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

APPEAL CASE NOS: A123/2015 &
A124/2015

In the matters between:

AUTOMATED OFFICE TECHNOLOGY (PTY) LTD
t/a ASSETFIN FINANCIAL SOLUTIONS Appellant

and

BESTMADE 160 CC First Respondent

SIMON PETRUS BASSON Second Respondent

JOHANNES STEPHANUS BASSON Third Respondent

JAN GABRIEL BASSON Fourth Respondent

Coram: Mr Justice A Le Grange et Mr Acting Justice M Sher

Heard: 25 November 2016

Delivered: 17 January 2017

JUDGMENT

SHER AJ:

[1] We have before us two matters, both of which are subject to an appeal and a cross-appeal.[1] For the sake of convenience the parties are referred to hereinafter as they are in the appeals.

[2] Second, third and fourth respondents are brothers and members of the first respondent, a close corporation through which they conduct certain farming activities. It is common cause that between January and April 2012 they signed a number of documents pertaining to two rental agreements they concluded with the appellant; one for a so-called 'PABX' telephone system and one for a photocopier. Included amongst such documents were *inter alia* rental finance applications, "*master"* rental agreements with addendums thereto, acknowledgements of receipt of equipment, and so-called *'guarantees'* in terms of which they bound themselves as guarantors and co-principal debtors for the obligations of the first respondent.

[3] It is common cause that subsequent to the signing of these documents a PABX telephone system and a photocopier were delivered to the respondents' farm late in April and early May 2012 respectively, and certain monthly instalments were paid by first respondent until July 2012, when second respondent instructed the bank to stop payment. In October 2012 the appellant issued

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[1] In the matter under case no. A 123/15 (ex Paarl 4783/15) the cross-appeal is conditional on the appeal succeeding.

summons against the respondents in respect of their alleged breach of the aforesaid agreements, in two separate matters in the magistrate's court for the district of Paarl. The matters came to trial some two years later and were heard together.

[4] On 19 December 2014 the magistrate found in favour of the appellant in the matter dealing with the PABX system and granted judgment in its favour in the sum of R298 072.84, and dismissed the appellant's claim in respect of the other matter. The appellant subsequently lodged an appeal against the judgment and order granted in respect of the PABX matter and the respondents in turn lodged a cross-appeal therein, and the parties similarly lodged an appeal and a conditional cross-appeal, in the other matter.

The evidence

[5] During October 2011 the respondents were interested in acquiring telephone, camera surveillance and employee 'clock-in' systems, as well as a colour photocopier. Their professional assistant Christelle Strumpher (*'Strumpher'*) duly made contact with one Henry Kinghorn (*'Kinghorn'*), who ran an office equipment business known as Greenstar Office Solutions (Pty) Ltd. Strumpher had previously worked with Kinghorn for a few months during 2007 at Nashua, a well-known manufacturer of photocopier machines. She requested Kinghorn to provide a proposal and quotation for the supply of the equipment the respondents were interested in. As far as the photocopier was concerned she

asked Kinghorn to quote on a Nashua-Ricoh machine, as she was familiar with its products. At that time the respondents had a black and white photocopier on their farm and were looking for a colour machine that could be used by their children for school projects.

[6] Kinghorn duly came out to the farm and spoke to second respondent about their requirements, and about a month later he provided an estimated price for the equipment they sought, which was in the order of R 400 000.00. Second respondent indicated that this was too much for them whereupon Kinghorn suggested that they obtain 'financing'. Second respondent agreed to this proposal.

[7] Kinghorn had working relationships with a number of finance houses at that time, including the appellant. As the appellant's operation manager Anton Nell (*'Nell'*) explained, where a customer is desirous of acquiring office equipment from a supplier but does not have the necessary means to do so the appellant will assist by agreeing to purchase the equipment (which the supplier will obtain from the manufacturer or distributor), and by paying the purchase price over to the supplier on delivery by it of the equipment to the customer, who then will pay off the appellant by way of monthly instalments, in terms of a rental finance agreement it enters into with it.

[8] The appellant supplied Kinghorn with the necessary blank template forms which his customers were required to complete in order to obtain finance. The

paperwork included, in the first instance, a so-called *'rental finance application'* in which the party seeking finance was required to set out its details (including its trading name and particulars of its shareholders, partners, directors or members, as the case may be), as well as its bank account details; and in which provision was also made for the insertion of the rental period and monthly instalments which would become due in terms of the agreement which was to be entered into.

