REPUBLIC OF SOUTH AFRICA

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

CASE NO: 20063/2003

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

....
DATE SIGNATURE

In the matter between:

D A UNGARO & SONS (PTY) LIMITED Plaintiff

and

ABSA BANK LIMITED Defendant

SUMMARY

Banking law – savings bank account – relationship between banker and customer – duties of bank towards customer – negligence and breach of agreement in regard to opening of account and operation thereof – bank customer (company) instructing its manager to open savings account – bank

subsequently allowing company manager to make transfers and/or withdrawals from account without the requisite authorisation from company – company suffering loss – bank held liable – no countering evidence from bank.

J U D G M E N T

MOSHIDI, J:

[1] This matter has a chequered, long, and old history. The plaintiff has instituted action against the defendant based on alleged negligence, and the breach of an agreement relating to the plaintiff's bank account held at the defendant during July 2000, as more specified below. The account in question is called an Active Save Savings' Account ("*the account*"). As the action was heavily contested over an extended and truncated period, including plaintiff's application to amend its particulars of claim, it is necessary to refer in some detail to the pleadings, where necessary. The starting point is paras 3 to 7 of the particulars of claim framed in the following terms:

> "*3.*
> *3.1 In or about July 2000 and at the defendant's branch in Northcliff, Johannesburg, the Plaintiff (represented by Mr K S Huang) and the Defendant (represented by an official whose name is not known to the Plaintiff) entered into an agreement in terms whereof the Defendant permitted the Plaintiff to operate an active savings account under account number [....].*
>
> *3.2 The agreement was orally concluded, alternatively, in writing. The Plaintiff alleges that such writing consists of standard forms used by the Defendant for the opening of such account, in accordance with Defendant's usual banking practice. The Plaintiff is not in possession of any such documents.*

3.3 Alternatively to paragraphs 3.1 and 3.2 above:-

3.3.1 The Plaintiff and the Defendant concluded a tacit agreement between them at Northcliff, Johannesburg, in terms whereof the Defendant permitted the Plaintiff to operate an Active Savings Account under Account Number [....];

3.3.2 The tacit agreement arose under the following circumstances:

3.3.2.1 During July 2000 and at the Defendant's Northcliff Branch, the Defendant, represented by an employee, opened an Active Save Account under Account No. [....] ('the Actives Save Account) in the name of the Plaintiff;

3.3.2.2 The Plaintiff's Financial Manager, Mr K S Huang, ('Huang') opened the Active Save Account;

3.3.2.3 By opening the Active Save Account, the Defendant regarded the Plaintiff as its customer;

3.3.2.4 Pursuant to the opening of the Active Save account, inter alia:

3.3.2.4.1 Funds of the Plaintiff were deposited and transferred in the Active Save account; and

3.3.2.4.2 Cheques drawn in favour of the Plaintiff were deposited into the Active Save account;

3.3.2.4.3 The Defendant produced Active Save Account bank statements in the name of the Plaintiff;

3.3.2.5 Conducted itself and the Active Save Account on the basis that it was the Plaintiff's banker and that a debtor/creditor relationship existed between the parties in respect of the Active Save Account. In this regard, and without limiting the generality of the aforegoing:

3.3.2.5.1 The Defendant permitted funds out of the Active Save Account to be

withdrawn and/or transferred to other bank accounts in the name of the Plaintiff held with the Defendant (although these other bank accounts were fraudulent).

3.3.2.5.2 The Defendant insisted that in order for the Plaintiff to close the Active Save account, the Plaintiff was required to provide the Defendant with written documents proving that the account could be closed.

3.3.2.5.3 The Defendant was only willing to make payment to the Plaintiff of the balance outstanding on the Active Save account provided that the Plaintiff accepted the said balance in full and final settlement of all claims that the Plaintiff had against the Defendant.

3.3.2.5.4 Save for the pleadings in this action, at no time did the Defendant dispute an agreement in respect of the Active Save account, nor did the Defendant allege or inform the Plaintiff that it did not conclude an agreement with it in respect of the Active Save Account.

4.

4.1 In terms of the agreement the Defendant agreed:

4.1.1 to accept payments and deposits made by the Plaintiff or on its behalf into the account;

4.1.2 to make payments out of the account only on instructions duly authorized by the Plaintiff in writing;

4.1.3 to pay any amount standing to the credit of the Plaintiff in the account to the Plaintiff on demand;

4.1.4 it would not act negligently in dealing with and handling the account.

4.2 It was also agreed that the Defendant would be entitled to debit the account with its usual or banking charges as and when they fell due.

5. Shortly after the conclusion of the agreement the account was opened and operated by the Plaintiff.

6.

6.1 In breach of its obligation under the agreement the Defendant debited the account with various sums of money which were not authorized by the Plaintiff. Details of these unauthorized debits appear from a schedule annexed hereto marked 'A'.

6.2 As appears from the Schedule, the total of such unauthorized debits amounts to the sum of R11 680 928,74. The Plaintiff has recovered R9million of the unauthorized debits and has accordingly suffered a loss of R2 680 928,74..

6.3 In the alternative to paragraphs 6.1 and 6.2 above:-

6.3.1 On the instructions of Mr K S Huang, the Defendant debited the account with various sums of money, the details of which appear from the schedule, annexure 'A' hereto;

6.3.2 The Defendant breached the agreement in that it acted negligently in dealing with and handling the account. The Defendant was negligent in one or more or all of the following respects:

6.3.2.1 …

6.3.2.2 The Defendant failed to ascertain that Mr K S Huang was not authorized to instruct the Defendant to make payments out of the account;

6.3.2.3 The Defendant failed to take all reasonable steps to ensure that payments out of the account were only authorized by the Plaintiff.

6.3.3 The Plaintiff did not receive any benefit arising from the debits on the account, nor did the Plaintiff authorize the debits.

6.3.4 As a consequence of the Defendant's conduct and breach of the agreement, the Plaintiff suffered a loss in the sum of R2 680 928,74 being the amount as set out in the Schedule, less R9 million recovered by the Plaintiff.

6.3.5 Had the Defendant acted without negligence and not breached the agreement, the Plaintiff would not have suffered the loss.

6.3.6 The loss of the Plaintiff detailed above was contemplated by the parties as foreseeable at the time of conclusion of the agreement.

