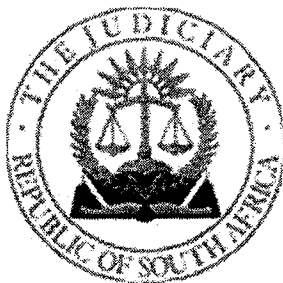


REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2019/8102

(1) REPORTABLE: ~~YES~~/NO  
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

25 MARCH 2019

  
RT SUTHERLAND

In the matter between

PERIMIFENCE (PTY) LTD

APPLICANT

and

KARISH NAIDOO

RESPONDENT

---

JUDGMENT

---

SUTHERLAND J:

[1] This case is about the protection of the confidential information of the applicant. It claims that the respondent, a former employee, stole confidential information and in breach of his fiduciary duties towards his employer, filched economic opportunities that were the property of the applicant. The applicant seeks indicatory relief in respect of certain economic opportunities. That an employee is so bound and relief is available to protect an employer's interest is beyond doubt.<sup>1</sup>

[2] Relief to enforce a restraint of trade agreement was initially sought but was not persisted with as the applicant could not find the signed copy of such an agreement. Strangely, Naidoo's alleged contract was the only one to be missing from the records of the applicant. Naidoo denies signing such an agreement during the eight or so months he was employed by applicant. As a result, that dispute of fact made this dispute incapable of resolution on affidavit. The applicant intends to pursue that relief in other proceedings. A prayer is made to refer that question to oral evidence. This is an appropriate step to take.

[3] The business of the applicant is the installation of security fencing. This involves sourcing material, costing and quoting on jobs and installation using a crew of employees. The fencing business is very price-competitive. Developing and maintaining accurate costings in order to quote competitively is critical. The business had been operating for about five years when the respondent joined it.

---

<sup>1</sup> See: *Heher JA in Phillips v Fieldstone Africa (Pty) Ltd & another 2004 (3) SA 465 (SCA) at [29] – [33]* where the principles concerning an employee's fiduciary duties, based on a relationship of trust, are dealt with extensively.

[4] The respondent was employed in June 2018. He was new to the fencing business. His job was as office Administrator and project coordinator. As such he had access to the entire administration, its finances and practices. Among other duties, the respondent was responsible for: -

- 4.1 Quoting on jobs and hence contact with and liaising with customers,
- 4.2 Placing purchase orders on the applicant's suppliers, and as such aware of the relative prices quoted by them for materials required.
- 4.3 Scheduling the projects.
- 4.4 The staff payroll.

[5] The events which led to this application display certain bizarre features. What happened was this:

- 5.1 On the morning of 5 February 2019, the day after the respondent had ferried the crew to a job in Orkney, he approached Van der Merwe, the Operations Manager. He handed over his company access devices and tendered his resignation on the basis that his family problems had become too much for him. The tender to resign is common cause. Van der Merwe says he persuaded the respondent to take off the day to recuperate and return tomorrow. He also tried to boost him by saying he was a valuable contributor to the business. The respondent left.

5.2 On 6 February 2019, neither the respondent nor the entire installation crew turned up for work. Nor did they come the day after that. Plainly, they had deserted. Efforts to phone the respondent and the team leader, Ntwabane, were fruitless as their phones were ostensibly switched off.

5.3 By Friday 8 February through a circuitous route via a casual worker the applicant learnt that Ntwabane had, allegedly, gone into the fencing business on his own and the respondent was joining him. A private investigator was engaged to track them and they were discovered on a fencing job in Volksrust for WK Steelworks a regular trade client of the applicant. After further searches, on Monday 11 February the crew were found at a school in Volksrust. Also present was one Kabawe, of WK Steelworks. Ntwabane hid from Van der Merwe but was called out. Kabawe confirmed the job had been arranged with the respondent. Kabawe told van der Merwe that the fencing had been sourced from a usual supplier of the Applicant, Invizi Fence. This was confirmed, and of importance, it was revealed that the order had been made by WK Steelworks and the material delivered to site on 5 February, ie, the very day that the respondent, 'resigned' and decamped with the crew.

5.4 Then on 21 February, the crew returned to the applicant after completing the Volksrust job. Ntwabane confessed they were recruited on 31 January by the respondent to do the Volksrust job

5.5 None of these allegations are seriously challenged. What is plain is that the Volksrust job had to have been set up before the purported resignation on 5 February. The respondent admits to doing the Volksrust job and using the crew. He vainly alleges that it was all arranged only after his resignation, an utterly implausible allegation having regard to logic and the probabilities.