[9] It is common cause that Strumpher completed such a form in respect of the PABX system on 5 January 2012, and on 20 March 2012 second respondent signed a typed version thereof. In addition, on 20 March 2012 second respondent appended his signature in three places on a so-called *'master rental agreement'*, which similarly contained details of the first respondent and a *'resolution'* purporting to be an extract of the minutes of a meeting of its members in terms of which they resolved to enter into the "*rental"* agreement with the appellant for the *'renting of goods'* as per the *'conditions of hire'* attached thereto, and at the foot of which second respondent similarly appended his initials. A so-called *'rental addendum'* (marked annexure *'*A*'*) to the 'master' rental agreement was also signed or initialled in two places by the second respondent, on the self-same date. In this document second respondent affirmed that the terms and conditions of the 'master' rental agreement would apply to the parties as if specifically set forth therein, and the addendum also contained a similar resolution stating that first respondent had resolved to enter

into the rental agreement with the appellant for the renting of the goods specified therein, which were described as a Samsung OfficeServ PABX system. It may be pointed out that in numerous places on this document there was reference to the "*master rental agreement"* and the monthly "*rental"* which was to be charged in terms thereof.

[10] Second respondent also signed a further "*rental addendum*" (marked annexure *'*B'*)* to the "*master rental agreement"* which made provision for the insertion of the insurance details (ie the insurance company, branch and policy number) in terms of which the equipment referred to was to be insured.

[11] Finally, second respondent appended his signature to a *'guarantee'* which declared that it was an addendum to *'all present and future master agreements of hire and/or master rental agreements"* entered into between the appellant and the first respondent, which was referred to therein as *"the hirer"'.* In terms of this guarantee second respondent bound himself jointly and severally as co-principal debtor for the primary continuing obligations of the "*hirer*", including the due, proper and punctual payment by it of all amounts that might be owing in terms of, or incidental to the "*rental agreements*" and addendums thereto. Third and fourth respondents subsequently also signed this guarantee.

[12] A complete set of similar documents was signed by second, third and fourth respondents in respect of the photocopier, on or about 23 April 2012.

[13] The respondents testified that the circumstances under which the aforesaid documents were signed were as follows. As far as the bundle of documents pertaining to the PABX system was concerned, these were apparently signed at an auction which the respondents attended and at which Kinghorn made his appearance. He informed them that they needed to sign documents in connection with the 'financing' ("*finansiering"),* and these included a suretyship *('borgakte'*). They duly signed the documents that were handed to them, in numerous places, without reading them. A few weeks later Kinghorn again made his appearance, one evening, at the farm and similarly requested them to sign documents which he said were in connection with 'financing'. Once again the respondents happily acceded thereto without reading the documents.

The law

[14] It is a trite and accepted principle of our law that a person who signs a document is ordinarily taken to have assented to what appears above his signature.[2] This is known as the *caveat subscriptor* principle, which can be traced to the oft-cited decision in *Smith v Hughes*[3] where it was explained that: "*If, whatever a man's real intention may be, he so conducts himself that a reasonable man would believe that he was assenting to the terms proposed by the other party, and that other party upon the belief enters into the contract with him, the man thus*

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2 *Brink v Humphries and Jewell (Pty) Ltd* 2005 (2) SA 419 (SCA) at para [1].

3 (1871) L R 6 QB 597 at 607.

conducting himself would be equally bound as if he had intended to agree to the other party's terms."

[15] This principle is said to be based on the doctrine of "*quasi-mutual assent",* [4] and is predicated on an objective approach to the theory of contract law ie that the law is concerned with the external manifestation, and not the inner workings of the minds of parties to a contract. So, even where subjectively speaking consensus may be absent, resort may nonetheless be had to this so-called reliance theory to determine whether a binding contract has come into being.[5] In effect what the law does in such matters is to say that a party will ordinarily be held to an agreement he or she has signed, even though they may not have intended to bind themselves thereto contractually, and even though they may not have read the document containing the agreement before signing it.

An evaluation: the law applied

[16] During cross-examination the respondents freely conceded that by completing and signing the bundle of documents referred to and submitting these to the appellant, they had created the impression that they wished to enter into the rental agreements, and as a contracting party the appellant was entitled to rely thereon. The respondents' defence was that they signed the documents by

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[4] *Brink* n 1 para [2].

