

SOUTH AFRICA / JUDGMENT

Berger v Semex South Africa (Pty) Ltd (4407/07) [2010] ZAWCHC 7 (8 February 2010) [2010] ZAWCHC 7

COURT

Western Cape High Court, Cape Town

BEFORE

Veldhuizen

CASE / FILE NUMBER

4407/07

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IN

THE HIGH COURT OF SOUTH AFRICA (WESTERN CAPE PROVINCIAL DIVISION)

Case

No.: 4407/07

In

the matter of:

GERT
DIEDERIK BURGER Plaintiff
and
SEMEX
SOUTH AFRICA (PTY) LTD Defendant

JUDGMENT

DELIVERED ON MONDAY, 08th FEBRUARY 2010

Veldhuizen J

[1] In terms of rule 33 the parties reached the following agreement:

"1. Plaintiff is Gert Diederik Burger, an adult male residing at 10 Querus Avenue Kleinbron Estate, Brackenfell, Cape Town.

2. Defendant is Semex South Africa (Pty), a company with limited liability duly registered as such in terms of the relevant legislation of the Republic of South Africa, with registration number

2001/020900/07, and with chosen domicile at Unit 9, Pontac Road, Winelands Park, Saxenburg Park, Blackheath, Cape Town.

3. On 18 October 2005 a written contract of employment was entered into between the parties, a copy whereof is annexed marked "A".
4. On 20 January 2007 the defendant, acting in terms of clause 5.1 of annexure "A", terminated the plaintiff's employment on thirty days written notice. A copy of the written notice handed to the plaintiff in that regard is annexed marked "B"

[2] Paragraph 3 of the contract of employment ('the contract') reads:

'3. Period of employment

You will enter a fixed term contract of employment with the Company on October 31, 2005.

The length of this contract is for a period of three (3) years beginning on October 31, 2005 and ending on October 31, 2008.'

In paragraph 5.1 of the contract the parties agreed: 'You or the Company will be entitled to terminate your employment on not less than 30 days notice given to the other party.'

Paragraph 5.2 set out the circumstances under which the defendant will be entitled to terminate the plaintiff's employment without notice.

- [3] In terms of the rule 33 agreement I am asked to decide: '5.1 whether, regard being had to the terms of annexure "A", the defendant was entitled to terminate the plaintiffs employment on thirty days written notice as per annexure "B"; or 5.2 whether, regard being had to the terms of annexure "A", the plaintiffs aforesated conduct, in the absence of "further procedure or consultation", amounted to an unlawful and without good cause cancellation of the agreement, as is pleaded by the plaintiff
- [4] Paragraph 5.1 of the contract gives not only the defendant but also the plaintiff the right to terminate the plaintiffs employment with the defendant on either party giving the other not less than 30 days written notice. The giving of notice in terms of this paragraph does not, in my view, amount to a repudiation of the contract or a breach thereof. By giving the plaintiff the notice, annexure 'B' to the rule 33 agreement, the defendant did no more or less than it was entitled to do in terms of the contract. It simply exercised one of the rights it had in terms of the contract.
- [5] It follows that the first question posed in paragraph 5.1 of the rule 33 agreement must be answered in the affirmative, namely that the defendant 'was entitled to terminate the plaintiff's employment on thirty days written notice as per annexure "B". The answer to the second question is 'no'.
- [6] The plaintiff's claim is accordingly dismissed with costs.

A.H. VELDHUIZEN

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