

SOUTH AFRICA / JUDGMENT

Voltex (Pty) Ltd v Jackson (5110/2024)

[2024] ZAFSHC 311 (30 September 2024)

[2024] ZAFSHC 311**COURT**

Free State High Court, Bloemfontein

BEFORE

Mhlambi

CASE / FILE NUMBER

5110/2024

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record**IN THE HIGH COURT****OF SOUTH AFRICA,****FREE STATE****DIVISION, BLOEMFONTEIN****Reportable:**

NO

Of Interest to other

Judges: NO

Circulate to

Magistrates: NO

CASE NO: 5110/2024

In

the matter between:

VOLTEX

(PTY) LTD

Applicant

And

JOYCE

DORIS JACKSON

Respondent

HEARD

ON:

23 SEPTEMBER 2024

JUDGMENT

BY: MHLAMBI, J

DELIVERED ON: 30 September 2024

[1] This is an opposed application to enforce a restraint of trade agreement between the applicant and the respondent for eight months.

The applicant approached the court on an urgent basis seeking the following orders:

1.1 The Respondent is interdicted and restrained from.

- a. Competing with the Applicant's business directly or indirectly, either as a shareholder, employee, partner, member of a close corporation, director of a private company or in any other natural or juristic capacity, on her own or through any associated or related person or entity, for a period of 8 Months from 1 August 2024, within the Republic of South Africa, alternatively, within the province of the Free State;
- b. from soliciting or enticing or coaxing away any of the Applicant's customers, for a period of 8 months from 1 August 2024, whether for reward or not, directly or indirectly, by furnishing any information or advice to any customer of the Applicant or using any

other means or to take any other action which is directly or indirectly designed, or in the ordinary course of events, calculated

to result in such customer/s terminating their business relationship with the Applicant or transferring any part or all of their business to any person/entity other than the Applicant;

- c. From divulging or disclosing to any competitor of the Applicant or making use directly or indirectly of any trade secrets or confidential information, of any nature whatsoever concerning or relating to the business of the Applicant.

1.2 The Respondent is directed to pay the costs of this application, including the costs of senior and junior counsel where so employed, on tariff scale C, alternatively;

1.3 An Order is granted on the same terms set out in paragraphs 2 to 3 above on an interim basis, pending the finalisation of this application.

1.4 Such further and/or alternative relief as the above Honourable Court deems fit.

The Parties

- [3] The Applicant is VOLTEX (PTY) LTD, a company duly registered and incorporated in accordance with the relevant laws of the Republic of South Africa with registration number 1964/006740/07, with its head office at Freestone Office Park, 135 Patricia Road, Sandton, Johannesburg, and its place of business within the jurisdiction of this Court at 2-8 Hornby St, Oranjesig, Bloemfontein. It supplies all manner of electrical components, cabling, appliances, and solutions and provides specialist, turnkey services in this regard.
- [4] The First Respondent is JOYCE DORIS JACKSON, an adult female employed by Actom Electrical Products (Pty) Ltd as a branch manager at 20 Lombard Street, Bloemfontein.

The contract of employment

- [5] On 19 October 2018, the parties entered into a contract of employment in which the applicant appointed the respondent as the internal sales representative who reported to the branch manager. On the same day, the respondent signed the acceptance clause and agreed, unconditionally, to abide by the conditions detailed in the contract.[1] She acknowledged, by her signature, that the undertakings and restraints of trade contained in the contract were entirely reasonable and necessary, both in regard to their period (i.e., duration) and area. She acknowledged furthermore that a breach of such restraints should cause the company to suffer, inter alia, financial harm and damage.[2]
- [6] The restraint of trade undertakings is contained in clause 24 of the employment contract and provided as follows:

“20.1 You warrant and agree that in the nature of your employment you will have access to significant confidential information of the Company and may develop relations with the Company’s Customers and Suppliers. You accordingly agree, without reservation, that the restraints set out in this clause are entirely reasonable and necessary in duration, scope and area to protect, inter alia, the Company’s proprietary information and business interests.

