

IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN**Not Reportable**

Case no: C1261/18

In the matter between:

SOUTHERN WORKWEAR (PTY) LTD**Applicant**

and

WARWICK BRETT BRISTOW**Respondent****Date heard: August 20 2019****Delivered: October 11 2019**

JUDGMENT

RABKIN-NAICKER, J

[1] This is an application to find the respondent in contempt of a court order by consent between the parties, handed down on the 6 February 2019. The contents of the order were as follows:

“1. The First Respondent on his own behalf and on behalf of any other person, company or entity, is interdicted and restrained from until 31 March 2019:

- 1.1 Canvassing or soliciting for order any business of a similar nature, or identical, to that conducted by the Applicant from any of its suppliers, customers, consumers or purchasers;
- 1.2 Directly or indirectly engaging in (other than a shareholder of the JSE), or setting up, any business within the RSA which would be likely to compete with the Applicant or which deals in or distributes any product which, at any time during the past two years, was dealt in or distributed by the Applicant in the RSA; and

1.3 Disclosing any of the Applicant's confidential information to any third party, including but not limited Global Solutions Corporate Clothing (Pty) Ltd, Kohler Safety (Pty) Ltd, Jelia Trading and Mia Office Works CC.

[2] It is averred by the Chairman of the applicant that he received an email on the 6 March 2019 from Basson Workwear, a customer of the applicant. The email reflects that the respondent solicited from the buyer of Basson Workwear (one Riaande Gerber), the business of supplying to her items of workwear manufactured by applicant's suppliers Treadsafe, BoA, Leo Garments, and Glolite. The email is attached to the founding affidavit and reads:

"Hi Rianda

I owe you the biggest of apologies. I was supposed to come and see you some weeks ago, but on the day I had some car challenges and I clear forgot to postpone the meeting. Then I just forgot.

Seriously, a thousand apologies!

I have worked out what I am going to be doing with myself now.

I am working as a free agent for 4 different workwear companies:

Treadsafe – BBF Products Jonssons, Euro (Terminator), Overalls, socke...

BOA – Gloves, Rainsuits, Budget Boots, Ref Waistcoats.....

LeoGarments – Freezer Jackets, Bunny jackets, waders, rainsuits, local reflective...

Glolite – Cones, Constuctive Lights striped poles, plastic chai, convex mirrors....

They are all great companies and cover a very wide range of Safety and Protective Clothing. None of them conflicts with the other.

There are several items that I think you would be interested in hearing about, so would like to know if I could come see you and chat further. I promise I won't stand you up again and I will bring chocolate Would you like to suggest a date and time?...

- [3] The conduct in contempt of the Court order as reflected in Applicant's email to Gerber is described as follows in the founding affidavit:

"14.1 during the time period (the restraint period, which expired on 31 March 2019), Respondent canvassed and solicited business, which business was identical to that conducted by the Applicant, from one of the Applicant's customers;

14.2 had solicited for order workwear from four of Applicant's suppliers;

14.3 actively engaged in a business which competes with the Applicant, and which deals in and distributing products which Applicant has dealt in and distributed during the past two years.

15. Respondent is accordingly the responsible person, who was aware of the Order, and who deliberately refused to comply therewith.

- [4] Annexures which contain evidentiary support to the above allegations are annexed to the founding affidavit.

- [5] In an answering hand written sworn statement the Respondent avers the following:

"I had no intention at all of competing with Southern Workwear when I sent the mail dated 07/03/2019 to Basson's Workwear. There is no competition between what I am selling and what Southern Workwear offers to Bassons Workw has ever sold to Bassons Wear. The facts are: 1) Bassons Workwear has a trade agreement with IMSS and could not buy PPE from me – I knew this 2) the companies I represent do not offer (to my knowledge) any goods Southern Workwear has ever sold to Bassons Workwear) I was intending to sell work jackets to Bassons that Southern Workwear does not and never has offered 4) Southern Workwear knows that I could not sell to Bassons Workwear."

- [6] In reply it is submitted that the denials in the above statement are bare as the facts in the founding affidavit and its annexures demonstrate. It is further averred in reply that:

"4. The Respondent was ordered by this honourable Court (see GT1) not to canvass, or to solicit, business of a nature that is similar or identical to the Applicant's business, from any of its suppliers, customers, consumers or

purchasers. I am advised that the Respondent's 'intention' is not a relevant consideration; furthermore that he was in fact well-aware, by virtue of being our Sales Manager at the relevant time that:

4.1. Applicant is in the business of supplying work-wear to our customers including footwear (safety boots), rain suits, freezer jackets, conti-suits and more;

4.2. Basson Workwear is one of our customers, which purchased from us regularly during Respondent's tenure as sales manager.

4.3. We regularly supply items manufactured by both Treadsafe and BOA to our customers; and

4.4. In canvassing and soliciting the business of dealing in items supplied by Treadsafe and BOA, Respondent was actively engaging in a business likely to compete with the Applicant, and which deals in and distributes products which Applicant dealt in or distributed in the past two years."

[7] In my view, the respondent's sworn statement in answer did amount to a bare denial. He represented himself in Court and his submissions took his defence no further.

[8] The applicant limited its remedy to a declaratory order and costs, in submission before me. Such an order requires proof on a balance of probability¹. Such proof is evident from the papers before me. I make the following order:

Order

1. The Respondent is declared to be in contempt of the Court Order dated 6 February 2019 under case number C1261/2018.
2. Respondent is to pay the costs of this application

H. Rabkin-Naicker

¹ Fakie NO v CCII Systems (Pty) Ltd 2006 (4) SA 326 (SCA) paras 19, 41 and 42(e)

Judge of the Labour Court

Appearances:

Applicant: S. Harvey instructed by De Klerk & Van Gend Inc

Respondent: In person

LABOUR COURT