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EQUITY*

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SEGAKWENG V OGILVY (JOHANNESBURG) (PTY) LTD: PRESCRIPTION: CERTAINTY BEFORE EQUITY

In *Segakweng v Ogilvy (Johannesburg)* (J2428/12) [2014] ZALCJHB 191 (29 May 2014) the Labour Court dismissed an application to make an arbitration award an order of court in terms of s158(1)(c) of the Labour Relations Act, No 66 of 1995 (LRA) on the basis that the award had prescribed.

Ms Segakweng, (applicant) had been dismissed from the employ of Ogilvy (Pty) Ltd (respondent) and had referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). The Commissioner found in favour of the applicant and awarded her R499,992.00. The respondent was ordered to pay this amount within seven days of receipt of the award, which was served on 9 August 2009. However, the respondent never complied with the award and instead, brought an application to review and set aside the award.

On 12 September 2012, the applicant brought an application to have the award made an order of court. The respondent opposed the application on the basis that the award had prescribed in terms of s11(d) of the Prescription Act, No 68 of 1969 (Prescription Act).

Application of the Prescription Act

Firstly, the court considered whether the Prescription Act applied to claims under the LRA. The court acknowledged case authority to the effect that where the LRA imposes a specific time limit on a claim, that limit will take precedence over the provisions of the Prescription Act. However, s158(1)(c) of the LRA does not stipulate any time limit for the enforceability of an arbitration award and consequently the court found that the Prescription Act applied.

Secondly, the court held that an application under s158(1)(c) of the LRA counts as a process whereby the creditor claims payment of a debt in terms of s15(1) of the Prescription Act and therefore interrupted the running of prescription in respect of the award in question. The court also noted that the same is not true of review applications.



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Thirdly, the court found that the applicable prescription period of three years commenced running on the date on which the debt became due, which was seven days after the date on which respondent received the award, being 16 August 2009. Consequently, the award had prescribed on 16 August 2012, almost one month before the respondent instituted the application, which was therefore too late to interrupt prescription.

Equity considerations

Despite the Labour Court's status as a court of equity, the court in casu firmly rejected the notion that the principle of equity required the preservation of the award:

"In the present context, considerations of fairness are however subject to the overriding objectives of certainty and finality in the relationship between employers and employees... ..as a general proposition, equity considerations do therefore not enter the deliberation when a Court applies the Prescription Act."

Employers are advised that bringing a review application will not interrupt the running of prescription on an award. Furthermore, while this does not appear from the present case, employers are cautioned that even partial compliance with an award may be deemed a tacit acceptance of liability in terms of the award and will therefore interrupt prescription.

Lauren Salt and William Woolcott



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