REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

[redacted]

18 FEBRUARY 2026 **FHD VAN OOSTEN**

CASE NO: 022415/2022

In the matter between

24/7 OFFICE AUTOMATION SOLUTIONS (PTY) LTD **PLAINTIFF**

and

DONOVAN RICHARD WHITE **DEFENDANT**

J U D G M E N T

VAN OOSTEN J:

Introduction

[1] This is an action for the payment of contractual damages, premised on a written confidentiality and restraint agreement, concluded between the plaintiff, as employer, and the defendant, as employee, in June 2019.

Parties

[2] The plaintiff is 24/7 Office Automation Solutions (Pty) Ltd, a registered and incorporated company with principal place of business in Bryanston, Johannesburg

(interchangeably 24/7 or plaintiff). It trades as a franchisee and operates as a sales component of the Daisy Business Solutions Group, carrying on business as a supplier of office automation equipment, telecommunications, security and information technology equipment and products, which are supplied in terms of rental and service contracts concluded with its customers, throughout Gauteng. The defendant is Mr Donovan Richard White, a sales representative, residing in Roodepoort.

Background

[3] The defendant commenced employment with 24/7, as a sales representative, on 14 March 2011. In June 2019 24/7 and the defendant concluded a written employment agreement in terms of which the defendant was employed by 24/7 in the capacity of director of its sales department, effective from 1 May 2019. In addition, the parties concluded the confidentiality and restraint agreement I have referred to (the restraint agreement).

[4] The following restraint undertakings are set out in the restraint agreement:

The defendant:

'2.1... undertakes and warrants that he would not during the restraint period (defined in the agreement to be 24 months calculated from the termination date) in any capacity whatsoever and whether directly or indirectly:

2.1.1 be associated or concerned with or engaged in any similar business or any entity carrying on any similar business, in the territory (Gauteng) or any part thereof, whether for reward or not; nor

2.1.2 persuade, induce, solicit, encourage or communicate with or furnish any information or advice to any business employee or any prospective employer of such business employee for the direct or indirect purpose of inducing or causing a business employee to leave the employ of the company [24/7] and/or become employed by or in any way directly or indirectly interested in, or associated with any similar business; employ, offer employment to, or cause employment to be offered to any business employee; or attempt to do any of the aforegoing.

2.2.1 communicate with or furnish any information or advice to or solicit or interfere with any business customer or business supplier for the direct or indirect purpose of inducing or causing a business customer or business supplier to cease being a customer or supplier of the company and/or become a customer of a similar business;

2.2.2 solicit orders or canvass business from any business customer for or in respect of the business products or any similar products and/or business services or any similar services, or sell or otherwise supply any business products or any similar products to any business customer or render any business services to any business customer.'

[5] On 11 June 2021, the defendant by way of a written notice, resigned, which resulted in the effective termination of his employment with 24/7, on 18 June 2021.

[6] On 9 July 2021, the plaintiff launched an application in the Labour Court, Johannesburg, scheduled for hearing on 30 July 2021, for an interdict to enforce the provisions of the restraint agreement, against the defendant, which was premised on several alleged breaches of the restraint agreement by the defendant, to which I shall revert. The defendant having been served with the application on 14 July 2021, instructed and consulted his attorneys of record, who on 22 July 2021, filed a notice of intention to oppose the application on behalf of the defendant, thereafter followed by the defendant's answering affidavit.

[7] Prior to the hearing of the motion proceedings, the attorneys on behalf of both parties engaged in discussions, by way of email correspondence, which eventually culminated into an agreed draft order, which the Labour Court issued on 30 July 2021 (the order). The correspondence and resultant order form part of the court bundle before this court and will be dealt with later.

[8] On 5 September 2022, the plaintiff instituted the present action, in which it claims from the defendant the sum of R10 000 000, interest thereon at the rate of 9% per annum from date of judgment to date of payment and costs of suit. The claim is once again premised on the defendant's alleged breaches of the restraint agreement and the amount claimed is in accordance with clause 2.4 of the restraint agreement, which reads as follows:

'Without derogating in any way from the company's [24/7's] right to seek and obtain an interdict to enforce the provisions of the agreement, whether on an interim or final basis, [the defendant] agrees that in the event that he should breach any of the restraint and non-solicitation obligations undertaken by him, he shall become liable forthwith to pay to the company an amount equal to R10 000 000.00 which amount he agrees is a genuine pre-estimate of the damages which the company will suffer as a result of such breach and which, but for the provisions of this clause, would otherwise be incapable of ascertainment at this time.'