7. *In the premises the Defendant is liable to pay to the Plaintiff the aforesaid sum, alternatively, the Plaintiff has suffered damages in the said sum which, despite demand, the Defendant has failed to pay.*

WHEREFORE THE PLAINTIFF CLAIMS:

1. *Payment of the sum of R2 680 928,74;*

2. *Interest on the aforesaid sum at the rate of 15,5% per annum calculated from 1 June 2001 to date of payment;*

3. *Costs of suit;*

4. *Further or alternative relief.*"

[3] Annexure "A" to the particulars of claim detailed the unauthorised withdrawals out of the account of the plaintiff, as follows:

"*1.*	*24 July 2000*	*250 000,00*
2.	*1 November 2000*	*400 000,00*
3.	*18 November 2000*	*100 000,00*
4.	*13 December 2000*	*130 928,74*
5.	*23 March 2001*	*400 000,00*
6.	*6 April 2001*	*100 000,00*
7.	*8 May 2000*	*40 000,00*
8.	*11 May 2001*	*60 000,00*
9.	*17 May 2001*	*100 000,00*
10.	*22 May 2001*	*32 000,00*
11.	*25 May 2001*	*40 000,00*
12.	*30 May 2001*	*28 000,00*
13.	*30 October 2000*	*10 000 000,00*
TOTAL		***11 680 928,74***"

THE DEFENDANT'S PLEA

[4] In the amended plea, the defendant pleaded, *inter alia*, as follows:

"*3. AD PARAGRAPH 3*

3.1 During July 2000 and at the defendant's Northcliff branch the defendant, represented by duly authorised employees including, inter alia, Ms Judie Lourens, opened an Active Savings account under account number [....] ('the account') in the name of D A Ungaro & Sons (Pty) Ltd.

3.2 It is admitted that Mr K S Huang opened the aforesaid account.

3.3 At the time of the opening of the account the defendant's standard form entitled 'Application to Open a Savings/Investment Account' was completed, and a true copy thereof is attached hereto as Annex 'B'.

3.4 At the time of the opening of the account Huang represented to the defendant:-

3.4.1 That he personally had an existing account with the defendant under account number [....];

3.4.2 That he was entitled to act on behalf of D A Ungaro & Sons (Pty) Ltd in entering into the agreement to open the account in the latter's name;

3.4.3 That a full and correct disclosure of all relevant information relative to the account, including the identity of the person or persons who could lawfully operate on and withdraw or transfer funds from the account, was made on Annex 'B'.

3.5 Save as aforesaid, each and every allegation contained in this paragraph is denied as if specifically traversed.

3(bis) The allegations herein contained are denied.

The defendant specifically denies that any tacit agreement was concluded.

The Defendant pleads that an express agreement was concluded containing the express terms set out in Annexure 'B' to the plea.

The Defendant pleads further that the agreement was concluded during July 2000 prior to any of the alleged events set out in paragraph 3.3.2.4 and as a consequence these alleged events could never have formed part of the surrounding circumstances at the time of the conclusion of the agreement.

Save as aforesaid, the allegations herein contained are denied.

4. *AD PARAGRAPH 4*

Each and every allegation contained in this paragraph is denied as if specifically traversed.

5. *AD PARAGRAPH 5*

Each and every allegation contained in this paragraph is denied as if specifically traversed.

6. *AD PARAGRAPH 6*

6.1 *The defendant admits having debited items 1 to 4 and items 8 to 15 of Schedule 'A' to the account.*

6.2 *The said debits were effected on the instructions of Huang.*

6.3 *The defendant admits that the schedule totals to an amount of R2 680 928.74.*

6.4 *The defendant specifically denies that items 5, 6 and 7 were debited to the account in issue.*

6.5 *In the premises the defendant pleads that the total of the aforesaid admitted debit entries amount to R1 680 928.74.*

6.6 *Save as aforesaid, each and every allegation contained in this paragraph is denied as if specifically traversed.*

7. *ALTERNATIVELY to paragraphs 3, 4, 5 and 6 and only in the event of it being found that the contents of these paragraphs have been proved by the plaintiff, the defendant pleads that:-*

7.1 *Huang was the agent of the plaintiff in opening the account;*

7.2 Huang <u>alternatively</u> the plaintiff represented to the defendant:-

7.2.1 That Huang was authorised by the plaintiff to open the account;

7.2.2 that Huang would impart full and correct information relative to the account, including the identity of the person or persons who could lawfully operate on and withdraw or transfer funds from the account on behalf of the plaintiff;

7.2.3 that Huang was authorised to give instructions relating to the operation of and withdrawal or transfer of funds from the account.

7.3 Huang opened the account and operated thereon by effecting deposits for the credit of the account and by giving instructions for the withdrawal or transfer of funds from the account;

7.4 The defendant accepted the correctness of the facts as represented by Huang or the plaintiff and acted to its detriment by:-

7.4.1 accepting Huang as the plaintiff's agent to open the account;

7.4.2 accepting that Huang had imparted full and correct information as aforesaid;

7.4.3 accepting Huang as the plaintiff's agent to give instructions as to how the account should be operated as aforesaid.

7.5 The plaintiff acted negligently:-

7.5.1 in clothing Huang with authority to partly operate on the account;

7.5.2 failing to advise the defendant that Huang's authority to operate on the account did not extent to the effecting of withdrawals and/or transfers;

7.5.3 by failing to provide the defendant with a mandate specifying the identity of the person who had been authorised to operate on the account.

7.6 In the premises the plaintiff:-

7.6.1 is bound by the aforesaid representations and actions of Huang; and

7.6.2 is estopped from denying that the withdrawals and/or transfers underlying the debit entries in issue were not authorised by the plaintiff.

7. AD PARAGRAPH 7

Each and every allegation contained in this paragraph is denied as if specifically traversed.

