THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS33/24

In the matter between:

SOLIDARITY OBO VAN RENSBURG Plaintiff

and

STALLION SECURITY (PTY) LTD Defendant

Heard: 28 August 2025

Delivered: 1 December 2025

Summary: Contractual claim for unpaid remuneration. Requirements met.

JUDGMENT

DANIELS J

Introduction

[1] The defendant was cited as Stallion Security Electronics (Pty) Ltd, however the parties subsequently agreed that the correct citation was Stallion Security (Pty) Ltd and requested the court to amend the citation. There being no reason to require a formal amendment[1] the amendment was granted.

[2] This is a contractual claim, brought under the Basic Conditions of Employment Act No. 75 of 1997 as amended ("BCEA") in which the plaintiff seeks payment of the commission he earned while in the defendant's employ.

Material facts

[3] The defendant is engaged *inter alia* in the sale of security equipment, installed and maintained subject to client's needs. The plaintiff, represented in these proceedings by Solidarity, was employed by the defendant as a salesperson, until his resignation. He gave notice of his resignation on 30 June 2023 and left the defendant's employ on 26 July 2023.

[4] The plaintiff's remuneration included a basic salary and commission. Under the title "Remuneration", clause 4.5 of the plaintiff's employment contract states:

---

[1] *PFE International and others v Industrial Development Corporation of South Africa Ltd* 2013 (1) SA 1 (CC) at para 30: "Since the rules are made for courts to facilitate the adjudication of cases, the superior courts enjoy the power to regulate their processes, taking into account the interests of justice. It is this power that makes every superior court the master of its own process. It enables a superior court to lay down a process to be followed in particular cases, even if that process deviates from what its rules prescribe."

> "4.5 Commission will be calculated and payable as set out in the attached <u>Annexure A "Payment of Commission/s Earned Pre 2022</u>. The parties may amend the commission structure of any aspect associated with it by mutual written agreement"
>
> (own emphasis)

[5] Clause 23 of the employment contract includes a 'non variation clause' whereby any variation of its terms must be agreed, recorded in writing, and signed.

[6] At trial, the document titled "*Annexure A – Payment of the Commission Earned Pre 2022*" was referred to as the commission structure. Clause 4.2.1 of the commission structure sets out the formula to calculate commission and provided that such commission would be paid upon receipt of payment from the client. The commission structure makes no reference to instances where the client only pays after the resignation or termination of services of the sales agent.

[7] It is common cause that the plaintiff signed up several clients[2] before his resignation but did not receive payment of commission in respect of such sales. Most of the payments were received from the clients after plaintiff left defendant's employ. The amount of the commission for these sales was common cause.

[8] Mr Kevin Monk ("Monk") testified for the defendant that he is the sales director and has been in the industry for over 32 years. Monk testified that the employment contract, and the commission structure, were not amended prior to the plaintiff's resignation.

[2] Precious Fine Jewellery, Imperial, Makoya Blinkpan, Fairprice (Newton) and MML Electronics.

[9] Monk testified that the reason the defendant did not make payment of the commission was that the plaintiff had left the defendant's employ before the clients had paid, and it was an industry norm that, in such circumstances, commission would not be paid. Monk testified that he had not made payment of commission in similar circumstances previously but gave no details.

[10] On the other hand, the plaintiff testified that he was unaware of the 'industry norm' and had not agreed to it. It was not suggested to him that he would have agreed to it if he was made aware of it.

[11] On 21 September 2023, the plaintiff demanded payment of the disputed commission.

<u>Legal principles and analysis</u>

[12] The plaintiff proved the terms of the employment contract. He further proved that he was entitled to commission absent any defence from the defendant, and he was not paid the commission. The first issue that arises is whether there can be said to be an industry norm.

[13] It fell to the defendant, whose defence is based on the industry norm, to prove that the norm actually exists. An industry norm must be shown to be "*universally and uniformly observed within the particular trade concerned, long established, notorious, reasonable and certain, and does not conflict with positive law*".[3] The defendant relied on the *ipse dixit* of its sales director to establish the norm and tendered no other evidence. All Monk could say was that such a norm exists and he is aware of it. In the circumstances, this was inadequate.

[3] *Golden Cape Fruits (Pty) Ltd v Fotoplate (Pty) Ltd* 1973 (2) SA 642 (C) at 645

[14] If there was an industry norm, one would still have to consider if the norm was incorporated into the contract. This requires an interpretation of the contract. The court must have regard to the context by reading the provision considering the document, and the circumstances attendant upon its coming into existence. Consideration must be given to the language used considering the ordinary rules of grammar and syntax, the context of the provision, the apparent purpose of the provision, and the material known to those responsible for its production.[4] It is said that interpretation is a unitary exercise that requires consideration of the text, context and the purpose.