[9] The defendant defends the action and filed a plea to the plaintiff's summons and particulars of claim. Thereafter, the plaintiff twice amended its particulars of claim to which the defendant in respect of each thereof, filed a plea, in essence denying any breach of the restraint provisions or unlawful possession of confidential information. It is further pleaded that the negotiations prior to the issuing of the order, as well as the order itself, 'moderated' the restraint agreement, resulting in a recreated restraint regime replacing the restraint agreement regime, to which *res judicata* and or estoppel apply, and lastly, that clause 2.4 of the restraint agreement constitutes a penalty provision the quantum of which is inequitable and falls to be reduced.

[10] Lastly, the plaintiff filed a replication to certain paragraphs of the defendant's plea, specifically denying that the restraint agreement was moderated, or that an agreement between the parties to vary the terms of the restraint agreement was concluded.

[11] As to the merits of this matter, the joint practice note filed of record, reflects that the following issues are not in dispute: the conclusion of the restraint agreement, the terms thereof, save for the restraint period, and the termination of the defendant's employment with 24/7, on 18 June 2021.

[12] The issues set out in the joint practice note, are in summary, first, whether the restraint agreement was 'moderated and varied' by the Labour Court order, and in regard thereto the opposing contentions of the parties, and second, whether clause 2.4 of the restraint agreement constitutes a penalty, and whether it falls to be reduced in terms of the Conventional Penalties Act, 15 of 1962.

The trial

[13] The plaintiff assumed bearing the onus to prove the defendant's breaches of the restraint agreement relied upon by the plaintiff, and accordingly commenced by

calling two witnesses to testify, first, Mr Gareth Brett Thorpe, and second, Mr Angelo Klein, who were both former employees of 24/7 and later joined Maximize. The defendant was the only witness called to testify by counsel for the defendant. It was rightly acknowledged by counsel that the onus rests on the defendant, to prove the defences raised in relation to the breaches relied upon by the plaintiff, and regarding the plaintiff's reliance on clause 2.4 of the restraint agreement, that the clause contains a penalty clause in terms of s3 of the Conventional Penalties Act, 15 of 1962, and further that the penalty of R10m is disproportionate to the prejudice suffered by the plaintiff (*Steinberg v Lazard* 2006 (5) SA 42 (SCA) para 7).

The breaches relied on by plaintiff

[14] The plaintiff alleges in its amended particulars of claim, that the defendant breached the restraint agreement in the following respects:

14.1

First, the defendant during or about October 2021 took up employment with Maximize Office Solutions (Pty) Ltd (Maximize), a competitor of 24/7 and carrying on a similar business to that of 24/7 (clause 2.1.1 of the restraint agreement).

14.2

Second, during October 2021 and November 2021, the defendant disclosed information pertaining to business customers to Angelo Klein and Brett Thorpe, who were employees of Maximize at the time, with the purpose of soliciting them away from 24/7 for the benefit of Maximize (clause 2.2.1 of the restraint agreement).

14.3

Third, during June 2022 the defendant solicited 24/7's business customer NSA Global away from 24/7 for the benefit of Maximize (clause 2.2.2 of the restraint agreement).

14.4

Fourth, during July 2022 to October 2022, the defendant solicited the custom of 24/7's business customers, *inter alia* NSA Global, Tiny Town Crèche, Platchem, EPDR and Redbrick away from 24/7 for the benefit of Maximize (clause 2.2.2 of the restraint agreement).

14.5

Fifth, immediately prior to his resignation, the defendant misappropriated confidential information of 24/7 by taking possession thereof, and thereafter remaining in possession thereof notwithstanding the defendant's affirmation under oath to the contrary in the Labour Court proceedings (clause 2.3 of the restraint agreement and paragraph 1 of the order).

The Labour Court Order

[15] The order reads as follows:

'1. The [defendant] shall return and to such extent as is necessary destroy all confidential information, which the [defendant] has in his possession, including but not necessarily limited to, the confidential information contained in emails directed to the [defendant] on 20 May 2021, and 18 June 2021 respectively, within 5 days from the date of this order, affirming that he is no longer in possession of any of [24/7's] confidential information and that he has not disseminated the confidential information nor distributed the confidential information to any other person and that he has deleted the emails addressed to the [defendant] by the [defendant] on 20 May 2021 and 18 June 2021.