[6] The telephone records of the applicant show several calls between the office of the applicant and Kabawe during January. Van der Merwe and his wife, the only other users of the phone, did not make the calls. The only inference can be that the respondent did so. The email records reflect a quote sent to Thami, of the Mpumalanga Education Department, during January requesting fencing in Volksrust. The only reasonable inference is that the respondent was responsible.

[7] The evidence establishes that the respondent breached his fiduciary obligations by conducting himself as described.

[8] There are two other opportunities in respect of which a reasonable risk exists the respondent may steal them. The respondent prepared quotes for both to WK Steelworks; One in for 113 m of fencing and another for 385 m, both in Nelspruit. Given the conduct established in respect of the Volksrust job, the risk is real.

[9] The answering affidavit deposed to by the respondent does little if anything to dispel the picture described. Prepared by himself, it is mostly off point and replete with irrelevancies and defamatory allegations about Van der Merwe. He claims a right to

compete. He denies using the applicant's information, despite the overwhelming evidence to the contrary. His denial is rejected.

[10] In the circumstances the relief sought by the applicant is appropriate. Moreover, given the rank deceit and betrayal of the fiduciary duties owed to the employer, attorney and client costs are appropriate too.

**[11] The Order**

1. This application is an urgent application.
2. The respondent is interdicted from pursuing or accepting, whether in his personal capacity or through a juristic entity or any other persona from which he will derive a personal benefit, the corporate opportunities for which the applicant has quoted, as detailed below:

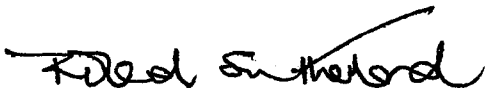
2.1 The corporate opportunity for which the applicant has quoted for WK Steelworks for the installation of a 113 metre Clearview fence in Nelspruit, which corporate opportunity the respondent is only aware of because he prepared and submitted the applicant's quote for this work, and by virtue of which he is aware of the supplier's details, materials and pricing the applicant has used in collating that quotation;

2.2 The corporate opportunity for which the applicant has quoted for WK Steelworks for the installation of a 386 metre Clearview fence in Nelspruit, which corporate opportunity the respondent is only aware of because he prepared and submitted the applicant's quote for this work, and by virtue of

which he is aware of of the supplier's details, materials and pricing the applicant has used in collating that quotation.

3. The respondent is further interdicted from making use of the applicant's pricing system, in any form, whether electronically or otherwise, as comprised of the schedule of preferred suppliers and pricing details the applicant researched, prepared and collated, including those which it has synthesised in a suite of excel formula and which the respondent made use of while he was employed by the applicant.
4. The question of whether the respondent did or did not conclude a written agreement encompassing a restraint of trade and confidentiality undertakings with the applicant in or about September 2018 is referred to oral evidence in accordance with the provisions of Uniform Rule 6(5)(g) on an urgent basis.
  - 4.1 Evidence shall be that of any witness whom either of the parties may elect to call.
  - 4.2 Save in the case of the deponents to the affidavits delivered in this application, no party shall be entitled to call a witness unless it has served on the opposing party at least 3 (three) days before the hearing, a written statement in which the evidence to be given in chief by such person is set out, or the Court allows such person to be called in the absence of such a notice.

- 4.3 Either party shall be entitled to subpoena any person to give evidence, regardless of whether that person has consented to furnish a statement or not.
- 4.4 The fact that a party has delivered a statement or subpoenaed a witness shall not oblige that party to call that witness.
- 4.5 Within 5 (five) days of this order, each party shall make discovery on oath or all documents relating to the issue of whether the respondent did or did not conclude a written agreement encompassing a restraint of trade and confidentiality undertakings with the applicant in or about September 2018. Such discovery shall be made in accordance with the provisions of Uniform Rule 35, and the provisions of the Rule relating to inspection and production of the documents so discovered shall be operative.
5. The respondent is directed to pay the costs of this application on the attorney and client scale.



---

**ROLAND SUTHERLAND**  
**Judge of the High Court**  
**Gauteng Local Division, Johannesburg**

Date of hearing: 19 March 2019  
Date of judgment: 25 March 2019

For the Applicant: Adv FR McAdam,  
Instructed by Coetzee Attorneys

Respondent appeared in person