THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

JUDGMENT

CASE NO: 722/2007

No precedential significance

DIGICORE FLEET MANAGEMENT (PTY) LTD **Appellant**

and

MARYANNE STEYN **1st Respondent**
SMARTSURV WIRELESS (PTY) LTD **2nd Respondent**

Neutral citation: Digicore Fleet Management v Steyn (722/2007) [2008] ZASCA 105 (22 September 2008)

Coram: **SCOTT, BRAND, LEWIS, JAFTA JJA MHLANTLA AJA**

Heard: **8 September 2008**

Delivered: **22 September 2008**

Summary: **Appeal against order refusing enforcement of contract in restraint of trade dismissed: proprietary interest of appellant not threatened by first respondent after termination of her employment with**

appellant and on her employment by a competitor, the second respondent.

ORDER

On appeal from: High Court, Durban (Van der Reyden J sitting as court of first instance)

The appeal is dismissed with costs.

JUDGMENT

LEWIS JA (Scott, Brand and Jafta JJA and Mhlanthla AJA concurring)

[1] The appellant, Digicore Fleet Management (Pty) Ltd (Digicore), seeks to enforce an undertaking in restraint of trade made in its favour by the respondent, Ms Maryanne Steyn. Digicore applied for an interdict, alternatively interim relief, restraining Steyn from working for the second respondent, Smartsurv Wireless (Pty) Ltd, a competitor of Digicore, for a period of 24 months from the termination of her employment with Digicore, in the greater Durban area. The high court refused the relief sought, finding that the undertaking in restraint of trade was unenforceable. Van der Reyden J granted leave to appeal to this court, however, on the basis that another court might reach a different conclusion especially in so far as interim relief is concerned. Smartsurv has played no role in this appeal.

[2] The facts in issue are largely undisputed and I shall deal with them only briefly. Steyn was employed by Digicore from May to December 2006 as a ‘sales executive’ for motor vehicle tracking devices. She signed a contract of employment that required her to maintain confidentiality in her work during the

course of her employment, and that restrained her from competing with Digicore after the termination of her employment.

[3] Digicore's business consists in the main of selling various kinds of vehicle tracking systems to vehicle owners. It sells to fleet owner clients that require systems to track vehicles in a fleet; to corporate clients that require vehicle recovery systems to protect against theft, and trace stolen vehicles; and to individual customers who purchase the second kind of tracking systems for themselves.

[4] When Steyn joined Digicore she had previous experience in selling tracking systems, and had also worked in the insurance business for a while. She was particularly attractive and useful to Digicore because of her contacts with insurance brokers in the Durban area who would refer potential clients to her when they acquired new vehicles and wished to insure them against theft.

[5] The period of Steyn's employment with Digicore was short: she was approached by Smartsurv towards the end of 2006 and offered a more lucrative position. She gave notice to Digicore and commenced working for Smartsurv in January 2007. Digicore learned of approaches to two of their clients by Steyn in early 2007 and commenced proceedings to prevent her from working for Smartsurv or to compete with it for the period of the restraint undertaking that she had made.

[6] The restraint provision in the employment contract reads:

‘19 RESTRAINT UNDERTAKINGS

19.1 The employee shall be restrained for a period of 2 years from the date of termination of this Agreement from working within a 200km radius of the Durban North area and / or be:

19.1.1 Directly or indirectly having any interest in (sic), involvement with, connection to or being employed by any company, corporation, firm, partnership, association or other form of business entity, whether incorporated or unincorporated (for convenience “Competing Business”), which conducts business along lines similar to or in competition with that of the employer; and

19.1.2 Acting as employee, director, shareholder, member, partner, consultant, financier, agent or advisor to any Competing Business in respect of the Restrained Activities in the aforementioned areas; and

19.1.3 Directly or indirectly soliciting or offering employment to any employee of the employer who was an employee as at the date of signature of this Agreement, or at any time within 3 (three) months preceding the date of signature of this Agreement, nor shall they attempt to do so;

19.2 The employee acknowledges that these restraint of trade undertakings and covenants are reasonable as to the period, the area of restraint and the nature and extent of the Restrained Activities.’

[7] It is now trite that provisions in restraint of trade are enforceable unless shown by the person wishing to escape an undertaking to be unreasonable and hence contrary to public policy. It is not necessary to rehearse the principles that have been set out by this and other courts governing agreements in restraint of trade. Suffice it to say that Steyn, in order to escape her contractual undertaking, must show that Digicore has no proprietary interest that is threatened by her working for a competitor of Digicore.

[8] Digicore contends that the restraint is reasonably necessary to protect its interest in its customer base because, when Steyn commenced her employment with it, she underwent an induction programme and had training and support that enabled her to market and sell Digicore's stolen vehicle recovery systems. They contend that she was provided with a client list with names and contact details, including the information on the products previously acquired by clients. Such information was alleged to be confidential and part of Digicore's goodwill. Moreover, Digicore argues, Steyn had access not just to client information but also to details regarding confidential discounts given to certain clients.

