IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

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

[redacted]

SIGNATURE DATE: 19 February 2024

Case No. 2023-008088

In the matter between:

SUPER STEEL LDA Plaintiff

and

MACHAVA TRADING CC Defendant

JUDGMENT

WILSON J:

1 The plaintiff, Super Steel, seeks provisional sentence in the sum of just over R17.5 million on an acknowledgement of debt signed on behalf of the defendant, Machava. Machava accepts that the acknowledgement was signed by one of its employees and that it is in all material respects a valid and liquid document on its face. Machava nonetheless denies that the employee who signed it, a Mr. Devanunthan, had any authority to do so.

2 In its replying affidavit, Super Steel pleaded that Machava was estopped from denying Mr. Devanunthan's authority. This point was also pursued in heads of argument drawn by the plaintiff's counsel, Mr. Nxumalo. However, in his oral argument, Mr. Nxumalo abandoned Super Steel's reliance on Mr. Devanunthan's ostensible authority. Mr. Nxumalo instead pressed the point that, on the undisputed facts, it had to be concluded that Mr. Devanunthan had actual authority to acknowledge Machava's debt to Super Steel on Machava's behalf.

3 Mr. Nxumalo was entirely right to abandon the estoppel point. This court's decision in *Colee Investments (Pty) Ltd v Papageorge* 1985 (3) SA 305 (W) makes clear that a plaintiff's reliance on estoppel to establish the authority of a signatory to a liquid document in fact destroys that document's liquidity and prevents a court from granting provisional sentence on the document. It is true that, in *Sebenza Shipping and Forwarding (Pty) Ltd v Passenger Rail Agency of South Africa (Soc) Ltd* 2019 (2) SA 318 (GJ), Wepener J refused to apply the *Colee* decision to the distinguishable and somewhat more complex facts before him in that case. *Colee* remains good law, however, and Mr. Nxumalo happily pivoted to a case of actual authority when faced with it.

4 The question before me, then, is whether Mr. Devanunthan was in fact authorised to sign the acknowledgement of debt. Neither party asked me to hear oral evidence on this issue, so I am left with what the papers say. Annexed to the provisional sentence summons is a copy of the acknowledgement on which Super Steel relies, together with a letter from Mr. Devanunthan warranting his authority to sign it.

5 The allegation of Mr. Devanunthan's authority is met with a bare denial in the answering affidavit. Machava is a close corporation. The only evidence under oath that might amplify its denial of Mr. Devanunthan's authority is the fact that Mr. Devanunthan is not a member of the close corporation. The sole member of the close corporation is a Ms. Devanunthan. It is not explored on the papers whether Ms. Devanunthan is related to Mr. Devanunthan other than as his employer.

6 In reply, Super Steel puts up a series of emails which demonstrate that Mr. Devanunthan routinely operates as a very senior employee. He regularly binds Machava onto significant financial transactions. He negotiates with Machava's bankers. He also distinguishes his authority to do so from that of any of Machava's other employees. Mr. Devanunthan clearly holds himself out in these emails as authorised to sign documents such as the acknowledgement of debt. But that is of course not enough. I must be able to conclude that the emails, taken together with all the other facts available on the papers, are evidence of Mr. Devanunthan's actual rather than ostensible authority.

7 Ms. Scott, who appeared for Machava, accepted that there were really only two facts that might count against the proposition that Mr. Devanunthan had the requisite authority to bind Machava to the acknowledgement of debt. The first of these is that he is not a member of the close corporation (although the close corporation's registration documents make clear that he was once a member, and that he resigned on 6 June 2010). The second is that Ms. Devanunthan is copied in to all of the emails in which he purported to bind Machava to financial arrangements made in the ordinary course of its

business. In her heads of argument, Ms. Scott also says that the acknowledgement of debt was signed in Ms. Devanunthan's absence, but Ms. Scott was driven to concede in argument that this was not alleged in Machava's answering affidavit, which are silent on when and how Ms. Devanunthan learned of the acknowledgement.

8 Provisional sentence proceedings are interlocutory in nature. Accordingly, the inherent probabilities test set out in *Webster v Mitchell* 1948 (1) SA 1186 (W), at 1189, is likely the appropriate method by which to choose between the parties' competing versions. However, even if I were to apply the test for the resolution of factual disputes in applications for final relief set out in *Plascon-Evans Paints Ltd v van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A), at 635A-C, which is inherently more generous to Machava, my conclusion would be the same.

9 On these papers, the proposition that Mr. Devanunthan was not authorised to sign the acknowledgement of debt is so far-fetched and untenable that it must be rejected. Against Machava's bare denial of Mr. Devanunthan's authority I must weigh Mr. Devanunthan's warranty of his own authority and the fact that the papers disclose that Mr. Devanunthan regularly exercises authority of that nature on Machava's behalf, albeit with Ms. Devanunthan's knowledge. Machava's failure to put up an admissible version on when Ms. Devanunthan knew of Mr. Devanunthan's signature on the acknowledgement of debt means that there is in fact no positive evidence that Mr. Devanunthan lacked the authority he warrants in the acknowledgement of debt.

10 It would have been one thing to say that Mr. Devanunthan signed the acknowledgement behind Ms. Devanunthan's back, but that case is not made out. What appears from the papers is that a very senior employee, who was once a member of the close corporation, and who regularly binds the close corporation in its dealings with others, including its bankers, signed the acknowledgement and warranted his authority to do so. Despite arguing that Mr. Devanunthan should not have done so without her knowledge, Ms. Devanunthan does not say whether she actually knew of Mr. Devanunthan's decision in this particular instance. Given the ordinary course of the close corporation's conduct, in which Mr. and Ms. Devnanunthan always acted with each other's knowledge, it is untenable to suggest that, on this occasion, in a transaction involving so much money, Mr. Devanunthan would have bound Machava to the acknowledgement without Ms. Devanunthan's foreknowledge and consent, or, at the very least, her ratification of his decision.

11 On the papers, then, the acknowledgement must be taken to have been made with Machava's full authority.

12 For all these reasons –

12.1 Provisional sentence is granted.

12.2 The defendant shall pay the plaintiff the amount of R17 538 621.85.

12.3 The Defendant shall pay interest on this sum at the rate of 7.25% *a tempore morae* from the date of issuing of summons to the date of final payment.

12.4 The defendant shall pay the plaintiff's costs of suit on the attorney and client scale.

S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 19 February 2024.

HEARD ON:	14 February 2024
DECIDED ON:	19 February 2024
For the Plaintiff:	NS Nxumalo Instructed by Farinha Ducie Christofli Attorneys
For the Defendant:	A Scott Instructed by Theart May Ramabulana Inc