WHEREFORE the defendant prays for:-

1. Judgment in its favour;

2. Costs of suit;

3. Further and/or alternative relief."

[5] Annexure 'B' referred to in paragraph 3.3 of the defendant's plea, is the defendant's "*application to open a Savings/Investment Account*" form which gave rise to the savings account in question. It is common cause that the application form was completed and signed by the plaintiff's financial manager, Mr K S C Huang ("*Huang*") the person referred to in the pleadings, at the defendant's Northcliff branch on 6 July 2000. The application was made on behalf of the plaintiff on instructions mentioned later below. The application was also signed, and apparently completed by the defendant's Relationship Manageress, Ms Judy Lourens ("*Judy*"), referred to in the pleadings above. A new account number, i.e. [….], was allocated in the name of the plaintiff. It is significant that next to the question, "*Do you have any existing accounts with Absa Bank in the same name*?", the relevant block was ticked "*Yes*". In addition, in the follow up question, "*If 'Yes', please quote the account number",* and the account number i.e. [....], being the personal account of Huang, was inserted. The address of the plaintiff was given as 487 Gelding Avenue, Ruimsig which is Huang's address. Huang became the

Financial Manager of the plaintiff from about October 1992. The plaintiff was in the tyre business, including wheel alignment and balancing. Prior to the opening of the Account under discussion, the plaintiff was offered by the defendant a rate of 10,45% per annum on a R15 million investment. Huang turned out to be the fraudster in this matter. As a consequence, Huang was under criminal investigation by the police at the time of the trial. All of the above were common cause at the trial. However, there will be more to say about the application form, annexure “B”, later.

[6] As stated before, the trial was truncated and postponed at least twice when it was set down. This, in between long periods. There were several reasons responsible for this. These included that, estimates provided for the duration of a civil trial in this high court, are often unpredictable and unreliable; by the nature of the plaintiff’s claim, it sought to rely partly on the evidence of witnesses who were either, in the employ of the defendant, or had since become unavailable for a variety of reasons; the change of legal representatives involved; the absence of the defendant’s procedure manuals for the period 2000 to about 2003 in regard to the account in question; the plaintiff’s application to amend its particulars of claim brought during the trial, which was opposed strenuously, and had to be heard later when this court was in the opposed motion court; part-heard civil trials in this high court are notorious for taking long (at that stage) for re-enrolment; the defendant’s initial contention that it never entered into an agreement with the plaintiff when the account in question was opened; and finally, that the court was on long leave during the second term.

[7] Be that as it may, the trial was set down before me for 27 August 2007 and became part-heard on 30 August 2007. At that stage the plaintiff was represented by Mr Maselle and the defendant by Mr Cochrane. The parties agreed to postpone the matter *sine die* on the basis that certain documentation in the possession of the defendant, excluding the defendant's procedure manuals for the period 2000 and 2001, had come to light belatedly. This, after lengthy addresses, including interlocutory applications, such as the separation of issues in terms of Rule 33(4), and after the plaintiff had led the evidence of certain witnesses as discussed immediately below.

THE PLAINTIFF'S WITNESSES

[8] On 28 August 2007, Ms Nancy Sheila Wright ("*Wright*"), was the plaintiff's first witness. Wright was apparently subpoenaed by the plaintiff, as became evident in her testimony. At the time of her evidence, she had been employed by the defendant from about 1998. She was a branch manageress at defendant's Rivonia branch. She was not involved in the opening of accounts such as the one under discussion. Wright's evidence plainly was not helpful at all. She was not cross-examined. Mr Yassim Hendricks ("*Hendricks*") testified.

[9] He testified on two separate occasions. At the time of his initial evidence, and also subpoenaed by the plaintiff to testify, he was a branch manager of the defendant with some 10 years' service. In that time, he worked in different departments of the bank. He was also involved in the opening of savings accounts, but only in 2003. On the hotly debated and

controversial matter of the defendant's procedural manuals, Hendricks said that the defendant indeed had procedural manuals in respect of an Active Save Account for the period 2000 to 2001. In a rather evasive manner, Hendricks said that he had never, either dealt with a company account or opened a company account as such. The evidence of Hendricks, confirming the existence of the procedural manuals at the time of the opening of the account in question, swiftly prompted counsel for the plaintiff to seek better compliance with a previously served notice in terms of Rule 35(3). In response to the latter rule request, the defendant had responded that it did not have such procedure manuals. The plaintiff's counsel also argued that, in its Rule 36(9)(b) notice, the defendant indicated that, its expert witness, Ms Ethel Weppenaar, would testify on *inter alia*, the standard banking procedures and practices in general and in particular in the conduct of savings accounts such as the Active Save Savings Accounts from time to time, including such procedures and practices during 2000.[1]

[10] When Hendricks re-entered the court room and the witness stand, he was asked a few hypothetical questions. These included that, if an account was in the name of an individual customer, would the defendant allow the individual's brother to transact and withdraw out of such account. The answer was that it all depended on whether or not the brother had authority to transact on the account. The other question was whether if an individual approached the defendant and alleged that they are the client of the defendant, how would the defendant check the veracity of such allegation, Hendricks answered that, "*by means of an identification book, and if they did not have an identification book, the defendant would request a signature*

[1] See index to expert witnesses' statement bundle pages 34 to 40.

verification on the account …". However, "*the defendant would first try and establish where the person's identification is and why that person does not have their identification with them*".[2]

[11] In regard specifically to the procedures the defendant had in place for ascertaining who was entitled to operate on an Active Savings Account, Hendricks said that, "*the accountholder would transact on the account, unless he provides power of attorney to someone else*".[3] When asked if he knew Huang was only a manager at the plaintiff and Huang phoned him to transfer money from plaintiff's account into his (Huang's) account, what would the witness do, Hendricks again gave a similar reply, namely it depended on whether or not Huang had signing instructions on the account. In reply to the defendant's counsel's question whether it was permissible for one individual to have an account, and for another individual to sign on the account, Hendricks said that if the non-accountholder had a power of attorney over the account, then they would be able to operate on the account.[4]

[12] At the resumption of the trial on 5 September 2011, Mr Giovanni Ungaro ("*Ungaro*"), one of the two directors of the plaintiff testified. I must at the outset mention that his evidence was in large measure corroborated by plaintiff's bookkeeper, Ms Vivienne Longley Taylor ("*Taylor*"). The other director was his brother, Mr Temasso Ungaro. Ungaro said Huang was first employed by the plaintiff as financial manager from October 1992. One Ms Felicia van der Berg and Taylor worked under Huang.

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[2] See transcript p 45, line 20 and p 46, line 5.
[3] See transcript p 48, lines 10 to 14.
[4] See transcript p 68, lines 15 to 21.

