Is a restraint of trade enforceable after the sale of a business?

Section 197 of the Labour Relations Act (LRA) deals with the transfer of a business combined with the transfer of employees to a new employer. The key objective of Section 197 is to uphold and safeguard the employees' obligations and their rights in terms of their existing employment contracts. According to Section 197, it is the responsibility of both the new and the former employer also to include the transfer of the employees' employment contracts and to make sure that the same benefits of the employees are retained.

The transfer of the existing employees' employment contracts is automatic, and a new employer could enforce such contracts once the transfer of the business occurred. The focus of this article is the restraint of trade clause.

A restraint of trade clause restricts the employee from performing certain work for a specific period in a specified geographical area during and/or after the employment.

The purpose of a restraint of trade is to protect an employer's proprietorial interest and, amongst others, to prevent a former employee from competing with the employer's business in any way.

In the case of *Slo Jo Innovation (Pty) Ltd v Beedle (2022) ZALCJHB 212*, the Labour Court had to determine whether a contract that was entered into by an employee with a former employer could be enforced by the new employer.

In the case, the respondent, Ms Beedle, was a sales representative at Slo-Jo Trading (Pty) Ltd, a full-designer drink company that designs beverages and concepts. Ms Beedle entered into an employment contract with the company in April 2007. The contract contained a restraint of trade clause.

The company's growth led to internal restructuring and the establishment of two companies, namely, Slo Jo Distribution and Slo Jo International (Pty) Ltd. The expansion resulted in limited financial harm and improvement of the business.

Ms Beedle resigned from the company and accepted a position at FlavourPro, a

direct competitor of the company. Slo-Jo Innovation (Pty) Ltd lodged an interdict application to enforce the restraint of trade clause in terms of the employment contract.

The court had to determine when the business transfer from the former employer to the new employer had transpired.

The court concluded that a new employer would immediately take the former employer's position. All the rights and responsibilities that were in place between the previous employer and the employees before the transfer, regardless of whether they were expressly stated in a contract or were agreed upon informally, will remain in effect against the new employer. Therefore, the new employer could enforce any employment contract concluded by an employee and the former employer.

Thus, employees will still be bound to the restraint of trade clause and every other clause contained in the contract, should such an employee wish to terminate his or her contract, as demonstrated in the case above.

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