



Not reportable

**THE LABOUR COURT OF SOUTH AFRICA,
HELD AT JOHANNESBURG**

Case No: J 1066/16

In the matter between:

DCL FOOD DISTRIBUTORS CC

Applicant

and

JEAN HENDRICK COETZEE

First Respondent

RAYMOND FRIEDMAN

Second Respondent

GENERAL SUPPLY CC

Third Respondent

RITA DA SILVA

Fourth Respondent

Heard: 28 April 2017

Delivered: 3 May 2017

Summary: (Contempt proceedings – third party not party to settlement agreement made an order of court – no order made against third party – no court order breached -costs)

JUDGMENT

LAGRANGE J

Background

- [1] This is an application to hold a third party in contempt of an order made arising from restraint of trade proceedings. Oddly, the question of holding the principal member or members of the third respondent in contempt does not arise in these proceedings as they were not personally cited.
- [2] The first, second and fourth respondents ('the individual respondents') had been employees of the applicant and after leaving the applicant, had taken up employment with the third respondent, a competitor of the applicant.
- [3] The applicant had initiated proceedings to enforce a restraint of trade agreements against the individual respondents. The third respondent was cited as a respondent in the matter but no specific relief was sought against it. The third respondent did not oppose the application and agreed "to abide by the decision of the court in respect of the Applicant's application".
- [4] On 10 June 2016, separate settlement agreements were concluded between the applicant and the individual respondents which were made an order of court. In terms of the settlement agreement, the individual respondents were restrained from enticing any of the applicants customers away from it and to make use of any of the applicants confidential information whether for their own benefit or for the third respondent's benefit. They were also restraint from making use of any of the applicant's trade connections in relation to any other business deriving any profits from the applicant's confidential information. However, none of the settlement agreements required the individual respondents to leave the employment of the third respondent. Further, the third respondent was not a party to any of the settlement agreements, which were made orders of court.
- [5] The third respondent claims that once the settlement agreements were made an order of court, it instructed the individual respondents not to pursue any of the applicant's customers referred to in the settlement agreements. Consequently, the individual respondents could not be acting in breach of the settlement agreements. In any event, the first and second respondents had left the employment of the third respondent by the end of

July and September respectively. The fourth respondent regrettably passed away.

- [6] In affidavits filed by the first and second respondents in the contempt application, they confirmed that they were told by the third respondent not to personally call upon any of the applicants former customers, the third respondent would continue to supply them. Thereafter, the servicing of former clients of the applicant by the third respondent was done by the telesales staff.

Evaluation

- [7] On the papers, I am satisfied that the third respondent did not require the individual respondents to act in breach of the settlement agreements which were made an order of court, even if it continued to make use of the information it had originally obtained from them using other staff to continue doing business with the applicant's former customers. Ordinarily, in restraint of trade enforcement orders, the third party with whom former employees took up employment in breach of their contracts in restraint of trade, would also be subject to an order prohibiting it from continuing to employ them or to make use of confidential information or trade connections obtained from them. Unfortunately for the applicant in this instance, it did not seek any specific relief against the third respondent when it entered into the settlement agreements with the individual respondents.
- [8] Consequently, the third respondent was not bound by any order requiring it to desist from conducting business with any former customers of the applicant. Naturally, it follows that it also cannot be held in contempt of the settlement agreements as they did not require it to do, or prohibit it from doing anything in relation to the applicant's customers.
- [9] In the circumstances, it is not necessary to consider the other defences raised by the third respondent, as the breach of a court order has not been established.
- [10] On the question of costs, ordinarily, the third respondent might expect its costs but even though the third respondent was not in legal breach of the

order, it clearly pursued a course of conduct that would allow to continue to benefit from confidential information about the applicant's customers, which it had already obtained from the individual respondents and did not conduct itself in a *bona fide* manner for this reason. Consequently, it would be inappropriate in all the circumstances for it to obtain a cost award against the applicant.

Order

[11] The third respondent is found not guilty of contempt of this court's order in this matter on 10 June 2016.

[12] Each party must pay its own costs.



Lagrange J
Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT:

J J Bitter instructed by
Mouyis Cohen Inc.

THIRD RESPONDENT:

HA Van der Merwe
instructed by Senekal
Simmonds Inc.

LABOUR COURT