[13] It is significant that Ungaro testified that prior to 2000, Huang never opened banking accounts on behalf of the plaintiff. Ungaro identified the account forming the subject-matter of this case as the plaintiff's account held at the defendant. In July 2000, Ungaro instructed Huang to open an investment account ("*the account*") for plaintiff at the defendant. The opening of the account was motivated by the fact that the defendant offered plaintiff a reasonable interest rate on plaintiff's investments. Huang brought the forms which were completed by the directors of plaintiff, i.e. Ungaro and his brother, Temasso Ungaro. This was so, according to Ungaro, since Huang had no signing powers and there was no company resolution empowering him to sign on behalf of plaintiff.

[14] Ungaro said that after the account was opened, he arranged for monies to be transferred electronically from Santam direct into the new account. In total an amount of about R15 million was deposited into the account. Ungaro was later alerted by plaintiff's auditors to the irregularities in the account. He subsequently discovered that the defendant had been transacting internal transfers without plaintiff's knowledge and authorisation. Some of the transactions had seemingly been performed telephonically and included cash withdrawals. Ungaro immediately closed the account. The defendant paid to the plaintiff the balance remaining in the account, leaving a shortfall of R2 680 928,74, the subject-matter of the claim in the present action. The matter was reported to the South African Police Service. Although Huang had authority to open the account under discussion, he had no

authority to make withdrawals or transfers in respect of the account. Neither did he have such authority in respect of the plaintiff's bank accounts.

[15] In cross-examination, Ungaro testified that he could not have given Huang the plaintiff's certificate of incorporation and certificate of change of name to take to the defendant when opening the account, as Huang was in possession of the safe keys. The defendant had copies of these documents. The evidence during cross-examination also showed that the defendant had not loaded signatories on its computer system in respect of the account.

[16] Taylor testified that she commenced employment with the plaintiff in 1994. As mentioned before, her evidence corroborated Ungaro in all material respects. It is truly unnecessary to repeat in full all her evidence. She investigated the relevant transactions, compiled a reconciliation and prepared a schedule which formed part of the court bundle.[5] Her evidence covered each of the unauthorised withdrawals, which included cheques, transfers and cash withdrawals, which occurred out of the account of the plaintiff. In short, the investigation and reconciliation conducted by Taylor revealed the following pattern:

16.1 On 24 July 2000, an internal transfer of R250 000,00 was made to Huang's personal account, the form thereof having been signed by Huang and authorised by Judy of the defendant;

[5] See pp 62 and 62A and p 93 of the court bundle.

16.2 On 30 October 2000, a cheque payment of R10 million was made to account number [....], which account was not authorised by the plaintiff;

16.3 On 1 November 2000, an internal transfer of funds (R400 000,00) was made to Huang's personal account. The transfer was once more authorised by Judy of the defendant. The reference in the transaction to Huang being '*accountholder*', was incorrect;

16.4 On 18 November 2000, an internal transfer of R100 000,00 was made from the account to Huang's personal account, under almost similar circumstances like in paragraph 16.3 above;

16.5 On 13 December 2000, an internal transfer of R130 928,74 was made to Huang's personal account;

16.6 Between the period 22 March 2001 to 30 May 2001, various transfers were made into the account of Huang, equalling approximately R800 000,00. Some of the transfers in the form of cheques, and cash withdrawals, were authorised by various staff members of the defendant, such as E Wepener ("*Wepener*") and Z Alpord ("*Alpord*"), or unidentified staff members. In some cases, the transfer forms were unsigned or the bank's authorising officials were not identified, and by telephone request or at the request of '*the client*'.

[17] During the evidence of Taylor, and up to the stage when she was supposed to be cross-examined, there were various objections raised to her evidence by Mr Theron who substituted defendant's previous counsel, Mr Cochrane. The objections related mainly to her evidence relating to other bank accounts which she investigated, other than the account in question. It was contended that the evidence was irrelevant since those accounts were not pleaded. It was also argued, surprisingly too, that the plaintiff was obliged to allege and prove the agreement and the terms thereof in respect of those accounts. The other accounts, referred to were opened with plaintiff's authority. The evidence of Taylor, so the objection continued, was conflating the accounts, and there was no negligence or *nexus* in respect of the other accounts and the account in question. The various objections, repeatedly made, but opposed, were dismissed by the court. The court was repeatedly asked to give full reasons for the rulings made. At that stage I was of the firm view that the investigation of the account in question and other accounts, especially Huang's account, were matters which were inextricably interwoven in the circumstances of this matter. My view has not changed in the interim. The objections, like the objection to the plaintiff's application to amend its particulars of claim brought during the trial, were without merit, to say the least. The matter was then postponed *sine die* in September 2011 in order for the court to hear argument on the opposed application to amend, as mentioned previously. In April 2012, I handed down a written judgment on the amendment and in which, I found in favour of the plaintiff. The reasons for dismissing the objections form part of the judgment as dealt with more fully later below.

[18] When the trial resumed in February 2015, Taylor continued with evidence-in-chief briefly. She confirmed that the total amount of the unauthorised withdrawals from the plaintiff's account was the sum of R11 680 928,74, of which the plaintiff subsequently recovered the sum of R9 million, leaving a balance of R2 680 928,74, as claimed in the amended particulars of claim. Taylor advanced credible basis and motivation for her calculations based on the investigations and reconciliation. There was plainly no reason to doubt her evidence, which was in any way not rebutted at all.

[19] Taylor was cross-examined. She confirmed that Huang was authorised to open the account under discussion, which was variously and loosely referred to as '*the investment account*' in evidence. She could not remember whether she was present when plaintiff instructed Huang to open the account since this occurred some 13 years ago. Huang dealt with management accounts. She did not know what documents Huang took along when he opened the account as she was not with him. She conceded that Huang had a personal Absa banking account at the same branch as plaintiff. Staff members of the plaintiff, including Huang, were allowed to make deposits into the account. The cross-examination did not at all detract Taylor's core version, as corroborated by Ungaro.

[20] The final witness for the plaintiff was Mr Ronald Gordon Wills ("*Wills*"). He was previously employed by Standard Bank for a period of about 49 years. He was called by the plaintiff to furnish expert evidence. There was no objection to this. He was also cross-examined closely. In the light of the view I take in the matter, and in the absence of any countering evidence from the

defendant, a summary of his evidence only sufficed: in his opinion, the opening of an Active Save Account by the defendant for the plaintiff was unusual since the plaintiff was a company. A personal identification number (pin) and/or a card is essential for all transactions.

[21] Wills opined that, in the circumstances of this case, the defendant's employees should have acquired all the relevant company documents to ensure that the customer was in fact the plaintiff, and that Huang had the requisite authority to operate on the account by withdrawals or otherwise. This did not happen.

