IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case no: 24139/2024

In the matter between:

QNET NETWORKING SOLUTIONS (PTY) LTD **Applicant**

and

D & E STEEL (PTY) LTD **Respondent**

JUDGMENT DELIVERED ELECTRONICALLY ON 28 MAY 2025

MANGCU-LOCKWOOD, J

A. INTRODUCTION

[1] This is an application for specific performance in terms of an alleged agreement between the applicant and the respondent, in which the applicant seeks delivery of 208 units of sections of steel described as 200 x100 IPE, alternatively an order for cancellation and damages.

[2] The application is opposed by the respondent, and as a point *in limine* it challenges the *locus standi* of the applicant. The respondent points out that, whilst the applicant's case is based on a partly verbal and partly written agreement, it has attached as proof an invoice dated 2 February 2023, which was issued, not to the

applicant but to Mr Rahim, the deponent to the founding affidavit, in his personal capacity.

[3] It is also stated in the answering affidavit that at all material times the respondent's staff members were under the impression that they were dealing with Mr Rahim in his personal capacity and were unaware that he purported to act on behalf of the applicant. The first time it came to their notice that he purported to act on behalf of the applicant was when they received a letter of demand from the applicant's attorneys of record, where it was claimed that the attorneys represented Mr Rahim and the applicant. As a result, says the respondent, there could not have been a valid agreement between the applicant and the respondent, and the applicant lacks *locus standi* to bring these proceedings.

[4] In reply to the point *in limine*, the applicant states that he has been conducting business with the respondent's sales representative, Mr Herman Krause, for the past three years and Mr Krause was aware that he, Mr Rahim, represents the applicant. Furthermore, that Mr Krause would know this from his previous employment where he dealt with Mr Rahim. The applicant also states that on 'the day in question' - it is not clear when - he informed Mr Krause that he required the steel for a project of the applicant.

[5] There are some difficulties with the manner in which the applicant has chosen to deal with this issue. Firstly, the averments made in the paragraph immediately above appear for the first time in the replying affidavit. It is trite that that a party is required to make out its case in its founding papers. Secondly, given the averment in the answering affidavit that Mr Rahim made no mention that he represented the applicant and that this was only discovered upon receipt of the letter of demand, the issue is self-evidently in dispute. And the applicant's averment leaves much to be desired because it is vague. Mr Rahim states it was 'on the day in question' that he advised Mr Krause that he required the steel for the applicant. Given that the founding papers allege that there were numerous engagements between Mr Rahim and Mr Krause between 2 February 2023 and 7 February 2023, I would have expected the applicant to deal with this issue with greater particularity. It effectively

amounts to a bald averment, which as I have indicated, is made in reply. At the very least, this is a dispute that cannot be resolved on the papers.

[6] One abiding question that arises from the version proffered in the replying affidavit is, if Mr Krause previously dealt with Mr Rahim in his capacity as representative of the applicant, surely he would have known to issue the invoice to the applicant and not to Mr Rahim. And the applicant has not gone as far as to claim that the invoice was erroneously issued in his name instead of his company's name. Although the applicant's counsel attempted to advance such an argument in his heads of argument, it is not supported by any evidence.

[7] As for the allegation made in the replying affidavit that Mr Rahim has dealt with Mr Krause for the past three years, I note that the replying affidavit was deposed on 18 March 2025, some two years since the incident, so the majority of the three years would have been with Mr Krause working at the respondent, after the events in this matter.

[8] The most significant problem facing the applicant is the fact that the only document relied upon for its contention that there was an agreement in respect of which it seeks specific performance is the invoice dated 2 February 2023, which, as I have adverted was made out, not to the applicant but to Mr Rahim. There is no attempt, even in the replying affidavit, to explain why he was happy to pay make payment on an invoice which is addressed to himself if it was indeed supposed to be addressed to the applicant. There has never been an explanation that, for example, the invoice was issued to him erroneously (this is stated for the first time in the heads of argument) or that he told Mr Krause to issue it in his name.

