

## RECENT JUDGEMENT ON RESTRICTIVE COVENANT IN EMPLOYMENT LAW

*Nabridas Ltd v Coombes* [2018] SCJ 142, a recent judgment of the judge in chambers of the commercial division of the Supreme Court, sheds light on the enforceability of a restrictive covenant clause in a contract of employment.

The employee, who was a sales representative with the responsibility to sell swimming pools and other related equipment and products, took up employment with a competitor of his former employer after his resignation, which intervened after 19 months of employment. There was a restrictive covenant in his contract of employment for a period of two years as from the date of termination of his employment, which prevented him from being employed or connected with any competing business.

Whilst the judge recognizes the need for the employer to protect its legitimate interests, the judge opined that an enterprise does not acquire exclusive rights over its clients and there is no provision in our law to prevent an ex-employee from competing with his former employer and make use of the contact established during a previous employment to divert clients to a new employer to the extent that the employee does not have recourse to unfair means. Similarly, an employee cannot be prevented from making use of the knowhow, skills and experience which he has acquired in the course of his employment provided he does not breach any confidentiality obligations.

On the facts, the judge opined that whilst there are serious questions to be tried in relation to the scope of the restrictive covenant, on a balance of convenience, when weighing the competing interests of the parties so as not to cause the least irremediable prejudice, she opined that the ex-employee's interests to earn his livelihood outweighed the former employer's concerns regarding the protection of its business interests, especially in the absence of any evidence of an attempt to or entice any of its clients by the ex-employee.

The judge went on to analyse and discuss whether restrictive covenants should make provision for the payment of financial compensation to be valid and enforceable. After a review of our case law, the judge opined that the requirement of financial compensation was devised in France by the court of cassation having regard to the specific provisions found in the French *Code de Travail* and in the absence of similar legislation in Mauritius, such a requirement cannot be imported wholesale into our laws.

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