20.2 It is thus a material term of this agreement and your employment with the Company that, by your signature hereto, you irrevocably agree and understand in favour of the Company, its successors in the title and assigns, that:

20.2.1 you shall not during the period of your employment with the Company (and its assigns/ successor in title) or at any time thereafter, utilize either for yourself or for any other person, or disclose to any person, any confidential Information or trade secrets, other than secrets which may be available in the ordinary course of business, relating to the business of the Company;

20.2.2 you undertake to surrender to the Company, on demand and In any event on termination of your employment with the Company, any documents, property, vehicles, assets or records, written instructions, notes or memoranda and any copies thereof which relate to the business of the Company or Its affair, irrespective of who the author was of any such document or record;

20.2.3 you will not solicit or tout for any clients of the or suppliers or any other connections of the Company. nor shall you seek to solicit, tout for or entice any of the staff for the time of the Company or any of the Company's clients.

20.3 It is a further material term of this agreement and your employment with the Company that, by your signature hereto, you irrevocably agree and understand in favour of the Company, its successors in title and assigns, that you will not during the currency of your employment with the Company and for a period of 8 (eight) months after date of termination of your employment with the Company for any reason whatsoever and howsoever arising, (including summary dismissal or notice duly given by the Company) be directly or indirectly engaged in or employed in or associated in anyway with any business which is similar to or competitive with any of the various business of the Company.

20.5 the area to which the restraint referred to in paragraph 20.3 above is applicable to each of any of the provinces of the Republic of South Africa as constituted from time to time and in which province/s you rendered services to the Company at the date of termination of your employment and/or at any time during the 8 (eight) month period preceeding the termination of your employment with the Company.”

Factual

Background

[7] The applicant employed Jackson for approximately 23 years. She was employed in various roles and positions in its

Kimberly and Bloemfontein branches from 2000 to 2011. In 2011, she was appointed as the applicant's branch manager in Kimberly

until 2013, when she became the branch manager of the Bloemfontein branch. In 2017, she resigned from her employment with Voltex. The applicant appointed her at the Bloemfontein branch in 2018 until 29 July 2024, when she tendered her resignation from Voltex.

[8] As the internal sales representative, she had unrestricted access to and knowledge of the applicant's confidential information and trade secrets. Although her official appointment was as an internal sales representative, her day-to-day functions were that of a senior managerial position. She had access to the applicant's server, which was reserved for managerial or

senior manager positions. She was the head of the applicant's sales operations for the region of Lesotho. She had access to pricing structures, discount spreadsheets, invoicing systems and cash reconciliations, which ordinary internal sales representatives were not privy to. She could change the pricing structure for her own clients without a manager's assistance, and was permitted to vary the pricing structure of clients serviced by other internal sales representatives within Voltex.[3]

- [9] According to the applicant, it was unknown that the respondent intended to work with one of its direct competitors upon her resignation. It was discovered, on/ or about 19 August 2024, that not only had she taken employment as a branch manager with Actom, a direct competitor of Voltex, on 27 July 2024, she sent a customer list from her work email address to her email address. The customer list contained each customer's individual TIN ("Tax Identification Number"), which is required by the Lesotho border clearing agents when bringing stock across borders into Lesotho. The branch at which the respondent has taken up employment as branch manager is approximately 4 kilometres from the applicant's Bloemfontein branch, where she was employed.
- [10] In her answering affidavit, the applicant stated that Voltex employed her in various positions over 23 years, making up almost all of her working life. The skills that she learned through her employment with the applicant was what she knew. If she were to be restrained to perform the only job in the industry known to her for eight months, it would cripple her family and put them in a dire financial predicament. Unemployment was rife in South Africa, and chances are slim that she would enter the market in a different sector. Her age and the high number of unemployed graduates actively searching for work may make it difficult for her to obtain alternative employment.
- [11] She did not and would not use any confidential information of Voltex to its detriment. After cutting the specific employment benefit, the applicant knew she had taken over the work cell phone. That meant that Voltex customers could contact her directly on her cell phone. Since 2 August 2024, after her resignation, she referred all customer enquiries to the applicant. She also enabled an automatic response on the business WhatsApp number to contact Anthony at Voltex and provided his contact details. She never intended to "steal" any of the applicant's customers. It is unreasonable of the applicant to prevent her from taking up employment with Actom because the products of the two companies are of similar or generic nature in the specific market segment.[4] The period for which the restraint would operate was unreasonable. Actom, Voltex, and several other companies operated and competed in the same geographical area on the same customer basis, services, and products. The applicant did not pay or assist her financially for the proposed restraint period.[5]
- [12] It is contrary to the public interest to enforce an unreasonable restriction on her freedom to trade and /or be employed, which is a constitutionally entrenched right. She could not be precluded from using her skills and abilities by a restraint of trade contract. Although she acquired the skills whilst working for the applicant, such skills and abilities were not the applicant's property.