2. The [defendant] is interdicted and restrained until 30 June 2022 from:

2.1 persuading inducing, soliciting, encouraging, or communicating with or furnishing information or advice to any business employee of [24/7] or any prospective employer of such business employee for the direct or indirect purpose of inducing or causing a business employee to leave the employ of [24/7] and/or becoming employed with any similar business;

2.2 Employing, offering employment to or causing employment to be offered to any business employee.

3. The [defendant] is interdict (sic) and restrained until 30 June 2022, from in any capacity whatsoever, in any part of the province of Gauteng and whether for reward or not, from (sic) directly or indirectly:

3.1 communicating with or furnishing any information or advice to or soliciting or interfering with any business customer of [24/7] for the direct or indirect purpose of inducing or causing such business customer or business supplier to cease being a customer or supplier of [24/7] and/or becoming a customer of a similar business;

3.2 soliciting orders or canvassing from any business customer for or in respect of the business customer or business supplier of [24/7] for the direct or indirect purpose of inducing or causing such business customer or business supplier to cease being a customer or supplier of [24/7] and/or becoming a customer of similar business;

3.3 for the avoidance of doubt, the business customers contemplated in 3.1 and 3.2 above, are listed in Annexure 'A' hereto.'

[16] Annexure 'A' contains the names of 402 business customers of 24/7, which, save for 2 names removed from the list at the request of the defendant, was agreed upon by the parties.

[17] The plaintiff in the pleadings, during the trial and in counsel's heads of argument, contested that the order in any way 'moderated' or amended the restraint agreement. In argument before me, counsel for the plaintiff readily, and in my view correctly, conceded that the totality of correspondence and consent order indeed did amend the restraint agreement, specifically in reducing the restraint period of 24 months to 12 months, and moreover, in the plaintiff's abandonment of the restraint against the defendant's employment at a competitor, which then was Maximize. This restraint was premised on clause 2.1.1 of the restraint agreement, and enforcement thereof was sought in prayer 1 of the notice of motion in the Labour Court proceedings, which was not persisted with. As a result of the concession, counsel confirmed that the third and fourth breaches referred to above, would no longer be pursued by the plaintiff, as the dates of the breached indicated, fell outside the amended period of the restraint. The concession further obviates the need to deal any further with the correspondence between the attorneys prior to the issuing of the order, and the arguments relating thereto.

[18] Finally, it is necessary to add that the order further amended the restraint agreement, in limiting and identifying 24/7's business customers to which the restraint applied.

[19] In the view I take of this matter, I do not consider it necessary to deal with the *res judicata* or estoppel defences raised by the defendant, and I propose to consider the issues before me, without having regard thereto.

Misappropriation and retaining of confidential information

[20] I turn now to consider and decide the 5th breach which it will be recalled, concerns the defendant's alleged misappropriation of 24/7's confidential information prior to his resignation, *and* remaining in possession thereof notwithstanding the defendant's affirmation in an affidavit attested to in pursuance of and compliance with the Labour Court order.

[21] The confidential information it is alleged, was contained in the attachments to emails which the defendant sent to himself. The defendant admits in the answering affidavit in the Labour Court application, which he repeated in his evidence before this court, that he sent several emails to himself in the period between 20 May 20121 and 18 June 2021, and that the annexures to the emails, contained 'customer and transaction particulars'. Copies of four emails from the defendant to himself, during that period, are annexed to the plaintiff's founding affidavit. Three thereof are dated 20 May 2021, and reflect in the attachment columns, '2006 Wishlist' and several 'prospect lists' with dates 2006, 2007, 2015 and 2016. The fourth email, with attachments, was sent by the defendant to Alan Pereira (24/7's chief operating officer and sole director) on 18 June 2021, and some three hours later to himself. The attachments to this email are reflected as, 'Copy of Donovan White Client base Area Vertical Market, Area and Contacts, Donovan White Billing Base April 2021, Airlink Cross Border Service Partners and Donovan Deals (in the system as well as collecting June 21)'. Notably, none of these annexures have been disclosed to this court.

[22] In terms of the order, as can be gleaned from its reproduction in para [15] above, the defendant was ordered to destroy all confidential material, including the emails I have referred to, and within 5 days from the date of the order, affirm that he is no longer in possession of any of the confidential information, that he has not disseminated the confidential information to any other person, and that he has

deleted the said emails. It is not in dispute that the defendant has complied with the order in this respect, although a copy of the affidavit has not been produced.

