



EMPLOYMENT

Labour Court Upholds Enforceability of Restraint of Trade Agreements

17 April 2025 3 min read

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In the recent case of *SMD Technologies (Pty) Ltd v Tavares and Another* ([2024] ZALCJHB 546), the Labour Court reaffirmed the enforceability of restraint of trade agreements in South African employment law, emphasizing the necessity for such restraints to be reasonable and to protect legitimate business interests.

SMD Technologies ("SMD") employed Tavares as a Key Account Manager from December 2019 until her resignation in September 2024. During her tenure, Tavares had access to confidential information and was instrumental in managing key client relationships. Upon her resignation, she joined Syntech Distribution ("Syntech"), a direct competitor of SMD.

SMD sought to enforce the restraint of trade agreement that Tavares had signed, which prohibited her from engaging in competitive activities for a specified period post-employment. The company approached the Labour Court for an interdict to prevent Tavares from continuing her employment with Syntech. The Labour Court considered several pivotal factors and took into account the following material factors.

Was there a Protectable Interest? The court acknowledged that SMD had a legitimate interest in safeguarding its confidential information and customer connections, both of which Tavares had substantial access to during her employment. As a Key Account Manager, Tavares' main roles and functions included sales and the responsibility over key customers, among others, Makro, Game, Builders Warehouse, Buco and Vodacom, customers who contributed a significant amount to SMD's income and revenue. She was the point of contact for these customers, thus strengthening the business relationship, retaining top customers, and nurturing those key relationships over time. This role included travelling to new store openings of these key customers throughout the country. Noting the foregoing the court found that "In deciding whether a protectable interest has been infringed upon, it is not necessary to show that there has been actual harm to the employer. It is about the risk created for the employer. All that must be shown is that the employee indeed had a close working relationship with customers and that it is likely that the employee is in a position to convince these customers to take their business elsewhere. In sum, is the employee in a position to act to the detriment of the erstwhile employer?"

Reasonableness of the Restraint: The restraint's duration and scope were deemed reasonable. The court noted that the 12-month period was appropriate to protect SMD's interests without unduly infringing on Tavares's right to employment.

Public Policy Considerations: Emphasizing the principle established in *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* 1984 (4) SA 874 (A), the court reiterated that restraint of trade agreements are generally enforceable unless proven to be unreasonable and against public policy. Tavares did not provide sufficient evidence to demonstrate that the restraint was unreasonable or that it unjustifiably restricted her economic activity.

The Labour Court granted the interdict applied for by SMD, restraining Tavares from employment with Syntech for the duration stipulated in the restraint agreement.

This judgment underscores the judiciary's stance on upholding restraint of trade agreements that are designed to protect legitimate business interests, provided they are reasonable in scope and duration. Employers are encouraged to ensure that such agreements are meticulously drafted to balance the protection of business interests with the constitutional right to freedom of trade and occupation. Employees, on the other hand, should be cognizant of the binding nature of these agreements and the potential legal ramifications of breaching them.



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