



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

CASE NUMBER: 23347/2014

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: YES/NO
<u>31/7/2015</u> DATE	<u>[Signature]</u> SIGNATURE

In the matter between: -

HECTOR PAREDES-TARAZONA

Plaintiff

and

WORLEY PARSONS SOUTH AFRICA (PTY) LTD

Defendant

JUDGMENT

GEORGIADES AJ:

[1] The plaintiff ("**Mr Paredes**") hails from Peru. He came to South Africa in

early 1991. He holds a degree in Mining Engineering, Advanced Management and an MBA. He held several employment positions as a mining engineer and as a managing director.

- [2] In this action he claims damages in contract against the defendant.
- [3] On 16 November 2009 Mr Paredes entered into an employment contract with TWP Projects (Pty) Ltd ("**TWP**"). This contract was amended by several addenda.
- [4] TWP sent him to Peru. His employment contract remained extant. For purposes of complying with the laws of Peru, he entered into a contract with TWP Sudamerica SAC on 1 July 2010. This contract was also amended by several addenda. These are not relevant for purposes of this judgment. He was paid a salary in Peru from March 2010.
- [5] An addendum to Mr Paredes' contract of employment with TWP was signed by him on 12 November 2012. This contract identified "the company" acquiring TWP as Worley Parsons SA (Pty) Ltd.
- [6] Effective 1 August 2013 a personnel transfer agreement was concluded transferring his employment from TWP Sudamerica SA to Worley Parsons Peru SAC.
- [7] The issue in this matter is whether Mr Paredes' contract was ever transferred to the defendant, Worley Parsons SA (Pty) Ltd.
- [8] One of the addenda to his contract with TWP, on 18 October 2012, arose

out of a letter received by him on a "*Worley Parsons RSA*" letterhead from Mr Andrew Fletcher, advising him of new terms and conditions of employment in anticipation of the sale of shares in TWP's shareholder, TWP Holdings (Pty) Ltd.

- [9] The shares in TWP Holdings (Pty) Ltd were sold by Basil Read Holdings Ltd to Worley Parsons RSA (Pty) Ltd, with a sale of shares agreement signed on 23 October 2012 and the effective date of the sale defined as 1 January 2013.
- [10] From the effective date, being 1 January 2013, Worley Parsons RSA (Pty) Ltd became the shareholder of TWP Holdings (Pty) Ltd and indirectly TWP Projects (Pty) Ltd.
- [11] It was common cause that in February 2014 Mr Paredes was advised in writing by Mr Mark Trueman, Managing Director of Worley Parsons Latin America, that his position in Peru had become redundant and would end and that he would be relocated back to South Africa. Mr Trueman advised the Mr Paredes to contact Ms Lindani Ndlovu with respect to human resources ("**HR**") in South Africa and Mr Fletcher with respect to HR at a global level.
- [12] Ms Ndlovu corresponded with Mr Paredes regarding his retrenchment in terms of section 189 of the Labour Relations Act, 66 of 1995 ("**LRA**") and then referred the discussion to the defendant's witness, Mr Philip Gallie, the Head of Legal and Risk for Worley Parsons RSA (Pty) Ltd.
- [13] After several correspondence, Mr Paredes was advised by Mr Gallie in

writing through his attorney on 12 March 2014 and 26 March 2014 respectively that Worley Parsons RSA (Pty) Ltd has sought legal advice in relation to Peruvian law and that it was advised by Peruvian counsel that Mr Paredes' new contract with Worley Parsons Peru SAC in August 2013 had novated all prior contracts.

[14] This arose because the contract that Mr Paredes had with TWP Projects (Pty) Ltd in South Africa, as amended, provided that in the event of a clash between South African and Peruvian labour law, the Peruvian law would prevail. The email correspondence that Mr Paredes wrote to Worley Parsons RSA (Pty) Ltd was that *"The Peruvian contract will be closed as the retrenchment compensation would follow the Peruvian law. This law prevails over the South African law in the case of a clash"*.

[15] This prompted Mr Gallie to seek legal advice from Peruvian counsel regarding the contract in Peru with Worley Parsons SAC and termination of the employment.

[16] Mr Paredes' employment with Worley Parsons Peru SAC was terminated in accordance with Peruvian labour legislation, effective 30 April 2014.

[17] However, this was the end of the story. Mr Paredes remained adamant that he was employed by Worley Parsons SA (Pty) Ltd, the defendant. This is because he believed that his contract was transferred to the defendant.

[18] On 13 June 2014, Mr Paredes accepted the alleged repudiation of the employment contract and terminated the contract with TWP Projects (Pty) Ltd together with what he alleged was a contract between Mr Paredes and

the defendant.