Parties

submissions

- [13] The respondent's defences can be summarised as follows: her access to confidential information had been revoked, and it no longer constitutes the applicant's protectable interest.[6] She would not use any confidential information to the applicant's detriment.[7] As an internal sales representative at Voltex, she did not have insight into the applicant's strategic issues or trade secrets.[8] The applicant did not have a legitimate proprietary interest worthy of protection.[9] The words and actions of the applicant's managing director repudiated the contract of employment and/or waived the restraint of trade provisions when she and other staff members were told that they were free to join the applicant's competitors if they were not happy at Voltex.[10]
- [14] It was pointed out on behalf of the applicant that the respondent had full customer information and tax invoices relating to the applicant's Lesotho customers in her possession. [11] Her daily activities revolved around local and Lesotho customers she procured on behalf of the applicant with whom she developed

relationships. Her admissions denied her allegations that the applicant had no proprietary protectable interest as she had confidential information and acquired customer relations. Relying on *Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another*, [12] the applicant's counsel submitted that, on the respondent's version alone, the statements she alleged were made did not pass muster to qualify them as a waiver of the restraint of trade provisions of her contract of employment. Waiver, amongst others, is not presumed; it must be alleged and proved; not only must the acts allegedly constituting the waiver be shown to have occurred, but it must also appear clearly and unequivocally from those facts or otherwise that there was an intention to waive.

Legal position

- [15] In *Experian South Africa (Pty) Ltd v Haynes and Another*, [13] Mbha J, as he then was, stated that proprietary interests that may be protected by a restraint of trade agreement between an employer and an employee include trade connections and confidential information. An employer seeking to enforce a restraint agreement is required only to invoke it and show breach, whereupon the employee seeking to avoid it must show unreasonableness by establishing that he had no access to confidential information or never acquired any significant personal knowledge of, or influence over, the employer's customers. For the employer it suffices to show that there was confidential information or trade connections to which the employee had access and which could, in theory, be exploited by the new employer.
- [16] The court went on to say that the ex-employer seeking to enforce against its ex-employee a protectable interest recorded in a restraint does not have to show that the ex-employee has utilised information confidential to it. It need merely show that the ex-employee could do so. The purpose of the restraint agreement is to relieve the applicant from having to show bona fides or lack of retained knowledge on the part of the respondent concerning the

confidential information. In these circumstances, it is reasonable for the applicant to enforce the bargain it has exacted to protect itself. Indeed, the very ratio underlying the bargain is that the applicant should not have to content itself with crossing its fingers and hoping that the respondent would act honourably or abide by the undertakings it has given. It does not lie in the mouth of the ex-employee who has breached a restraint agreement by taking up employment with a competitor to say to the ex-employer, 'Trust me, I will not breach the restraint further than I have already been proved to have done.'