[9] Steyn's response (which we must accept, these being motion proceceedings) is that she was not trained by Digicore and did not undergo any induction programme. She was given no support save for receiving a laptop computer, a cellular telephone, and brochures describing Digicore's products. She was given no confidential client information save for the details of about 20 clients whom a previous sales executive had cultivated. Digicore had previously concentrated on corporate and fleet management clients. By contrast, she had brought with her contacts with insurance brokers, and had continued to cultivate those contacts. She had also shared the information that she had with another sales executive at Digicore, Mr Stanley Strydom, with whom she worked. During her employment with Digicore she continued to work on her contacts and had followed them up when she started working for Smartsurv.

[10] Steyn, as I have said, came to Digicore with experience in the field of tracking devices: she had previously been employed by a company referred to as Tracker Network, and subsequently by Bandit Vehicle Tracking. She had also worked for an insurance brokerage. When she left Digicore she took with her no more than she had brought to the business in the first place: experience in the field and contacts with insurance brokers in the Durban area. It can hardly be said, in the circumstances, that Digicore had any proprietary right that was in jeopardy when she left to work for a competitor.

[11] There are two particular instances where Digicore alleges that Steyn did approach its fleet management clients: she contacted Mr Rob Currie, a client of Digicore, to canvas his business for Smartsurv, and she contacted Mr Dieter Coetzee, also a Digicore client, and suggested that he move his business to Smartsurv. Steyn denies any knowledge of Currie, and although admitting that she contacted Coetzee, points out that he declined to move his company's business to Smartsurv. In neither case, therefore, can it be said that she breached any obligation to Digicore.

[12] Steyn contends – and Digicore does not dispute this – that her value to Digicore lay in her contacts with insurance brokers, a source of business previously untapped by Digicore. Digicore accordingly had no proprietary interest in her contacts and thus no right to prevent her from using them. She maintains also that she did not acquire any confidential information while working at Digicore. Although Digicore claimed that she had access to their

databases, Steyn denies that she had access to anything that was not in the public domain.

[13] Accordingly this matter is entirely different from that in *Reddy v Siemens Telecommunications (Pty) Ltd,*[1] relied on by counsel for Digicore, where a restraint was enforced on the basis that the employee had in fact undergone extensive training and acquired confidential information which warranted protection.

[14] It seems to me that, on the facts that are common cause, Steyn has shown that Digicore did not have any proprietary interest that warranted protection. It is useful to invoke the fourfold test enunciated by Nienaber JA in *Basson v Chilwan*:[2]

(a) Is there an interest of the one party (Digicore) which pursuant to the agreement warrants protection?

(b) Is that interest threatened by the other party (Steyn)?

(c) If so, does that interest weigh qualitatively and quantitatively against the interest of the other so that he or she will be economically inactive and unproductive?

(d) Is there another aspect of public interest that does not affect the parties but does require that the restraint not be invoked?

[15] The answers to these questions in this case are in my view clear. Digicore does have a proprietary interest in its client base, and information

[1] 2007 (2) SA 486 (SCA).
[2] 1993 (3) SA 742 (A) at 768F-H.

about it, that deserves protection. However, Steyn presents no threat to that interest: she is using only her own contacts and information, acquired before joining Digicore, and not making improper use of information that is confidential to Digicore. Indeed, Digicore's admitted main business is its fleet management systems. Steyn had no experience of them or the fleet management clients either before or after she joined Digicore, and made no attempt to break into that area of the business.

[16] To the third question I would suggest that given the very short period of Steyn's employment by Digicore, the fact that she was recruited for her contacts with insurance brokers, and that she was doing no more than cultivating them when she worked there and then subsequently for Smartsurv, Digicore's interest cannot be regarded qualitatively or quantitatively as warranting protection.[3] To prevent Steyn from being economically active – by enforcing the restraint – would not be reasonable. There is no commercial justification for enforcing the provision in restraint of trade against Steyn. The fourth question does not arise here.

[17] Accordingly the high court rightly found that any threat that Steyn's employment with Smartsurv might have posed did not 'weigh qualitatively and quantatively against her interest to be economically active and productive' and correctly refused to interdict her from working for Smartsurv or working in the vehicle tracking business.

[3] See in this regard *Rawlins v Caravantruck (Pty) Ltd* 1993 (1) SA 537 (A) at 541F-I.

[18] In so far as the alternative relief sought – the interim interdict – is concerned, Digicore has shown neither an apprehension that any right will be infringed by Steyn, nor that the balance of convenience favours interim relief in its favour.

[19] The appeal is dismissed with costs.

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C H Lewis

Judge of Appeal

Appearances:

For Appellant:	F H Tereblanche SC
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