[23] In his evidence the defendant admitted that the emails he had sent to himself, contained confidential information, which as I have indicated, was contained in the attached Excel spreadsheets, and that it constituted a breach of the restraint agreement. He attributed his conduct to 'an error in judgment'. In the answering affidavit he sets out the reason for his conduct, which he stated arose from an issue he had with 24/7's unilateral change of his commission structure, which remained unsolved. He further stated that he believed that those would be required for calculating the actual commission due to him, and serve as evidence for the purpose of instituting a claim based on breach of contract against 24/7.

[24] The defendant then continues in the answering affidavit to explain further:

'5.12 The respondent [the defendant] has since been advised by his current attorneys, after taking legal advice when served with the restraint of trade application, that no matter what his motivation, he should not have copied what could be seen as confidential company information and documents to himself. It was explained to him that if he wanted information in litigation with the applicant [24/7], he would need to use discovery process under the Court Rules. The respondent was advised to immediately delete/destroy all such documents and information, which he did. The respondent no longer has any confidential all information concerning the applicant, and in the end, he never used it for anything.'

[25] The defendant testified that in the week after he had left the employ of 24/7, in middle June 2021, he was requested to and did hand in his personal computer at 24/7's IT department, together with all passwords and codes required to enable opening of all programmes and files. Upon collection of his personal computer a few days later, he was given the assurance that all confidential information and data had been deleted and erased. Shortly after service on him of the Labour Court application, on 9 July 2021, he got 'such a fright' that that he immediately proceeded to delete anything remotely connected to his employment with 24/7, such as calendar entries, from his computer.

Discussion

[26] Paragraph 5.12 was fiercely questioned in the cross-examination of the defendant by counsel for the plaintiff. The concluding proposition counsel put to the defendant, in essence, concerned the apparent irreconcilability of his version as reflected in para 5.1, juxtaposed to the defendant's earlier evidence that his personal computer was, as counsel coined the word, sanitised by 24/7's IT department already in middle June 2021, and thereafter once again, by him after 9 July 2021. The defendant, although experiencing difficulty in understanding some of the questions posed, eventually conceded that he had given three versions on this aspect, which led counsel for the plaintiff to submit that the defendant was an untruthful witness.

[27] The defendant's explanation at times was undoubtedly less than satisfactory, and it is difficult to reconcile his actions in middle June when his personal computer was cleared by 24/7's IT department, with the allegations in the answering affidavit concerning the advice given to him by his attorneys, with the emphasis on his confirmation that he had adhered thereto. On a conspectus of the totality of his evidence, I am however not satisfied that his evidence was dishonest. A crucial consideration, militating against dishonesty, is to be derived from an examination and considering in context, the defendant's explanation for sending the confidential information to himself, to which I have referred, which in the absence of any challenge thereof either by way of cross-examination or adducing evidence to rebut the version, I am unable to reject as false. Further of significance, is his forthright admission both in the Labour Court proceedings and in this Court, as to the misappropriation of the confidential information and that it constituted a breach of the restraint agreement, as well as his willingness expressed in the answering affidavit to consent to the granting of most of the orders sought, subject to certain amendments, which were all accepted by 24/7, and eventually resulted in an agreed order and the affidavit submitted in compliance with the order.

[28] The defendant's possession of the confidential information has accordingly become common cause. However, to prove this breach, as pleaded, the plaintiff bears the onus of also proving that the defendant remained in possession thereof. The breach obviously is premised on both the restraint agreement and the order. The only time relevant to the second leg of the enquiry, will be after the issuing of the

order and the filing of the affidavit. Put differently, the plaintiff in addition, is required to prove that the defendant was still in possession of the information, after expiry of the five-day compliance period provided for in the order.

[29] In the absence of any evidence or other proof that the defendant was in possession of the information after that date, this part of the plaintiff's claim cannot succeed.

