

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2019/7031

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| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: NO |

DATE

SIGNATURE

In the matter between:

VITAL ENGINEERING (PTY) LTD

Claimant

and

DODDS BEAUMONT PRINGLE

Defendant

Neutral Citation: *Vital Engineering (Pty) Ltd v Dodds Beaumont Pringle* (Case No. 2019/7031) [2023] ZAGPJHC 505 (18 May 2023)

JUDGMENT

YACOOB, J

- [1] The defendant was employed by the plaintiff from the early 1970s until 07 November 2018, when he was dismissed. He had been with the company since he was 13 years old. He was a director of the plaintiff from 1993 and managing director from 1995, until he was removed as a director by resolution on 12 November 2018. Until 1 February 2021 he was a 50% shareholder in the plaintiff. He was bought out by the other shareholder, who is his brother.
- [2] The plaintiff claims damages from him for legal fees allegedly paid by the plaintiff which ought to have been paid by the defendant personally, and which the plaintiff claims were paid at the defendant's instance.
- [3] The plaintiff initially instituted summons, and there was a full set of pleadings, as well as an application for summary judgment. Thereafter the matter was transferred to the commercial court, and a new statement of claim and statement of defence were filed. The matter then was delayed when the plaintiff was provisionally liquidated by the defendant, but once that order was discharged, it gained momentum again.
- [4] Witness statements and a statement of common cause facts and facts in dispute were filed in accordance with the commercial court rules.
- [5] The trial was set down for hearing in November 2021 but was postponed due to the ill-health of the defendant. The defendant was ordered to pay the wasted costs.
- [6] The plaintiff's case as pleaded is that the defendant appointed the plaintiff's erstwhile attorneys, Louis and Associates ("Louis"), to act for him in a personal matter, and, according to the plaintiff, used the plaintiff's money to pay for those legal services, unlawfully and in breach of his fiduciary duties. The plaintiff now seeks the recovery of damages of R 2 600 491,98, which is the amount the plaintiff contends was paid to Louis for the defendant's personal legal services.
- [7] The defendant pleaded that the payments were made incorrectly. He had agreed with Louis that fees would be capped at R100 000 for that matter. The invoices from Louis for the matter were not brought to his attention and he did not authorise their payment. By entering into a settlement agreement with Louis

for legal fees, the plaintiff prejudiced the defendant's right of recourse against Louis. The plaintiff debited the defendant's loan account by an amount of R2 426 240 and this should be deducted from any amount awarded to the plaintiff.

[8] The question of the loan account with debit was not included in the defendant's witness statement, and therefore the defendant has not proved that averment. The agreement with Louis, which was in the papers, only settles the dispute between the claimant and Louis. To the extent that the defendant had personal arrangements with Louis, those are not affected by it.

[9] In terms of the commercial court practice directive, the witness statements filed by the parties constitute their evidence before this court. Oral evidence was adduced, to deal with the factual disputes which emerged from the witness statements filed, and the statement of agreed facts and facts in dispute.

[10] Only the plaintiff's witnesses gave oral evidence. The defendant, who was the only witness of whose evidence a statement was filed, chose not to testify orally.

[11] This means that his evidence was not tested by cross-examination. This must be taken into account when deciding the factual dispute between the parties. What must also be taken into account, is the nature of the cross examination put to the plaintiff's witnesses.

[12] In argument, the claimant relied on the fact that its evidence was undisputed. The defendant, on the other hand, contends that the claimant has not made out its case, because it has not produced the original invoices that were paid by the claimant and which the claimant claims ought to have been paid by the defendant.

[13] The relevant issues in dispute identified in the agreed statement of undisputed facts and issues in dispute are:

- a. Whether Mr Pringle (the defendant's brother), Ms Gadney, Ms Watkins, Mr Brown and Ms Robero assisted the defendant with the claimant's administration.

- b. Whether Mr Pringle, Ms Gadney, Ms Watkins and the defendant shared responsibility regarding the claimant's legal matters.
- c. Whether the defendant exercised his powers and performed his duties and functions in accordance with the provisions of the Companies Act, 71 of 2008.
- d. Whether it came to the claimant's knowledge in April 2016 the defendant defrauded the plaintiff by paying or causing to be paid amounts totalling R2 600 491.98 to Louis for legal services rendered to the defendant in a personal capacity.
- e. Whether the annexure POC1 to the statement of claim sets out the unlawful payments.
- f. Whether the defendant was aware that the payments were unauthorised, failed to inform the Board of Directors, and acted in material breach of his fiduciary duties.
- g. Whether the claimant has suffered damages in the amount of R2 600 491.98.

[14] It is common cause that the defendant appointed Louis to act on his behalf in his personal capacity in a matter referred to as the "Cloverdene" matter.

[15] It is clear that, if it is proved that the defendant in fact caused the amounts charged by Louis in respect of Cloverdene and paid by the claimant, to be paid by the claimant, without the knowledge or authority of the board of directors, he acted in material breach of his fiduciary duties, and that the claimant must be found to have suffered damages in the amount proved to have been paid. There were amounts not paid by the claimant which were charged by Louis and those do not come into consideration.