[9] In his heads of argument, the applicant's counsel sought to deal with this issue by referring to legal authority that deals with authorization for a person to bring an application on behalf of a company. That however is not the issue. There is no dispute with the fact that Mr Rahim deposes to the papers on behalf of the applicant by virtue of his directorship and co-ownership of the applicant. Nor is there an issue raised with the certificate from the Companies and Intellectual Property Commission (CIPC) attached to his affidavit indicating such directorship.

[10] The issue is that it has not been established that the applicant was a party to the agreement. As the applicant correctly states, there is not a single direct mention of the applicant in the papers, save for the letters of demand preceding these proceedings from the attorneys who themselves stated that they represented both the applicant and Mr Rahim. And Mr Rahim is not cited as a party to these proceedings in his personal capacity.

[11] The clearest example of the problem is that there is no description of the applicant in the papers, as one would normally expect at the start of the founding affidavit. Instead, there is a description of Mr Rahim. The Court remains in the dark regarding the nature of, or any other description of the applicant. The affidavit is equally silent regarding the attitude of its co-director who is mentioned in the CIPC document. The remainder of the founding affidavit follows suit, referring consistently to Mr Rahim as the contracting party who also complied with the terms of sale.

[12] Notably, it is stated as follows at paragraph 5 of the founding affidavit:

> *"On or about 2 February 2023, at Kuilsriver, the respondent duly represented by its salesman, Herman Krause ("Herman") and I concluded a partly oral and partly written agreement at the respondent's business premises in terms of which the Respondent issues a pro forma invoice for 208 units of 200 by 100 IPE Sections.*

[13] As the respondent's counsel correctly states, the drafter of this paragraph clearly appreciated the need to accurately describe the parties to the agreement, and was content in describing the applicant as "I", referring to the deponent, Mr Rahim. This pattern of the deponent referring to himself as the other party to the agreement, can be found throughout the founding affidavit. It has been stated that, when determining an objection taken in *limine* as to the *locus standi* of a party, the issue must be dealt with on the assumption that all the allegations of fact relied upon by that party are true.[1] On application of that assumption, the picture emerging from the

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[11] See *Erasmus* D1-175 *et seq*.

founding affidavit which consists, in the main, of allegations concerning Mr Rahim in his personal capacity, supports the respondent's case that the agreement was not in the name of the applicant.

[14] In argument, Mr Garces referred to three instances in the founding affidavit where reference is made to the business of the applicant. The first is in relation to the alleged prejudicial effect on Mr Rahim and 'my business' at paragraph 34. This, however, does not establish *locus standi* because the averment concerns events which allegedly occurred after conclusion of the agreement.

[15] The second mention of the applicant referred to occurs at paragraph 42.1 under the heading *"Relief Sought"*, where it is submitted that *"the aforegoing facts unequivocally demonstrate the fact of the agreement concluded between the respondent and the applicant"*. On its express wording, it presupposes that the necessary facts for the conclusion drawn in this paragraph would have been laid out before the paragraph in question. It does not itself establish *locus standi*.

[16] The third reference relied upon is an e-mail from Mr Rahim dated 9 February 2023 and headed "*Qnet Steel Order*". This e-mail was sent to Mr Krause around the time of incident, and is the closest indication that the steel order may have been made on behalf of the applicant. However, it does not cure the defect contained in the papers because, the fact that the order was made on behalf of the applicant is not mentioned in the papers of the applicant. In fact, whilst the content of email was reproduced in the founding affidavit, the heading now relied upon, which is contained an email attachment, was not even mentioned in the affidavit. It is trite that a party may not rely on the contents of an attachment without adducing evidence in support thereof. It is not for a court to make out a case on behalf of a party by reference to attachments to its affidavit.

[17] There is otherwise not a single mention of QNet Networking Solutions in the applicant's papers relating to the contract that is the subject of this case. As the respondent's counsel argued, it is possible Mr Rahim owns other businesses, which may well be the entities on whose behalf he entered into the alleged agreement with the respondent.

[18] Although this issue may, at first seem to be elevating form over substance, it is nonetheless important. The question of whether a litigant's interest, in this case the applicant, is sufficient to clothe it with standing must be determined in the light of the factual and legal context.[2] In this case, the applicant has brought proceedings to execute an alleged agreement by means of an application. And the only document it uses in support of the existence of an agreement is the invoice, which does not contain the name of the applicant. It is trite that a company is a legal entity distinct from its shareholders, and has rights and liabilities of its own, separate from those of its shareholders.