The evidence of the plaintiff's witnesses: the remaining breaches

Gareth Brett Thorpe

[30] Mr Thorpe testified that he was employed at 24/7 until December 2020. In February/March 2021 he commenced employment, as the sales manager, at Maximize, a direct competitor of 24/7, until he resigned in March 2022. While employed by Maximize, the defendant joined their ranks, during mid/late 2021. With reference to the common cause fact on the pleadings, that in October/November 2022 a list was shown to him by the defendant, Mr Thorpe was requested whether he agreed with the defendant that the list, annexure 'A' to the order, to which he turned for the purpose of identification, was indeed the one shown to him, he answered in the negative and then said that the list shown to him by the defendant, was, what he referred to, a customer base list (in the form of an Excel spreadsheet), containing information such as customer names, contact details, the equipment and the duration of the contract, thus containing more information than annexure 'A'. The purpose of the list, the defendant explained to him, was that there were a few customers on the list he had a long relationship with, who he wished to keep in contact with. Because of his restraint of trade, the defendant said he would keep in contact with customers whose contracts were imminent for renewal, which he referred to as 'low line fruits'. The defendant further said that he intended distributing those details to the sales staff of Maximize, to enable them to approach those customers, and conclude new contracts with the tempting benefit of the outstanding balance of the existing contract being factored into the price of the new contract. On a seemingly leading proposition put to him by counsel for the plaintiff, he agreed that the purpose of this plan of action was to poach customers away from 24/7 to Maximize. Mr Thorpe was requested to peruse annexure 'A' and indicate the names

of customers he was able to recognise as 24/7's customers. He identified five such customers: ADD X Trading (number 10 on the list), which he added was entrusted to Garth Upstone's sister-in-law, Airlink (number 18 on the list) which the defendant, due to a very good relationship existing between them, allotted to himself, CADAC with offices in the West Rand (number 64 on the list), SA Hunters and Game Conservation Association (number 336 on the list), and SA Hockey Association, based in Pretoria (number 365 on the list). In concluding his evidence in chief, he agreed with counsel's summary of the gist of the evidence, which included the leading proposition that the purpose of the defendant's conduct was to move plaintiff's customers away to Maximize.

[31] The cross-examination of Mr Thorpe reveals the following salient aspects:

31.1 Mr Thorpe, at variance with his denial in evidence in chief, and having been referred to paragraph 5.10 of the defendant's plea, admitted that annexure 'A' was shown to him by the defendant, which he then elaborated on in adding that it was shown to him together with the customer base list.

31.2 Mr Thorpe for the first time mentioned that the lists were both on the defendant's cell phone, and that the defendant explained to him that they had remained on his cell phone due to the incompetence of 24/7' employees who had cleared his personal computer but not his cell phone.

31.3 The discussion between him and the defendant occurred in the defendant's office while he was standing at his desk, which lasted 'not even 2 to 3 minutes'.

31.4 Mr Thorpe conceded that he could not remember all the names on the customer base list, although the recognised the kind of form, which he had become accustomed to during his employment.

31.5 Mr Thorpe agreed that some record of the defendant's dissemination of information to Maximize's sales staff must exist, but in the same breath, stated that he had never come across any proof thereof.

31.6 Mr Thorpe testified that he had had a personal involvement with the customers, CADAC, ADD X, and SA Hockey, in that he accompanied the Maximize sales people to the meetings held with those customers to assist them. He was of the view that it was 'highly unlikely' that Maximize would independently have made contact with those customers.

Angelo Klein

[32] Mr Klein testified that he left his employment at 24/7 at the end of August 2021 and thereafter took up employment at Maximize, from September 2021 until his resignation in December 2021. While employed by Maximize, and in September 2021, he was in a meeting, attended by Sian Upton, his spouse Garth Upton, the defendant, Brett Thorpe and another member of the sales staff at Maximize whose name he could not recall. At the meeting everyone had access to an Excel spreadsheet (which he testified, was emailed to him by Thorpe, but which he believed was the plaintiff's customer list reflecting the defendant's customers at 24/7, while conceding that it could have been drafted by Mr Thorpe) which included 24/7's customer names, customer contact details, contract details, contract start and end dates, and equipment details. He described it as a base list. At the meeting it was generally discussed to contact certain customers, especially those having contracts coming to an end, for the purpose of moving them from 24/7 to Maximize prior to renewal.

[33] In his evidence and cross-examination Mr Klein pinned the date of the meeting, to September 2021, and denied that it could have been in October/November 2021, as Mr Thorpe had testified. Except to recall the purpose of the meeting and by way of general description the subject matter discussed, he was unable to recall the exact words that were used and who said what. He agreed with the proposition put to him that the email trail concerning the circulation of the customer base list, should still be available at Maximize. Mr Klein was unable to comment on Mr Thorpe's version that an entirely different kind of meeting, between himself and the defendant, with no one else present, had taken place. Neither was he familiar with nor had he heard of the phrase 'low line fruit customers'. He conceded that the plaintiff's customers were known to both Mr Thorpe and himself, as erstwhile employees of the plaintiff, which arguably would have enabled them to contact those customers without any prior information having been given by the defendant.