[22] Wills further expressed the opinion that when Huang alleged to the defendant's officials that he owned the plaintiff, the defendant failed to undertake a search to ascertain if the allegation was correct. The plaintiff's records clearly showed that Huang was only a manager of the plaintiff, and had a proper check been carried out, which was a reasonable thing to do, a warning signal would have occurred, and the defendant would not have allowed Huang to operate on the account. Interestingly, Wills emphasised that Judy was not the only defendant employee who was involved in the transactions in question which depleted the funds in plaintiff's account. There were other employees of the defendant involved in the transactions. These included Wepener, Alpord and A van der Merwe. These employees knew that there was no specimen signature which they should have checked to ensure if Huang was authorised to withdraw from the account.

[23] For the above reasons, and others as articulated in his evidence, and written report, Wills concluded, and reliably so, too, that, on the facts of this

matter, there was an obligation on the defendant to obtain written authority on each occasion from the plaintiff when the account was operated by any person. Further that, the defendant failed to ascertain that Huang was factually not authorised by the plaintiff to make withdrawals out of the account, and more importantly, that the defendant failed to take all reasonable steps to ensure that the payments out of the account were only authorised by the plaintiff. More about the evidence of Wills later. The cross-examination of Wills remained consistent and he was adamant that even though it was suggested to him that he was not an expert he remained confident and reliable in his opinion. At the close of the plaintiff's case, the defendant closed its case without leading any evidence.

[24] From the facts of the matter, there were at least three issues for determination. These were:

24.1 Whether the opening of the account on behalf of the plaintiff resulted in the conclusion of an agreement between the plaintiff and the defendant; and if it is so;

24.2 Whether it was a term of the agreement, express or tacit, that the defendant agreed to make payments out of the plaintiff's account number [….] (the account), only on the instructions authorised by the plaintiff; and/or;

24.3 Whether the defendant and its officials acted negligently in dealing with and handling the account. There were other peripheral issues.

THE RELATIONSHIP BETWEEN BANKER AND CLIENT

[25] The first issue mentioned above is capable of disposal with relative ease in favour of the plaintiff. There is no doubt that the relationship between a banker and its client is based on a mandate. In *Giulio v First National Bank of South Africa*,[6] the Court said:

> "*In the well-known case of London Joint Stock Bank Ltd v MacMillan and Arthur [1918] AC 777 (HL) Lord Finlay LC said the following in his speech (at 789):*
>
> > *'The relationship between banker and customer is that of debtor and creditor, with a superadded obligation on the part of the banker to honour the customer's cheques if the account is in credit. A cheque drawn by a customer is in point of law a mandate to the banker to pay the amount according to the tenor of the cheque.'*
>
> *That the underlying agreement between bank and client is one of mandate, has been unequivocally accepted in South African law, as appears from the dictum of Grosskop J in Volkskas Bpk v Johnson 1979 (4) SA 775 (C) at 777H-778A:*
>
> > *'Die verhouding tussen bankier en kliënt behels dat die bankier sy kliënt se opdrag om te betaal, soos uitgedruk in 'n tjek, moet uitvoer – indien hy dit doen, is hy geregtig om die kliënt se rekening te debiteer met die bedrag van die tjek.'*"

At para [18] of the judgment, the Court went on to say:

> "*In his leading judgment on banking law, as reported in Standard Bank of SA Ltd v Oneanate Investments (Pty) Ltd 1995 (4) SA 510 (C) Selikowitz J, with reference to South African and foreign legal authorities, stated thus (at 530G-H):*

[6] 2002 (6) SA 281 (C) at para [17].

> *'The law treats the relationship between banker and customer as a contractual one. The reciprocal rights and duties included in the contract are to a great extent based upon custom and usage. Although historically the original objective of a depositor was to ensure the safekeeping of his money, over time jurists have considered characterising and explaining the basic relationship as one of depositum, mutuum or agency. All of these approaches have on analysis proved to be inadequate. It is now accepted that the basic, albeit not sole, relationship between banker and customer in respect of a current account is one of debtor and creditor."*

See also Malan on *Bills of Exchange*, *Cheques and Promissory Notes;*[7] and *LAWSA* where it is stated that:

> "*The relationship between a bank and its customer is contractual in nature, with authority for the view that the relationship is that of debtor and creditor, that is a contract sui generis or a contract of mandate.*"[8]

[26] Based on the above legal principles, the contentions of the defendant throughout the trial, and until 2015, that there was no agreement in opening the account, and that the plaintiff first had to allege and prove such agreement, and the terms thereof, were without merit at all. In my view, the defendant in adopting such an attitude, was unnecessarily obstructionist and dilatory. The defendant went out of its way to place all and every impediment in the way of the plaintiff to present its case. For it was only in 2015, when the defendant admitted by way of an amendment to its plea that the parties indeed entered into an agreement in terms of annexure "B" to the defendant's plea. This, after a request for further particulars was made, and only when the further particulars were furnished, was the defendant prepared to admit the express terms as set out in annexure "B" to its plea. It is well to recall that

[7] 5ed (2009) Chapter 17, para 217.
[8] 2nd ed, Part 1 para 343.

annexure "B" is the defendant's document, i.e. the application to open a savings/investment account referred to in para [5] of this judgment.

[27] In addition, in spite of the fact that the terms of annexure "B" plainly do not deal with any aspect as to who was authorised to withdraw on the account (except for a card and pin number), the defendant proceeded to plead in further particulars as follows that:

> 27.1 "*It was an express alternatively implied alternatively tacit term of the agreement in terms of which the account was operated that, Huang was entitled to operate on and withdraw or transfer funds from the account and that Huang was entitled to instruct the defendant to effect debits to the account.*"[9]
>
> 27.2 Again that, "*in accordance with the terms and conditions of the agreement in terms of which the account was opened signature cards were not required in respect of an account such as the nature of the account*".[10]

[28] From the above, and once more, the defendant's assertions with respect to the terms of the conceded agreement were readily, not only baseless, contradictory, but also untenable in the extreme. This was more so in the absence of any evidence from the defendant to prove that signature cards were not required. Neither was there any evidence led in order to prove who precisely could withdraw on the account. I am indeed further fortified in

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[9] See pleadings bundle p 57 para 4 and p 58 para 5.3.
[10] See pleadings bundle p 56 para 1.1.4.

my above finding by the following: in February 2015, the parties held a pre-trial conference whereat the defendant agreed to several portions of Will's report. The admissions included that, Huang withdrew the amounts therein contained except for certain insignificant references; that the defendant opened the account for the plaintiff and allocated account number [….] to the account; that the defendant, represented by Judy, used the defendant's standard opening form for savings/investment account; that when Huang applied to open the account for the plaintiff, he did so, on behalf of the plaintiff on the terms and conditions set out by the defendant in the account opening form; and finally, that for the purposes of opening the account, the defendant received from Huang the plaintiff's certificate of incorporation as well as change of name certificate.[11] On the contrary, the plaintiff has proved, on a balance of probabilities, that an agreement had been concluded between it and the defendant on 6 July 2000.