[5] *Sonap Petroleum (SA) (Pty) Ltd v Pappadogianis* 1992 (3) SA 234 (A) at 234J; *Ridon v Van der Spuy and Partners (Wes-Kaap) Inc* 2002 (2) SA 121 (C).

mistake or, as it is more properly referred to, in error, as they thought that the documents were required in order to obtain financing for the purpose of purchasing the equipment in question and not for the rental thereof.

[17] The Appellate Division has held that a party is only allowed to rely on his own mistake or error in attempting to resile from a contract he has feely signed, in certain limited circumstances.[6] Such an error would, at least, have to be reasonable ie *justus*.[7] In the *locus classicus* of *George v Fairmead (Pty) Ltd*[8] Fagan CJ set out the circumstances in which a party may be entitled to rely on an error as being *justus,* in the following terms:

> *'When can error be said to be* justus *for the purpose for entitling a man to repudiate his apparent assent to a contractual term? As I read the decisions, our Courts, in applying the test, have taken into account the fact that there is another party involved and have considered his position. They have, in effect, said: 'Has the first party (the one who is trying to resile) been to blame in the sense that by his conduct he had led the other party, as a reasonable man, to believe that he was binding himself?...If his mistake is due to a misrepresentation, whether innocent or fraudulent, by the other party, then, of course, it is the second party who is to blame and the first party is not bound.'*

[18] Given the authorities I have referred to, the respondents correctly conceded that in order to avoid being held to the contracts in question they needed to prove that they had been induced into entering into them on the basis of a

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6 *National and Overseas Distributors Corporation (Pty) Ltd v Potato Board* 1958 (2) SA 473 (A) at 479G-H.

7 *Sonap Petroleum (SA) (Pty) Ltd v Pappadogianis* 1992 (3) SA 234 (SCA) at 239E.

8 1958 (2) SA 465 (A) at 471B-E.

misrepresentation on the part of the appellant, and it would not be sufficient for them to simply say they had signed the agreements by mistake. The respondents also fairly and properly conceded that the onus in this regard (ie to establish a misrepresentation on the facts before us) lay on them,[9] and conversely, there was no obligation on the appellant to show that it had not misled the respondents in any way.

[19] It was further common cause that inasmuch as the appellant itself and none of its employees (including its operations manager Nell and Liezel Rogers the clerk who processed the rental finance applications and the documents the respondents completed), had ever dealt directly with the respondents, in order to succeed the respondents needed to establish that Kinghorn had acted as an agent on behalf of the appellant. The reason for this is because it was held in *Slip Knot Investments*[10] that a person who is induced to sign an agreement with a finance provider[11] as a result of a misrepresentation made by a third party, will nonetheless be held to the agreement if the finance provider was innocent and unaware of the signatory's mistake. In accordance with the general principles outlined above the finance provider would in such a case be entitled to rely on the appearance of consensus created by the signature, and the signatory would not be entitled to set up his unilateral mistake in order to avoid liability under the agreement.

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9 *Stellenbosch Farmers' Winery Ltd v Vlachos t/a Liquor Den* 2001 (3) SA 597 (SCA) at para [4].

10 *Slip Knot Investments 777 (Pty) Ltd v Du Toit* 2011 (4) SA 72 (SCA) at paras [9] and [12].

11 *In casu* a suretyship.

[20] I am not so sure that on the evidence before us it was established that Kinghorn was indeed an agent of the appellant in regard to the conclusion of the agreements referred to. But, for the purposes of this matter I am prepared to assume that he was. In this regard it appears that he had templates for the documents in question which allowed him to print them and to fill in the blank spaces thereon, including the spaces that dealt with items such as the instalments, the rental period, the names and details of the respondent parties and the equipment. He was also reflected on the rental finance application form as being the *'salesperson',* and he presented the bundle of documents required (in order to make application for finance) to the respondents, on behalf of the appellant, and after the documents had been completed he delivered them to the appellant together with the supporting documentation and financial information it required.

[21] The principal difficulty which I have is whether on the evidence before us the respondents succeeded in proving that a misrepresentation had been made by Kinghorn.[12] In this regard it appears that second respondent was the only one who had any dealings directly with him.

[22] He testified that, during a discussion they had in March 2012 (when he was informed that the estimated cost of the equipment would be in the region of

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[12] See *ABSA Technology Finance Solutions (Pty) Ltd v Thando Funeral Service CC & Ano* [2014] ZAGPJHC 94 at para [15].

R400 000) he told Kinghorn that they did not have the money to buy the equipment and in response Kinghorn offered to try and arrange *'financing'*.