Analysis of the evidence

[34] At the heart of the plaintiff's claim lies its customer data list. The litigation commenced with the launching of the Labour Court proceedings, more than four years prior to the hearing of this matter. Although a list of customers was compiled for the purpose of identifying the plaintiff's customers in respect of which the restraint would apply, there is no reference in those proceedings to the plaintiff's customer data list. The defendant's employment at Maximize, and the dissemination of 24/7's confidential information to employees of Maximize, 'namely Garrett Brett Thorpe and Angelo Klein', prominently featured in the plaintiff's particulars of claim. In the much-debated paragraph 5.10 of the defendant's plea, the disclosure to Thorpe and Klein was specifically restricted to presenting them and discussing annexure 'A' to the order. In the plaintiff's replication this sub-paragraph is not dealt with. The plaintiff only adduced the evidence of Thorpe and Klein, although the names of several other persons, obviously potential witnesses, featured prominently in the evidence. This is the first time, in this litigation that reference was made to 24/7's customer list, as a separate and distinct document. The existence of, and the defendant's possession or use of the customer data list was hotly challenged in the evidence in this court. The evidence of both the plaintiff's witnesses was that the document and even the email trail, to which it was attached, should still be available.

[35] The customer data list, in my view, constitutes an essential document which remains shrouded in uncertainty. No evidence as to the existence thereof was adduced. The absence thereof, considered against the background circumstances I have referred to, warrants an adverse inference to be drawn against the plaintiff, which of course will be considered, together with the other factors I will presently deal with, in determining the question whether the plaintiff has discharged the onus resting on it.

[36] In the assessment of the evidence of the plaintiff's witnesses, the difference in their evidence concerning the date and circumstances in which the defendant's disclosure of confidential information had occurred, is decisively important. Klein resolutely recalled the date September 2011 as the date of the discussion, in saying he was 'one hundred percent sure' thereof, and dismissed the possibility put to him, of it having occurred during October/November 2011, as pleaded by the plaintiff and repeated in the evidence of Mr Thorpe. I am mindful of the human fallibility of

memory regarding exact dates, especially four years after the event. However, the discrepancy pertaining to the circumstances in which the discussion took place remains, and their versions on this aspect, can hardly be reconciled. In addition to the foregoing, Klein described a meeting which inter alia Thorpe attended, and disagreed with the version of Thorpe on this aspect, when it was put to him.

[37] The defendant's version that he had only shown annexure 'A' to the witnesses to indicate to which customers the order applied, was corroborated by Mr Thorpe in cross-examination. Mr Klein's evidence that he had never seen annexure 'A' prior to being referred to it during his evidence, carries little if any weight, due to the unreliable aspects I have referred to. The defendant consistently denied having referred to a further list. The absence of the second document, as rightly argued by defendant's counsel, strongly indicates that it did not exist. My finding accordingly is that the evidence adduced on behalf of the plaintiff, fails to present a full picture from which it can be found, on a balance of probabilities, that any other information than that contained in annexure 'A', in the manner described by the defendant, was disclosed.

Conclusion

[38] In conclusion, I am not satisfied that the plaintiff has met the minimum threshold required for discharging the onus resting on it. It follows that the plaintiffs claim falls to be dismissed. There is no reason why the normal costs order should not follow.

Order

[39] In the result the following order is made:

1. The plaintiff's claim is dismissed.
2. The plaintiff shall pay the costs of the action, to be taxed on scale D.

[redacted]

FHD VAN OOSTEN
JUDGE OF THE HIGH COURT

COUNSEL FOR PLAINTIFF ***ADV D WILLIAMS***

PLAINTIFF'S ATTORNEYS	***QUINN ATTORNEYS***
COUNSEL FOR DEFENDANT	***ADV R ORTON***
DEFENDANT'S ATTORNEYS	***SNYMAN ATTORNEYS***
DATES OF HEARING	***2, 3 & 4 FEBRUARY 2026***
DATE OF JUDGMENT	***18 FEBRUARY 2026***