- [19] It appears that in July 2014 TWP Projects (Pty) Ltd sold its business to Worley Parsons RSA (Pty) Ltd as a going concern, effecting the transfer of employees from TWP Projects (Pty) Ltd to Worley Parsons RSA (Pty) Ltd on 1 July 2014 in accordance with section 197 of the LRA.
- [20] At the heart of the dispute between the parties is whether Mr Paredes established a contractual nexus between himself and the defendant, Worley Parsons SA (Pty) Ltd. Mr Paredes argues that his contract with TWP remained extant, even though he concluded a contract with TWP Sudamerica and later Worley Parsons Peru SAC. On the other hand, the defendant argues that Mr Paredes' employment with TWP Projects had terminated at the end of February 2010. Mr Paredes, in evidence, denied that he had resigned from TWP and taken up employment with TWP Sudamerica.
- [21] On this issue Mr Paredes' evidence was that he was paid by TWP Projects while in Peru, because the new Peruvian entity, TWP Sudamerica, was not yet generating sufficient income to sustain his expenses. Hence, his salary was paid, at first, directly into his bank account in Peru and later, into TWP Sudamerica's bank account, from where it was paid to him as his salary.
- [22] Later, when TWP Sudamerica became self-sustaining, his contract with TWP Sudamerica was concluded, being 1 July 2010, whereafter he was paid by TWP Sudamerica from its own funds.
- [23] Mr Gallie, on the other hand, contended in his letter of 12 March 2014 that

he received advice from Peruvian counsel as to what the Peruvian law was and, therefore, how the plaintiff's contract with TWP Projects ought to be understood vis-à-vis the plaintiff's contract with TWP Sudamerica. Mr Gallie also contended that Mr Paredes' contract with Worley Parsons Peru was terminated on 30 April 2014 in accordance with Peruvian law.

[24] Apart from this, the defendant argued further that the transfer of the business of TWP Projects as a going concern was not transferred to the defendant, but rather Worley Parsons RSA (Pty) Ltd. The defendant produced evidence in this regard. Mr Gallie's evidence was that the business of TWP Projects was transferred as a going concern to Worley Parsons RSA (Pty) Ltd. There was a lot said about the unsigned agreement between TWP Projects and Worley Parsons RSA (Pty) Ltd. The signed agreement was produced during the trial. Mr Paredes took exception to this and argued that this evidence was not admissible.

[25] Mr Paredes contended that on the probabilities, it was likely that TWP Projects was transferred as a going concern to the defendant and not to Worley Parsons RSA (Pty) Ltd as contended by the defendant. The defendant had also contended that since 2011, the defendant had been dormant. It was deregistered on 19 January 2017 and then resuscitated by the plaintiff in 2021 on the basis that the plaintiff had allegedly not known of its deregistration prior to 2021, nor had any reason to check the defendant's status.

[26] On this basis the defendant contends that Mr Paredes failed to establish the existence of an agreement transferring his employment from TWP Projects

(Pty) Ltd to the defendant, Worley Parsons South Africa (Pty) Ltd.

[27] In cross-examination, Mr Paredes testified that he was uncertain as to the identity of the defendant and said that he became aware in 2014 that he may have sued the wrong party. He testified that he and his lawyers decided it was better to pursue a claim against the defendant than pursue a potentially costly joinder application wherein Worley Parsons RSA (Pty) Ltd would be joined to the proceedings.

[28] It is my view that Mr Paredes remained employed by TWP Projects (Pty) Ltd throughout. His contract with TWP Sudamerica SAC and later Worley Parsons Peru SAC is of no moment. He remained employed by TWP Projects (Pty) Ltd.

[29] I therefore do not agree with the contents of Mr Gallie's letters of 12 March 2014, and 26 March 2014. In this regard I find that Mr Paredes' employment had been transferred to Worley Parsons RSA (Pty) Ltd in terms of section 197 of the LRA.

[30] Unfortunately, the plaintiff did not join Worley Parsons RSA (Pty) Ltd to the proceedings despite knowing of its existence and despite knowing that the defendant had remained dormant since 2011. While I accept that the joining of the correct entity, being Worley Parsons RSA (Pty) Ltd, would have cost time and money, I cannot fathom why this was not done.

[31] Instead, I am forced to find that there was no contract between Mr Paredes and the defendant in the circumstances.

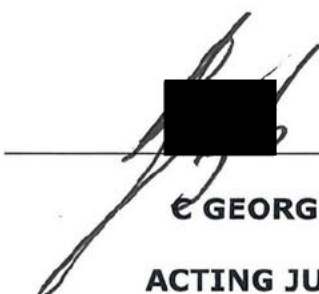
[32] Lastly, the issue of estoppel cannot assist Mr Paredes. He was confused as to the identity of the defendant. That should have put him on his guard and he was expected to cite the correct party. He knew or ought to have known the true state of affairs from 2016 at the latest.

[33] In the result, Mr Paredes' claim must fail.

ORDER

[34] I therefore make the following order: -

1. The plaintiff's action is dismissed.
2. The plaintiff is ordered to pay the defendant's costs on scale A.



E GEORGIADES
ACTING JUDGE OF
THE HIGH COURT
GAUTENG DIVISION,
JOHANNESBURG

Date of Hearing: 27-31 January 2025 and 31 March 2025

Judgment Delivered: 4 August 2025

APPEARANCES: -**On behalf of plaintiff:**

Mr A Bishop

Instructed By:

Dewey Hartzberg Levy Inc

On behalf of defendant:

Ms J Potter

Instructed By:

Werksmans Attorneys