[23] Although second respondent and some of the other respondents testified that, had they known that Kinghorn was proceeding to obtain quotations for rental financing as opposed to financing in order to enable them to purchase the equipment in question, they would never have entered into the agreements, it was never suggested by them in their evidence that this was ever made clear to Kinghorn, nor was there any indication of any discussion in this regard having taken place prior to the documents having been signed. It is thus quite conceivable that when he was told that the respondents were unable to afford purchasing the equipment, Kinghorn sought to obtain rental financing for them instead.

[24] It also appears that at the time when the documents were put before the respondents for signature they were simply informed by Kinghorn that this was for the purposes of 'financing', a statement which was factually correct, and it was common cause that there was no discussion on the point and the respondents simply proceeded to sign the documents without reading them. To my mind, it is improbable in the extreme that, had the respondents made it clear to Kinghorn that they wished to obtain finance in order to *purchase* the equipment concerned and that they were not interested in an agreement in terms of which they would obtain financing in order to simply *rent* it, Kinghorn

would not have attempted to source such form of financing. Either way it would have made no difference to him, as he would still have been compensated.

[25] At best for the respondents it seems as if there may have been a possible miscommunication between them and Kinghorn as to what they had in mind in regard to the nature of the 'financing' which was to be obtained but, in my view, this was a far cry from establishing that Kinghorn made any misrepresentation to them in this regard, nor was it pleaded that the parties had laboured under any form of common or mutual mistake as far as this aspect was concerned. And of course, if one has regard for the documents themselves it is abundantly plain that any reasonable person who made an effort to look at what he was signing would, and should, have seen that they pertained to rental agreements and not to agreements of purchase.

[26] To this one must also add the evidence of the second respondent in regard to the circumstances which led to him cancelling the debit orders. When he was asked, in evidence in chief, whether he would have signed the documents if he knew what their true contents were he answered in the negative but then, somewhat surprisingly, when asked why not, said it was because Kinghorn had told him that it would not cost them more than R 5000 per month by way of instalments. Thus, he did not say that he would not have signed the documents if he knew they were rental agreements as opposed to purchase agreements- it was only the amount of the instalment that was the problem for him. And more illuminating, when asked why the debit orders were cancelled at the end of

June, he said this was because the cameras and the clocking system had not been installed yet by that time.

[27] During June 2012 second respondent also consulted an attorney, who subsequently addressed a letter to the appellant on 26 June 2012 in which he set out the grounds why, in his view, the rental agreements which had been entered into were void and unenforceable and had led to second respondent taking steps to cancel the debit orders.

[28] These reasons, at least according to the letter, were firstly that on both occasions when Kinghorn required the respondents to sign the documents they did not have an opportunity to read them before doing so. No such evidence was ever tendered by any of the respondents and it was apparent from their evidence that, had they wanted to read the documents they would have had ample time to do so. In the second place it was averred that inasmuch as the rental agreements were credit agreements in terms of the National Credit Act,[13] the appellant had failed to comply therewith by failing to conduct a prior assessment of the respondents' creditworthiness, and had failed to provide second respondent with a 'pre-agreement statement and quotation' before the agreements were concluded. It was also alleged that the agreements were invalid because, whereas they purported to suggest that second respondent had received certain goods and services, performance had been defective **in**

[13] Act 34 of 2005.

that a number of security cameras had not been supplied or installed (my emphasis). No reference was made in the letter to the central element of the respondents' later defence ie that Kinghorn had induced the respondents to enter into the agreements by means of a misrepresentation, pertaining to the essential nature of the agreement itself. In fact, from the terms of the letter it appears to have been accepted that the agreements had been consciously entered into between the parties on the basis that they constituted *rental* agreements, and no issue was taken therewith.

[29] In the result, the respondents failed, in my view, to prove that there was any misrepresentation which induced them to enter into the agreements in question and this defence must fail. The obvious corollary to such a finding is that on the basis of the *caveat subscriptor* principle and the doctrine of quasi-mutual assent the respondents must be held to be bound to the documents which they signed. In his judgment the magistrate thus erred in finding that the appellant was responsible for a misrepresentation which was made fraudulently by Kinghorn (whom he described as a third party) and he also erred in finding that the *caveat subscriptor* principle was not of application because it could not be 'applied rigidly*'* in the circumstances.