WHAT WERE THE TERMS OF THE AGREEMENT?

[29] I deal with the second issue for determination in this trial. That is whether it was a term of the agreement between the parties that the defendant agreed to only make payments and transfers out of the account on instructions by the plaintiff. In *Alfred McAlpine & Son (Pty) Ltd v Transvaal Provincial Administration*,[12] the appellant was the plaintiff and the respondent the defendant in the court *a quo*. The parties entered into a contract in terms whereof plaintiff undertook to build a portion of a national road. Certain declaratory orders were applied for on behalf of the plaintiff. During the

[11] See pre-trial notices bundle pp 87 to 92.
[12] 1974 (3) SA 506 (A).

execution of the contract, the contractor had received instructions to introduce an exceptionally large number of alterations which in certain cases had caused disruption. The plaintiff alleged that, although each alteration had fallen within the scope of the contract, the cumulative effect of all the alterations was of such a nature that the original contract had lapsed and a new contract had arisen impliedly through the conduct of the parties, in terms whereof the plaintiff was entitled to reasonable remuneration for all the work done i.e. from the commencement of the execution of the contract. The Court *a quo* had held that the alterations had been envisaged in the original contract. At p 531D-H, Corbett JA said:

> "*In legal parlance the expression 'implied term' is an ambiguous one in that it is often used, without discrimination, to denote two, possibly three, distinct concepts. In the first place, it is used to describe an unexpressed provision of the contract which the law imports therein, generally as a matter of course, without reference to the actual intention of the parties. The intention of the parties is not totally ignored. Such a term is not normally implied if it is in conflict with the express provisions of the contract. On the other hand, it does not originate in the contractual consensus: it is imposed by the law from without. Indeed, terms are often implied by law in cases where it is by no means clear that the parties would have agreed to incorporate them in their contract. Ready examples of such terms implied by law are to be found in the law of sale, e.g. the seller's implied guarantee or warranty against defects; in the law of lease the similar implied undertakings by the lessor as to quiet enjoyment and absence of defects; and in the law of negotiable instruments the engagements of drawer, acceptor and endorser, as imported by secs. 52 and 53 of the Bills of Exchange Act, 34 of 1964. Such implied terms may derive from the common law, trade usage or custom, or from statute. In a sense 'implied term' is, in this context, a misnomer in that in content it simply represents a legal duty (giving rise to a correlative right) imposed by law, unless excluded by the parties, in the case of certain classes of contracts. It is a naturalium of the contract in question.*"

See also *Tolgaz Southern Africa v Solgas (Pty) Ltd and Another; Easigas (Pty) Ltd v Solgas (Pty) Ltd and Another.*[13]

[30] On the facts of this matter, the plaintiff clearly relies on events which occurred after the opening of the account on 6 July 2000. However, from the nature of the claim, the actual act of the opening of the account itself remains interlink. As argued by the plaintiff, there is nothing for a banking official, upon considering the form to determine whether Huang, the fraudster, had authority to confirm that he had no authority to withdraw from the account since his name is not on the form. It is plain that when each of the defendant's employees (and there were several of them) attended to the unauthorised withdrawals, they were mindless whether Huang could in fact withdraw or transfer. The defendant should not have allowed any withdrawals or transfers out of the account without the requisite signature of an authorised person of the plaintiff. This the defendant did not do. On the basis of the legal principles set out above, it was clearly an implied term of the agreement between the parties, by the nature of things, that the defendant agreed to only make payments and transfers out of the account on specific instructions by the plaintiff. The credible evidence presented by the plaintiff proved convincingly that the defendant failed in its obligations and breached the agreement.

THE NEGLIGENCE OF THE DEFENDANT

[13] 2009 (4) SA 37 (W) at [32].

[31] I deal with the question whether the defendant and its officials involved acted negligently. This question has already been resolved partly in the preceding paragraph of the judgment. Significantly, the defendant, in para 7.5 of its plea, pleaded that it was the plaintiff that acted negligently on certain alleged grounds.[14] The fact that the defendant opened an account on behalf of the plaintiff styled a savings/investment account, should in my view, not affect the bank's duty of care and responsibility towards its client. There is plainly no reason not to accept that the account was to be operated on the same basis as an ordinary cheque or current account. The appeal in *Barclays Bank DCO v Straw*,[15] concerned the issue of negligence of the appellant (bank) in circumstances where its client, the respondent, had issued a cheque payable to cash or bearer. When the cheque was presented to the respondent bank, the amount thereon had been increased substantially by the payee. The bank or its cashiers paid out the increased amount over the counter. The respondent sued the bank on the basis of negligence. The Court *a quo* found in favour of the respondent, the client. The bank appealed the decision. In finally dismissing the appeal, the Court said:

> "*According to … This plea incorporated the defence of estoppel by negligence (on the part of the client) … The onus still lay on the defendant to prove that the negligence of the plaintiff had been the causa causans of the loss. (See London Stock Bank v MacMillan and Arthur, 1918 A.C. 777 at pp. 827 and 828, and Cowen Law of Negotiable Instruments, 3rd ed. at pp. 349 and 350.*) *Although estoppel by negligence has been expressly recognised as a defence in our Courts in cases such as the present (see Standard Bank of South Africa Limited v Kaplan, 1922 CPD 214 at p. 222), … the question to be resolved remains the same, viz. to determine whose negligence*

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[14] See para 7.5 of defendant's plea above.
[15] 1965 (2) SA 93 (O).

was the causa causans of the loss, and the onus of establishing the defence clearly rests on the defendant." (my insertions)

In the present matter, the defendant pleaded both the issue of negligence and estoppel on the part of the plaintiff, without leading any evidence. Clearly these defences were misplaced. (*Cf Strydom NO v Absa Bank Bpk,*[16] on which reliance was incorrectly, in my view, placed by Mr Theron on behalf of the defendant.)

