



REPUBLIC OF SOUTH AFRICA

Of interest to other judges

**THE LABOUR COURT OF SOUTH AFRICA,  
IN PORT ELIZABERTH  
JUDGMENT**

Case no: P 343/13

In the matter between:

TEDDYBEAR CONSULTING TRUST

Applicant

T/A BLUE BAY FOOD STOP

and

DEYSEL RONELLE LAUREN

First Respondent

STEERS CLEARY PARK

Second Respondent

**Heard:** 16 April 2014

**Delivered:** 29 April 2014

**Summary:** (Claim for contractual damages – insufficient factual averments to prove damages).

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**JUDGMENT**

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**LAGRANGE, J**

- [1] In this matter the applicant originally sought an interdict enforcing an agreement in restraint of trade against its former employee the First Respondent, Ms RL Deyssel ('Deyssel'), together with a claim for notice pay in terms of the First Respondent's contract of employment.
- [2] At the hearing, *Mr Lee*, who appeared for the applicant withdrew the application and associated relief sought in respect of the restraint of trade, but persisted with the relief for damages allegedly suffered as a result of her breach of contract amounting to R 22, 035–00. The matter was unopposed.
- [3] Deyssel was employed as a shift supervisor in a Steer's franchise operated by the applicant.
- [4] On the applicant's papers, the first respondent resigned from her employment with the applicant with immediate effect on 4 February 2013, without notice to the applicant. According to the applicant Deyssel did so in order to take up employment with another Steer's franchise holder in Port Elizabeth.
- [5] The pertinent provisions relating to notice in the contract of employment are set out in clause 23 thereof. The relevant ones for the purpose of this application are:

*"23.1 Notice of termination of service required from either side will be 1 week for the first month of employment, thereafter two full calendar months. The written notice of termination must be submitted on the first calendar day of the month and must be handed in to the employer or management designate.*

*...*

*23.4 The periods of notice as set out in 23.1 shall not be applicable:*

*23.4.1 in the case of summary dismissal in the event of disciplinary procedure*

*23.4.2 in the case of desertion or unauthorised absence for 3 (three) or more working days.*

*23.5 The employer shall have the right to pay the employee in lieu of notice.*

*23.6 The employee will be required to continue working at the work for which she/he was employed until the end of the notice period. If the employee fails to work during the notice period the employer will be obliged to pay for only the number of days (hours) during which the employee actually worked and the employee will be liable **to pay the employer the wage he would have earned for the period which he failed to work ...***

(original emphasis in the contract)

- [6] At the time of her resignation, Deyssel was earning a basic monthly remuneration of R 5,180 and a monthly payment ostensibly in consideration for the restraint of trade agreement of R 600 per month.
- [7] The applicant is claiming damages for breach of contract and the value of items it claims that Deyssel has in her possession, namely a Supervisor Control Card (valued at R 125, 00), Steers' supervisor uniforms and related items (valued at R 3 300, 00) and the business stock and storeroom keys which the applicant claims it had to replace at a cost of R 1 750, 00. The damages claim for breach of contract excluding any damages arising from a breach of the restraint of trade agreement is set at R 22 035,00 in the notice motion, but this calculation is not validated by averments in the founding affidavit.
- [8] In the notice of motion, also the applicant claimed a separate amount of damages in the event of the restraint not being upheld in the amount of R 32 835, 00. This amount is only claimed in the event that the order to enforce the restraint by means of an order of specific performance was not granted. The composition of this amount is also not verified in the founding affidavit, and in any event falls away in the light of the applicant's withdrawal of its claim to enforce the restraint.
- [9] The remaining claim is therefore for payment of the amount of R 22 035,00, the calculation of which remains unclear, but presumably includes a claim for the missing items and a claim for nearly three months' remuneration including the restraint payment. Assuming in the applicant's favour that this is the basis for the calculation, it would seem the applicant is claiming damages not only for two month's notice but for the unworked portion of February 2013.

[10] Given that the two months' remuneration might have been due in lieu of notice which should have been given on or before 1 February 2013 and would have ended on 31 March 2013, it is unclear to the court what the legal basis would be for claiming an amount in excess thereof. In **SA Football Association v Mangope (2013) 34 ILJ 311 (LAC)**, the LAC stated:

*"It is not competent for a court to embark upon conjecture or guesswork in assessing damages when there is inadequate factual basis in evidence."*<sup>1</sup>

[11] Nothing prevents an applicant from launching a claim for contractual damages by way of an application as the judgment in *Mangope* makes clear, but the court is not required to attempt to divine the calculation of those damages from baldly stated amounts. Insofar as the missing items are concerned, there are no supporting documents provided to support the claimed value of the items, and the applicant does not make the legal basis of its claim to recompense to these items clear. Thus, it is not clear if it is based on contract or delict or as an alternative to a vindicatory action, assuming even that the court has jurisdiction to entertain such claims. As the notice of motion refers only to claims based on breach of contract, the applicant fails to identify if it is relying on a written or oral agreement to support its entitlement to claim the value of the items in question. It merely states that Deyssel was obliged to return the items on leaving.

### **Order**

[12] In the circumstances, the applicants have failed to prove the damages claim based on a breach of contract, and the application is dismissed.

[13] No order is made as to costs.



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**R G LAGRANGE, J**

**Judge of the Labour Court**

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<sup>1</sup> At 333, para [44]. Footnote omitted.

**APPEARANCES**

For the applicant: H Lee of Snyman Attorneys

For the respondents: no appearance.

LABOUR COURT