[30] Notwithstanding the finding which he arrived at that ie there had been a fraudulent misrepresentation by a third party which vitiated the contract, the magistrate proceeded to find, nonetheless, that although no enforceable contract had come into existence it had subsequently been "*cancelled*" by the

respondents but, because they had continued to make use of the PABX telephone system for more than 2 years thereafter they had created the impression that the rental agreement was 'ratified' ("*geratifiseer")*. As a result he held that *'deur die skynbare aanvaarding van die kontrakterme deur voort te gaan om in terme van die huurooreenkoms op te tree, word eerste verweerder gebonde gehou daaraan met uitsluiting van individuele borgstellings van tweede, derde en vierde verweerders'.* What the magistrate was purporting to say in terms of these remarks is not entirely clear to me, and neither of the parties' counsel were able to shed any light thereon. The finding that notwithstanding that no agreement came into existence first respondent somehow 'ratified' it by its subsequent conduct in accepting the PABX system and making use of it was, with respect to the magistrate, not a proper and competent finding in law and I am not aware of any authority which supports it.

[31] As far as the agreement in respect of the photocopier is concerned however, notwithstanding that by appending their signature thereto the respondents would ordinarily be held bound to it on the basis of the doctrine of quasi-mutual assent, this doctrine only finds application where a party whose actual intention does not conform to the common intention expressed on the papers, labours under a *unilateral* mistake or misapprehension. Where however the common intention as expressed in the documents constituting an agreement evidences a common ie mutual mistake on the part of both parties, not only is there no consensus present, but also no basis for seeking to hold the resiling party to the

contract on the grounds that he or she has brought the other party under the wrong impression.

[32] According to the evidence which was tendered by the respondents and which was not challenged by the appellant, second respondent had made it clear to Kinghorn via Strumpher that what was required was a colour photocopier from Nashua/Ricoh and not a black and white photocopier from Canon. The documents however mistakenly referred to a Canon photocopier, and also failed to stipulate that it was to be a colour photocopier.

[33] Consequently, when a black and white photocopier was delivered the respondents immediately complained and Strumpher arranged for Kinghorn to come to the farm that Friday to discuss the matter. The uncontested evidence of Strumpher was that following his vist Kinghorn undertook to rectify the malperformance ie the delivery of the wrong photocopy machine, but before he could do so he was unfortunately fatally injured in a motor vehicle accident which took place over the intervening week-end. Although Rogers claimed that Strumpher had subsequently confirmed on 25 April 2012 that the photocopier had been installed and was in working order, Strumpher strenuously denied this, and the respondents produced a series of photographs in evidence which showed the photocopier still wrapped in bubble cling-wrap, which they said was the condition in which it was delivered. Although one of the photographs shows that the photocopier has a sticker on it from Smart Installation, the company which was supposed to do the installation, no evidence was led to the effect

that an installation in fact occurred, and the respondents' evidence during the trial that the photocopier was still standing, unused, in the same condition in which it had been delivered a few years before was never controverted.

[34] In the circumstances it is apparent that the goods which were actually agreed upon and which were to be supplied in terms of the rental agreement were not delivered to the respondents. Nell testified that the appellant would only be liable to pay the supplier in respect of a rental agreement once it was satisfied that due and proper performance in terms of the agreement had taken place ie that the correct equipment had been supplied to the customer, and if there was a mistake in this regard they would ensure that the supplier rectified it and complied with its obligations in terms of the agreement before it would be paid by the appellant. In the circumstances, on the evidence before us it was not open to the appellant to suggest that it was entitled to expect performance by the respondents (of their duty to make payment in terms of the contract), as the supplier had not complied with its obligations. I am not aware of any authority in terms of which, despite the defence of *exceptio non adimpleti contractus* being available to a contracting party who wishes to resile from an agreement, it should be disentitled from doing so on the basis of the doctrine of quasi-mutual assent.

[35] On the facts before us it is plain that there was a mistake common to both parties and not a unilateral mistake on the part of the resiling party. The respondents attempted, as a fall-back position, to rely on the doctrine of

estoppel and urged us to hold that the respondents were to be estopped from denying that there was due and proper compliance with the terms of the contract, by the supplier. Respondents pointed out that the appellant was an innocent party who had relied *bona fide* on the acknowledgement of receipt it had received, and the apparent regularity of the documents which had been signed by the respondents.

[36] In my view the balance of probabilities in regard to the evidence pertaining to delivery rather lies in favour of the respondents, given the evidence of Strumpher and the evidence that the photocopier is still standing in the original bubble cling-wrap in which it arrived. In my view such evidence demonstrates that it would have been impossible for the machine to have been installed by Smart Installation and any incorrect impression or perception which was created in this regard, as far as the appellant was concerned, emanated from the actions of its own employee (Rodgers) and not from the conduct of the respondents.