[32] Indeed, in *McCarthy v Absa Bank Ltd,*[17] the Court dealt with the terms pleaded by the plaintiff in regard to the agreement between the parties, and whether the bank had acted negligently. In upholding the appeal, the Court at para [16] said:

"*Given the terms in which the question was framed that finding by the court below cannot be faulted. An agreement between a bank and its customer for the operation of a cheque account is an agreement of mandate that imposes, as a naturalia of the agreement, two obligations on the bank (there may be other terms that are expressly agreed, but that is not now material). First, it undertakes, on behalf of its customer, to pay from the account cheques properly drawn by the customer, according to their tenor (provided funds are available in the account). And secondly, it undertakes, on behalf of the customer, to collect cheques properly deposited for collection 3. It clearly has no obligation to collect, on behalf of someone else, cheques that are drawn by the customer (and to do so without negligence).*"

At para [22] of the judgment, the Court went on to say that:

"*The fact alone that McCarthy had a cheque account justifies the inference that an express agreement (not necessarily reduced to writing) was concluded between McCarthy and Absa (or their predecessors) at sometime in the past that such an account should be*

[16] 2001 (3) SA 185 (T).
[17] [2010] 1 All SA 435 (SCA), also reported at 2010 (2) SA 321 (SCA).

operated (it is difficult to see how a bank account might otherwise come into existence). Where such an agreement exists, as pointed out by the authors of Malan on Bills of Exchange etc.:5

> *'5 It is the duty of the bank to pay cheques drawn by the customer that are in all respects genuine and complete, on demand, provided sufficient funds or credit for their payment are available in the customer's account … In paying cheques, the bank must adhere strictly to the customer's instructions, and must perform its duties with the required degree of care, generally, in good faith and without negligence.*'"

See also *McAlpine and Son (Pty) Ltd supra* where the Court elucidated fully the scope of implied terms in contracts.

[33] I have already dealt partially with the evidence of Wills. His admitted and uncontested opinion, clearly showed that the defendant and its staff members involved, acted negligently in regard to the plaintiff's account. In this regard, the plaintiff submitted that: when dealing with a corporate entity, banking officials must satisfy themselves that the corporate entity has indeed authorised a specific person to operate the account; in opening the account, the defendant should have worked through its check list, and by doing so, as well as making the necessary inquiries, it would have ascertained that Huang had no authority to operate the account, the *ipse dixit* of the Huang alone that he owned the plaintiff, was insufficient in the circumstances. As no card had been issued in respect of the account to the plaintiff, nor had a personal identification number been given, the defendant's employee, Judy, would have known, or ought to have known that the only way moneys could be withdrawn or taken out of the account, was by a signature of an authorised person from the plaintiff.

[34] It was also Wills' opinion that as the plaintiff was a company, the defendant should have realised that the address furnished by Huang when the account was opened, i.e. within a residential area, and that the address given in Ruimsig, had no street address by the name "*Gelden Avenue*". A simple enquiry by the defendant into such mundane aspect, would have provided a further warning signal, and the loss suffered by the plaintiff would have been averted. The defendant, manifestly did not act reasonably in the opening of the account by not taking reasonable steps to ascertain whether Huang, the fraudster, was entitled to operate the account. The plaintiff had no previous accounts with the defendant. The account furnished in the application form as an existing one was that of Huang. This was common cause during the trial.

[35] It was the further opinion of Wills that the defendant's procedure for withdrawals of cash is for its personal customers to produce an identity document and automatic teller machine ("ATM") card. In the present matter, it was common cause that there was no ATM card and no identity number to check since the plaintiff is a company, the defendant was unable to verify the signature as well as the authority of Huang to withdraw the cash amounts, and should not have been done without proper cheques. Wills further opined that in terms of the defendant's internal financial history documents, it is reflected that the account medium is a "*card*". The reflection was clearly incorrect as no card was issued in respect of the account, as mentioned before. Indeed, if a card was issued to the plaintiff, such card would have been one only of the several mediums to cheque if Huang was factually authorised by the plaintiff to operate the account, and to make the withdrawals

and transfers, which he did. In the absence of anything on the file, as happened here, the plaintiff should have been contacted immediately and steps should have been taken in order to obtain the company documents to clarify the issue, and to ensure that the defendant had all the appropriate information at hand. All of these, the defendant did not do. A reasonable banker should have and would have done so in the circumstances of the case. In my view, the conclusion that the defendant acted negligently in regard to the plaintiff's account, became irresistible.

THE DEFENDANT'S ASSERTIONS OF PLAINTIFF'S NEGLIGENCE

[36] The contentions of the defendant that the plaintiff was negligent in certain respects, were equally without merit at all in the circumstances of the matter and based on the finding above. For in *Absa Bank v Hanley*,[18] Malan JA stated that:

> "*Save in respect of drawing documents to be presented to the bank and in warning of known or suspected forgeries he (the customer) has no duty to the bank to supervise his employees, to run his business correctly, or to detect frauds. The negligence or carelessness of the customer must be real, direct or immediate cause of the bank having been misled, and must be evident in the transaction itself, in the manner in which the cheque or payment instruction was drawn.6.*" (my insertion)

To make matters worse, in a request for further particulars for purposes of trial, the plaintiff took the trouble to request the defendant to set out the exact procedures that were required to be adopted during July 2000 for the opening of the Active Save Account with the defendant. The defendant chose to

[18] 2014 (2) SA 448 (SCA) at 457F-458A.

respond that the plaintiff was not entitled to the particularity sought.[19] As stated earlier in the judgment, it was only in 2015 when the defendant admitted by way of an amendment to its plea that the parties in fact entered into an agreement in terms of annexure "B" to the defendant's plea. The defendant was only prepared to admit, belatedly too, the express terms set out in annexure "B" to its plea. In my view, this was unreasonable in the extreme on the part of the defendant, one more.

[37] The fact that Huang was known to the defendant's employees he interacted with on regular basis, was of no assistance to the defendant's cause.