[19] The general rule of our law is that a person or entity which claims relief from a court in respect of any matter must establish that it has a direct interest in that matter in order to acquire the necessary *locus standi* to seek relief.[3] No person, including an entity, can sue in respect of a wrongful act, unless it constitutes a breach of a duty owed to that entity by the wrongdoer, or unless it causes that entity some damage in law, which is also referred to as "some grievance special to [it]self"[4]. A party alleging a contract must allege and prove the terms of the agreement on which he or she seeks to rely.[5]

[20] The effect of the all the above is that the issue of whether the applicant was a party to the agreement remains in dispute. In application proceedings, where a dispute of fact has emerged and is genuine and far-reaching and the probabilities are sufficiently evenly balanced, referral to oral evidence or trial, as the case may be, will generally be appropriate.[6] Uniform Rule 6(5)(g) provides as follows:

> "*Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a*

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[2] *Firm-O-.Seal CC v Prinsloo & Van Eeden Inc and Another* (483/22) [2023] ZASCA 107; 2024 (6) SA 52 (SCA) (27 June 2023) para 6; See also Erasmus D1-187. *JDJ Properties CC and Another v Umngeni Local Municipality and Another* (873/11) [2012] ZASCA 186; [2013] 1 All SA 306 (SCA); 2013 (2) SA 395 (SCA) (29 November 2012) para 27.
[3] *Dalrymple & others v Colonial Treasurer 1910 TS 372 at 379.*
[4] *Op cit.*
[5] *Telcordia Technologies Inc v Telkom SA Ltd* 2007 (3) SA 266 (SCA) at para 32.
[6] *Mamadi and Another v Premier of Limpopo Province and Others* [2022] ZACC 26 para [44].

view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the a foregoing, it may direct that oral evidence he heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise."

[21] The Rule allows a court faced with a dispute of fact that cannot be decided on the papers to follow anyone of three alternatives: it may dismiss the application, or direct that oral evidence be heard on specified issues, or refer the matter to trial. A court is not restricted to the listed remedies and may make any order it deems fit and which is directed at ensuring a just and expeditious decision.

[22] Given the discussion earlier, I am of the view that the issue of the *locus standi* of the applicant is a material dispute of fact. On the face of the pleadings, it appears that the applicant did not appreciate that this issue might amount to a material dispute of fact, and appears to have taken it as 'fact' that Mr Rahim, being a director, was sufficiently representative of the applicant. On the other hand, the respondent admits to receiving communication before the launch of these proceedings in which the applicant is mentioned, and thus the applicant's involvement in these proceedings is not a surprise. Neither is it disputed that Mr Rahim has at all times dealt with the respondent, including by making payment. Had he been cited in his personal capacity, the issue might well not have arisen. It is possible that the issue is one of bad pleading.

[23] While it is so that an application for a referral to oral evidence or trial, where warranted, should be applied for by a litigant as soon as the affidavits have been exchanged and not after argument on the merits[7], that is not an inflexible rule[8]. And courts are loathe to deal with matters on a piecemeal basis, or to dispose of matters based on points taken *in limine.* The issue to be determined is simple and discrete. I

[7] *Lombaard v Droprop* 2010 (5) SA 1 (SCA) at para [53].
[8] *Kalil v Decotex (Pty) Ltd and Another* 1998 (1) SA 943 (A) at 981 D-F.

am therefore of the considered view that referring the matter to oral evidence would ensure a just and expeditious decision.

ORDER

[24] In the result, the following order is made:

1. The issue concerning the applicant's *locus standi* is referred to oral evidence.

2. Costs are reserved for later determination.

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N. MANGCU-LOCKWOOD
Judge of the High Court

APPEARANCES:

For the applicant	:	Adv M. Garces
Instructed by	:	Parker Attorneys I. Hamid
For the respondent	:	Adv A. Walters
Instructed by	:	Hickman van Eeden Phillips Inc. A. Phillips