Conclusion

[17] It is not in issue that the restraint of trade clause in the contract is valid and enforceable. Its reasonableness and the fact that it protects the employer's legitimate proprietary interest are in issue. It is common cause that the respondent had access to the applicant's server and had knowledge of its confidential information and trade secrets.[14] In *Reddy v Siemens Telecommunications (Pty) Ltd*, [15] it was stated that:

"Reddy is in possession of confidential information in respect of which the risk of disclosure by his employment with a competitor, assessed objectively, is obvious. It is not that the mere possession of knowledge is sufficient, and this is not what was suggested by Marais J in BHT Water: Reddy will be employed by Ericsson, a 'concern which carries on the same business as [Siemens] in a position similar to the one he occupied with Siemens. His loyalty will be to his new employers and the opportunity to disclose

confidential information at his disposal, whether deliberately or not, will exist. The restraint was intended to relieve Siemens

precisely of this risk of disclosure. In these circumstances the restraint is neither unreasonable nor contrary to public policy."

[18] I am satisfied that the respondent has no defence against the restraint of trade undertakings she provided to the applicant in the employment contract. I agree with the applicant's counsel that the short duration of the restraint necessitates the relief sought to be final and adjudicated based on *Plascon Evans Paints Ltd v Riebeeck Paints (Pty) Ltd*. [16] I am also satisfied that the applicant is entitled to final relief as sought since it has shown a clear right that is being infringed on by the respondent in commencing employment with the applicant's competitor in breach of the agreement. An injury has been committed or is reasonably apprehended, and no other satisfactory remedy is available. [17] Clause 20.5 of the employment contract states that the area to which the restraint is applicable is the province in which the respondent rendered the services to the company at the date of the termination of her employment.

[19] I, therefore, make the following order:

Order:

1. The respondent is interdicted and restrained from:

1.1 competing with the Applicant's business directly or indirectly, either as a shareholder, employee, partner, member of a close corporation, director of a private company or in any other natural or juristic capacity, on her own or through any associated or related person or entity, for a period of 8 Months from 1 August 2024, within the province of the Free State;

1.2 from soliciting or enticing or coaxing away any of the Applicant's customers, for a period of 8 months from 1 August 2024, whether for reward or not, directly or indirectly, by furnishing any information or advice to any customer of the Applicant or using any other means or to take any other action which is directly or indirectly designed or in the ordinary course of events, calculated to result in such customer/s terminating their business relationship with the Applicant or transferring any part or all of their business to any person/entity other than the Applicant;

1.3 From divulging or disclosing to any competitor of the Applicant or making use directly or indirectly of any trade secrets or confidential information of any nature whatsoever concerning or relating to the Applicant's business.

2. The respondent is ordered to pay the costs of this application, including senior counsel's costs on tariff scale C.

MHLAMBI, J

On behalf of Plaintiff: Adv. J Blou SC, Instructed by: Lovious Block INC 31 First Avenue Westdene Bloemfontein
On behalf of the Defendant: Adv. J Els Instructed by: RC Ishmail Attorneys Unit 4 Red Plaza 21 Reid Street Westdene Bloemfontein

[1] Page 94 of the indexed papers.

[2] Clause 20.7 of the contract.

[3] Paras 17 and 18 of the FA and paras 112 and 113 of the AA.

[4] Para 74 of the AA.

[5] Para 75 of the AA.

[6] Para 12-12.5 of the AA.

[7] Para 69 of the AA.

[8] Para 85 of the AA.

[9] Para 82 of the AA.

[10] Paras 48,49,59 and 60 of the AA.

[11] Para 12 of the AA.

[12] 2009 (4) SA (CC) at para 80.

[13] 2013

(1) SA 135 (GSJ) paras Paragraphs [14], [17] and [20] – [22] at 140G, 141B – D.

[14] Para 113 of the AA and para 17 and 18 of the FA.

[15] 2007 (2) SA 486 (SCA) para 20.

[16]1984

(3) SA 623 (A).

[17] Setlogelo v Setlogelo 1914 AD 221.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAFSHC/2024/311.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/voltex-pty-ltd-v-jackson-unknown-topic-afshc-2024--6a3ea5193b1caa912981028e>

Prepared on 11 October 2026 · Esheria