.

[215] I accordingly conclude that summary judgment should be refused and the defendants should be granted leave to defend. This conclusion should not be understood as an endorsement of the defendants' version or as expressing a view that they are likely to succeed at trial. It reflects the narrower conclusion required by Rule 32- that the court cannot properly characterise the relevant defences as sham without determining factual and interpretative questions which should more appropriately be tested by oral evidence and cross-examination.

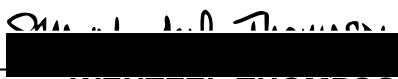
Costs

[216] There is no reason why the ordinary rule should not apply in matters for summary judgment, and thus that costs should not be costs in the cause in the main action.

Order

[217] The following order is made:

- a. The plaintiff's application for summary judgment is refused.
- b. The defendants are granted leave to defend the main action.
- c. The costs of the application for summary judgment, including the costs occasioned by the supplementary affidavits and the condonation application, are costs in the action.


WENTZEL-THOMPSON J
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of the hearing: 30 July 2026
Date of the judgment: 31 August 2026

For the Applicant:

Advocate Ushir Ahir instructed by
Jay Mothobi Inc

For the Respondent:

RM Inc Attorneys