[37] In the circumstances this is in my view not a matter where the principles of estoppel can find application. Estoppel is traditionally applicable in instances where it is alleged that a party acted without the necessary authority, but in circumstances where it gave out that it, or its servant, ostensibly was entitled or authorised to so act, and it is a mechanism whereby such a party will be estopped from denying the existence of such ostensible authority.

The *quantum*

[38] As far as the *quantum* is concerned the magistrate did not explain in his judgment how he got to the amount of R298 072.84 in respect of the claim pertaining to the PABX system and both parties' counsel were *ad idem* that it was plainly wrong.

[39] During the course of the trial in 2014 the respondents presented the evidence of an actuary, which was directed at proving what the discounted, present-day value of the appellant's claim for future loss was at that time.

[40] In this regard clause 7 of the PABX rental agreement provided that in the event that first respondent breached the terms of the agreement by failing to pay any amount which was due and owing in terms thereof, the appellant would have the right to "*treat as immediately due and payable all rental which would otherwise become due and payable*" in terms of the agreement "*over the then unexpired hire period, and claim and recover….forthwith the aggregate amount of such charges as well as all other charges then in arrears*".

[41] As such, clause 7 was a so-called 'acceleration' clause, in terms of which in the event of a breach of the agreement first respondent would become liable not only for the appellant's past loss, but also for all future rentals it would have been paid, in due course, as its future loss.

[42] The basis for leading the actuarial evidence was that inasmuch as the provisions of clause 7 of the rental agreement constituted a penalty stipulation in terms of the provisions of the Conventional Penalties Act[14] it would be unfair to the respondents and disproportionate to the appellant's actual prejudice to allow it to obtain the full value of its future rental instalments which would, had the agreement been honoured, been devalued by the effects of inflation over the course of time. In the result, what the respondents sought to do was to allow the appellant only to claim the net discounted value of the future rentals.

[43] The rental agreement for the PABX is to endure for a period of 6 years from 23 March 2012 ie until 22 March 2018. Nell testified that the appellant's profit in respect of this agreement would only start to accrue in the 44th month after its inception ie at the end of November 2015, at which point the appellant would 'break even'. Given these circumstances and given that the contract has little more than a year and three months left to run the parties were agreed that the bulk of the appellant's loss to date, some four and a half years down the line, constitutes an actual incurred past loss and it would thus not be correct to discount this loss, nor would it be disproportionate or unfair in the circumstances to award the appellant not only the *quantum* of such past loss but also the remaining balance of the contract in respect of the future rentals until March 2018, in lieu of its future loss, without discounting such loss to present-day values. The parties were also agreed that the value of such past

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[14] Act 15 of 1962.

and future loss combined, as at the date of the hearing of the appeal, was the amount set out in para 147.1 of the appellant's heads of argument.

[44] Finally, the parties were further agreed that in the event that we were minded to find in favour of the appellant in respect of the *quantum* of the claim pertaining to the PABX system and in favour of the respondents in respect of the merits of the photocopier matter, both parties would have achieved substantial success on appeal and the fairest order to make in such circumstances would be that each party should be liable for its own costs on appeal (including the cross-appeals).

Conclusion

[45] In the result I would propose the following Order:

1. **The appeal in matter no. A124/15 (ex Paarl 4785/12) is upheld and the cross-appeal is dismissed.**
2. **The judgment granted by the court *a quo* in matter no. 4785/12 is set aside and substituted with the following order:**

   'Judgment is granted against first to fourth respondents (jointly and severally the one paying the other to be absolved), as follows:

   (a) Payment of the sum of R339 814.42;

   (b) Interest on the aforesaid amount at the prescribed rate* a tempore morae *to date of final payment;

   (c) Costs of suit on the scale as between attorney and client.'

3. **The appeal and conditional cross-appeal in matter no A123/15 (ex Paarl 4783/15) are dismissed.**
4. **Each party shall be liable for their own costs in respect of the appeals and the cross-appeals.**

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SHER, AJ

I agree, and it is so ordered.

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LE GRANGE, J

Appearances:
For the appellant: Adv P Botha (assisted by Adv G Hayward)
Instructed by: Kinniburgh & Associates, Cape Town
For the respondents: Adv W P Coetzee
Instructed by: Visagie Vos & Partners, Goodwood