[16] The claimant called three witnesses, Ms Yvonne Gadney, the financial manager and erstwhile financial director of the claimant, Mr Glen Pringle, the brother of the defendant, and Dr Derek Brown, a director of the claimant.

- [17] Ms Gadney was the main witness. In her witness statement, which she also confirmed in her oral evidence, she stated that the defendant instructed her to pay the Cloverdene account, and that he would make good with Vital. He never told her of any cap to the amount, and the invoices were sent to both her and the defendant. When they were not copied to the defendant she forwarded them to him. She followed the defendant's instructions and would not have questioned him.
- [18] Attached to Ms Gadney's witness statement, in addition to statements and invoices from Louis, are the papers in a sequestration application Louis brought against the defendant. From those papers it is evident that the defendant knew and intended for Vital to pay his legal fees in Cloverdene on his behalf. This is clear from his answering affidavit in that matter. It is also clear from the schedule of payments made by the claimant to Louis in respect of Cloverdene that payments started not to be made in full at the same time that payments for the claimant's matters with Louis started to fall into arrears.
- [19] Ms Gadney confirmed that she made the payments from the claimant's bank account, but was insistent that she never did so without obtaining approval. She confirmed that she created the schedule of payments annexed to the Particulars of Claim (POC1) and her witness statement (YG16) and that some of the original source documents were no longer available. Those that were available were annexed to her witness statement. She extracted them from the system and she put them into the system herself.
- [20] It was not put to Ms Gadney in cross-examination that the amounts paid were debited against the defendant's loan account, that the defendant had told her that there was a R100 000 cap on payments for Cloverdene, or that the defendant had never authorised payment to Cloverdene. Those elements of the defendant's version therefore must be rejected.
- [21] Mr Glen Pringle, the defendant's brother, confirmed that the payments to Cloverdene were not authorised, and that many of the original invoices were lost when the claimant's server crashed in 2017. He also testified that before 2016 when the claimant became aware of the defendant's actions, the

claimant's structures were more fluid, and that invoices for the claimant would be addressed to the defendant without making a distinction between him personally and him as a representative of the claimant.

[22] He also confirmed that his brother bore responsibility for legal matters and he did for procurement. Ms Gadney would get verbal authorisation from each of them for payments in the area they were each responsible for.

[23] Mr Brown's evidence simply corroborated that of Mr Pringle.

[24] Much was made in cross examination of the claimant's witnesses about the documents annexed to the witness statements as "invoices". Mr Louis appears to have issued combined invoices and statements. This cannot be held against the claimant. The issue of whether Mr Louis provided sufficient particularisation in his invoices does not affect the validity of the claimant's claim. That is an issue between the defendant and Mr Louis. It appears, however, that although the defendant was responsible for the legal portfolio, and saw these documents, he did not take up the issue of particularisation with Mr Louis at the time. It is too late for him to do so now.

[25] In argument for the defendant it was submitted that the documents annexed to Ms Gadney's statement could not be relied upon by the claimant because Ms Gadney did not refer to each individual one in oral evidence. The commercial court practice directives make it clear that she did not need to. The witness statements constitute evidence, and this includes what is annexed to them. It was open for Ms Gadney to be cross-examined on them.

[26] It was also submitted for the defendant that because the pleadings refer to the defendant having acted fraudulently, the claimant has to establish the elements of fraud in order to prove its cause of action. This is not the case.

[27] The claimant from the outset, clearly relied on the breach of fiduciary duty by the defendant in causing payments to be made that were not authorised and were for his own personal benefit. The use of the adjective "fraudulent" does not change the cause of action.

[28] I am satisfied that Ms Gadney's evidence taken as a whole, including her witness statement and the annexures, establish that the payments were made as alleged, and what the amount is. Ms Gadney impressed as a witness and I am satisfied that there is no reason to believe that she either falsified any entries into the financial management system, or that she made errors.

[29] It is also clear, from the manner in which the defence has changed in its various iterations, that the defendant has not been candid with the court. His version can be rejected entirely, to the extent that there is one. This was in fact the approach taken in argument for the defendant, as the focus was only on submissions that the claimant has not proved its case.

[30] For the reasons set out above I am satisfied that the claimant has made out a case for the relief sought on a balance of probabilities. In particular it has proven that the defendant caused the payments to be made by the claimant to Louis for the Cloverdene matter, a personal matter. He acted in breach of his fiduciary duties, using the claimant as a personal resource.

[31] I therefore make the following order:

- a. The defendant is to pay to the claimant R2 600 491.98, and *mora* interest on that amount at the prescribed rate from 28 February 2019.
- b. The defendant is to pay the claimants costs including costs of two counsel.

S YACOOB
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant: L M Malan SC and L van Tonder
instructed by Cilliers Attorneys

For the Respondent: F Botes SC
instructed by Macintosh Cross & Farquharson

Date of Hearing: 31 October – 3 November 2022
Date of Judgment: 18 May 2023