[15] In *University of Johannesburg v Auckland Park Theological Seminary and another*[5] at para [66] the court stated:

> "The Supreme Court of Appeal has explicitly pointed out in cases subsequent to *Endumeni* that <u>context and purpose must be taken into account as a matter of course, whether or not the words used in the contract are ambiguous</u>. A court interpreting a contract has to, from the onset, consider the contract's factual matrix, its purpose, the circumstances leading up to its conclusion, and the knowledge at the time of those who negotiated and produced the contract."
>
> (own emphasis)

[16] When the terms of the employment contract are considered using the interpretative triad of text, context and purpose, the meaning is clear that the commission is payable upon receipt of the monies from the client. There are no indications in the text, context or purpose of the contract which suggests that commission is forfeited if the employee is no longer in employment.

---

[4] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA)

[5] 2021 (6) SA 1 (CC)

[17] Even if the industry norm was proven, one must still consider whether the industry norm was a tacit term of the contract. In *City of Cape Town (CMC Administration) v Bourbon Leftley and another NNO*[6] ("*Bourbon Leftley*") the Supreme Court of Appeal stated:

"[19] A discussion of the legal principles regarding tacit terms is to be found in the judgment of Nienaber JA in *Wilkins NO v Voges* 1994 (3) SA 130 (A) at 136H - 137D. These principles have since been applied by this Court, *inter alia*, in *Botha v Coopers & Lybrand* 2002 (5) SA 347 (SCA) at paras [22] - [25] and in *Consol Ltd t/a Consol Glass v Twee Jonge Gezellen (Pty) Ltd and Another* 2005 (6) SA 1 (SCA) ([2004] 1 All SA 1) at paras [50] - [52]. As stated in these cases, a tacit term is based on an inference of what both parties must or would necessarily have agreed to, but which, for some reason or other, remained unexpressed. Like all other inferences, acceptance of the proposed tacit term is entirely dependent on the facts. But, as also appears from the cases referred to, a tacit term is not easily inferred by the courts. The reason for this reluctance is closely linked to the postulate that the courts can neither make contracts for people nor supplement their agreements merely because it appears reasonable or convenient to do so (see e.g. *Alfred McAlpine & Son (Pty) Ltd v Transvaal Provincial Administration* 1974 (3) SA 506 (A) at 532H). It follows that a term cannot be inferred because it would, on the application of the well-known 'officious bystander' test, have been unreasonable of one of the parties not to agree to it upon the bystander's suggestion. Nor can it be inferred because it would be convenient and might therefore very well have been incorporated in the contract if the parties had thought about it at the time. A proposed tacit term can only be imported into a contract if the court is satisfied that the parties would necessarily have agreed upon such a term if it had been suggested to them at the time (see e.g. *Alfred McAlpine (supra)* at 532H - 533B and *Consol Ltd t/a Consol Glass (supra)* at para [50]). If the inference is that the response by one of the parties to the bystander's question might have been that he would first

[6] 2006 (3) SA 488 (SCA)

> <u>like to discuss and consider the suggested term, the importation of the term would not be justified</u>.

(own emphasis)

[18] It is clear from *Bourbon Leftley* that a tacit term should only be imported into the contract where the court is satisfied that the parties would necessarily have agreed upon such a term if it had been suggested at the time. The court is not satisfied that the parties would necessarily have agreed upon such a term if it had been suggested at the time. In fact, at trial, this was not even suggested to the plaintiff during cross examination.

[19] In the circumstances, the plaintiff has proven that he was entitled to payment of the commission and that it was not paid. The defence raised by the defendant fails.

<u>Costs</u>

[20] This dispute was brought under the BCEA, and the requirements of law and fairness are not applicable. There being no reason why costs should not follow the result, I intend to make such order.

<u>Conclusion</u>

[21] In the circumstances, the following order is made:

21.1 It is declared that the defendant breached the plaintiff's employment contract by failing to make payment of the commission due to him, 21.2 The defendant is ordered to pay the plaintiff his commission in the amount of R89 262, 84 together with interest at the prescribed rate calculated a *tempore mora*.

21.3 The defendant is ordered to pay the plaintiff's costs.

RN Daniels

Judge of the Labour Court of South Africa

Appearances:

For the Plaintiff

Solidarity - union official

For the Defendant

Self-representation