

RIGHTS CONCERNING THE RESTRAINT OF TRADE AGREEMENT IN THE WORKPLACE

Restraint of trade is a tool which the employer uses to protect his economic interests and trade secrets from competitors. A restraint of trade agreement is defined as an agreement between the employer and employee whereby provision is made in the employment contract which restricts an employee from being employed by a competitor of the employer or restricts the employee from establishing a business in competition with the employer following termination of employment.

However, the rights flowing from a restraint of trade agreement is not unlimited in that a restraint of trade will be invalid and unenforceable if deemed unreasonable. Accordingly, a restraint of trade agreement is considered unreasonable if it is in conflict with public policy and public interest. Public policy and public interest in this context means the interests of the community in terms of rights contained in their contract and the freedom to trade.

It should be noted that restraint of trade agreements are not regulated in terms of the labour law but more particularly with the law of contract, so in the event of an employee breaching a restraint of trade agreement one cannot refer the

matter to the CCMA. Therefore in should the employer wish to enforce a restraint of trade agreement, application should be brought before Court.

Of relevance to the current topic is the matter of **Laser Junction (Pty) Ltd v Fick (6970/2017) [2017] ZAKZDHC 36 (28 September 2017)**. In this particular case the employer Laser Junction (Pty) Ltd sought to enforce a restraint of trade agreement against Karl Fick who was previously employed by the Company. The application was brought under the allegation that Mr. Fick had violated the restraint of trade contained in his employment contract with Laser Junction in that he was now employed by Pinion Adams (Pty) Ltd, a competitor of Laser Junction.

The Court however found that Mr. Fick did not violate the restraint of trade agreement between Laser Junction in that Mr. Fick did not deliberately set out to use his skills and or trade connections which he obtained to the detriment of Laser Junction. Mr. Fick searched for new employment for fear of losing his job because of difficulties he experienced with the Company.

Further the Court found that Laser Junction had no protectable interest, such as confidential

information and trade secrets, which Mr. Fick made use of in his new position. Thus the application for restraint of trade against Mr. Fick was viewed in terms of both the Constitution and labour law protections as being unreasonable as it was against public policy and thus unenforceable.

Employers should take note that although restraint of trade agreements differ according to the circumstances of each employer such agreements will only be enforceable if found to be reasonable in terms of public policy and public interest and whether the employee was found to deliberately make use of the employer's protected interests to such employer's detriment.

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