[38] In *Columbus Joint Venture v Absa Bank Ltd*,[20] the Court, in finally dismissing the plaintiff's claim against the defendant bank, based on negligence, dealt with different situations in the process of a bank opening an account for a customer. These situations are, when a stranger requests that a bank account be opened for him/her; and the other situation is when an existing client requests further facilities or another account. In the process of dealing with the duties of a bank, the Court also referred to *Energy Measurements (Pty) Ltd v First National Bank of SA Ltd.*[21] At p 511 of the *Columbus* case, Malan J said:

> "*The stated case severely limits the facts and circumstances on which a finding of negligence can be made. There is no evidence of what banking procedure is or of what a prudent banker would or should have done under the circumstances. The stated case is quite silent on this*

[19] See pleadings bundle p 37 to 38, paras 2.4 and p 49.
[20] 2000 (2) SA 491 (W).
[21] 2001 (3) SA 132 (W) and the judgment of the SCA at paras [135] to [139].

matter. In the absence of evidence the question is thus whether the defendant displayed reasonable care in opening the account … The personal particulars given by Bertolis when opening the account were correct: in addition, his identity document was seen and the number of his other account entered onto the application form. Various other documents relating to the account form part of the stated case but it is not known whether reference was made to them when the account was opened. To my mind, it has not been shown that, had the official opening the account looked at them, he would not have accepted the account. Nor have any circumstances been shown indicating that he should have had access to them or called for them."

The learned judge went on to say that:

"*Where a stranger requests that an account be opened for him the circumstances are quite different from those when an existing client applies. An existing client asking for further facilities or another account is known to the bank and his personal particulars are, if known to the official, are certainable.*"

Later on, in the judgment, and finally, Malan J said:

"*A bank should also be careful not to inquire where inquiries might offend the customer and invade his privacy. A right balance should be struck: a bank should inquire where it is put on inquiry or the transaction is out of the ordinary.*" (my underlining)

See also *KwaMashu Bakery Ltd v Standard Bank of South Africa Ltd.*[22]

[39] The *Columbus Joint Venture* case was taken on appeal to the Supreme Court of Appeal.[23] The appeal was dismissed since the Court could not find any basis for concluding that the bank failed in the duty of care it owed to the plaintiff. However, I must point out that at para [18] of the judgment, the Court said:

[22] 1995 (1) SA 377 (D).
[23] See [2002] 1 All SA 105 (A).

"*… The bank is under an obligation to take reasonable steps to ensure that its clients are who they say they are, and to scrutinize with reasonable caution documentation submitted to it in substantiation of the uses to which they propose to put their accounts they open. The plaintiff's argument seeks to go far further. It would make the bank the guarantor of the probity of its customers, or at least of their dealings and doings, as against all they injure by utilising banking facilities reasonably extended to them …*"

DISTINGUISHABLE FACTS

[40] From the above, it is self-evident that the facts in the present matter are distinguishable from the facts in the *Columbus Joint Venture* case, on which the defendant relied. For example, although Huang, the fraudster, was known to some of the defendant's officials he interacted with, he was an employee of the plaintiff; the plaintiff's claim is based on facts which occurred after the account had been opened; the account was not an ordinary cheque account, but a savings account; the account was opened in the name of the plaintiff; the moneys therein deposited after the opening, came from the plaintiff; and the conduct of the defendant's representatives and/or the lack thereof in opening the account, based on the plaintiff's evidence, played an integral part in determining the issue whether the defendant breached the relevant terms of the belatedly conceded agreement. All of this, in the absence of any countering evidence from the defendant. However, each case must be decided on its own merits. For the same reasons, the defendant's reliance on case law such as *Marfani and Co Limited v Midrand Bank Limited;*[24] *Powell and Another v Absa Bank Limited t/a Volkskas Bank;*[25] and

[24] [1868] 2 All ER 573.
[25] 1998 (2) SA 807 (SE).

Strydom NO v Absa Bank Bpk,[26] did not advance the defendant's case in the circumstances of the present matter.

[41] In addition, as shown earlier in the judgment, the defendant's allegations that the plaintiff was negligent as it alleged, were not based on any evidence and remained as such. Even if I am incorrect in this regard, any such alleged negligence ought to have been linked sufficiently directly to the undisputed loss of legal liability.

[42] The fact that the defendant dragged the plaintiff throughout the duration of the trial to prove its case, and ending with the defendant not tendering any countering evidence at all, as well as the probable inferences to be made by the court for such failure, did not justify to be unduly over-emphasised. However, it remained a significant factor in this trial. There was limited room for the court to speculate as to the reasons why the apparently available witnesses of the defendant, were not called. All the court knew was that Judy had since passed away. The court was also not told why the defendant's expert witness, Weppenaar, involved in some of the unauthorised withdrawals made by Huang from the account, was also not called. In the end, it remained the prerogative of the defendant to run its case, as it did. Indeed, the absence of and/or refusal of the defendant to make available its procedure manuals for the relevant period, also remained puzzling.

CONCLUSION

[26] *Supra*.

[43] In the circumstances, I concluded that the plaintiff has succeeded in proving, on a balance of probabilities, that there was an agreement between the parties in the opening of the account in question. Further that, during the opening of the account, which was on instructions of the plaintiff, and subsequently, the defendant proceeded to breach its duty of care towards the plaintiff as its client, and acted wrongfully and negligently in regard to the account. This was a direct cause of the plaintiff's loss, as claimed. In her evidence Taylor of the defendant, the defendant informed the court that in the event the plaintiff proved that the withdrawals in the account were indeed unauthorised, the defendant admitted the quantum of the plaintiff's claim. This was the amount of R2 680 928,74, as pleaded.

COSTS

[44] It remains for me to deal with the issue of costs, which is tritely a matter within the discretion of the court. There was no credible reason advanced why the costs should not follow the result. The only aspect is on what scale such costs should be awarded on the facts and the history of this case. I was more than tempted to initially award the costs on the scale as between attorney and client, which would have been perfectly justified. However, in the heads of argument, counsel for the plaintiff did not argue for such costs award.

ORDER

[45] In the result the following order is made:

1. The defendant is ordered to pay to the plaintiff the sum of R2 680 928,74 (two million six hundred and eighty thousand nine hundred and twenty eight rand and seventy four cents).

2. Interest on the said amount at the rate of 15,5% per annum from 1 June 2001 to 31 July 2004, and 9% per annum from 1 August 2014 to the date of payment.

3. Costs of the action, including all and any costs previously reserved.

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D S S MOSHIDI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

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