

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: HC-MD-CIV-ACT-DEL-2020/02237

In the matter between:

JOHN MEINERT PRINTER (PTY) LTD

PLAINTIFF

and

ANORAH MICHELLE DIERGAARDT

DEFENDANT

Neutral citation: *John Meinert Printer (Pty) Ltd v Diergaardt* (HC-MD-CIV-ACT-DEL-2020/02237) [2023] NAHCMD 442 (3 August 2023)

Coram: COLEMAN J

Heard: 17 - 20 January 2023 & 3 to 6 April 2023

Delivered: 3 August 2023

Flynote: Claim by employer against ex-employee for alleged theft of money – Damages as a result of the manipulation of financial records.

Summary: The plaintiff alleges that during her employ with the plaintiff, the defendant stole a substantial amount of money and manipulated the client records primarily to hide the thefts. As a result of the manipulations, the plaintiff suffered damages.

Held that, the plaintiff proved its claims and the defendant is liable to repay the plaintiff the balance of the money stolen and for the damages the plaintiff suffered.

ORDER

1. The defendant is ordered to pay the plaintiff N\$115 985,78, plus interest calculated at the rate of 20 per cent per year from the date of this order.
 2. The defendant is ordered to pay the plaintiff N\$3 645 981 as damages, plus interest calculated at the rate of 20 per cent per year from the date of this order.
 3. No order as to costs.
 4. The matter is removed from the roll and regarded as finalised.
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JUDGMENT

COLEMAN J:

Introduction

[1] This is a claim for the alleged theft of money and damages allegedly suffered as a result of the manipulation of financial records by an ex-employee.

Pertinent facts

[2] The plaintiff's case is that the defendant, while employed by it as a debtor's clerk, and during the period of 2011 to May 2019, stole N\$666 200 from the plaintiff in respect of claim 1. In addition, the plaintiff claims N\$3 645 981 from the defendant as damages in respect of claim 2.

[3] The plaintiff alleges that during the period of 2011 to May 2019, the defendant manipulated the plaintiff's records, passed fraudulent or erroneous transactions on the plaintiff's systems and destroyed the plaintiff's records in an attempt to conceal the defendant's theft. This caused the damages according to the plaintiff. In her plea, the defendant does not deny the theft and pleads to the claim for theft that the plaintiff indicated the claim will be abandoned. She denies every allegation in respect of the damages claim.

[4] It is undisputed that the defendant was employed by the plaintiff for 24 years. Her duties as debt clerk are also not in dispute. The defendant also does not dispute that she manipulated the plaintiff's record but explains that she did it because she did not want to appear unable to do her job.

[5] On 3 December 2019, the defendant, while represented by legal practitioners, signed a written authority and consent in terms of s 37D (b)(ii) of the Pension Funds Act 24 of 1956 (introduced as Exhibit 'L'). Her husband co-signed the document. In the document, the defendant acknowledged that she committed theft from the plaintiff and that the amount of N\$743 783,74 had been determined by forensic accountants to have been stolen. She further admits and agrees, in the document, that she is indebted to the plaintiff in the amount of N\$743 783,74, and agrees that her pension money '...be ceded, made over and assigned to ...' the plaintiff. Her pension money amounts to N\$550 214,22. The defendant testified that, according to her, the payment of her pension money settled the claim for the money stolen.

[6] Jurgen Sievers, Ulricke Sievers and Laura Koch – a forensic expert – were called as witnesses on behalf of the plaintiff. They testified extensively about the theft and alleged manipulation of records and were cross-examined elaborately. The defendant was the only witness for the defence.

[7] Under cross-examination, the defendant admitted that she stole money from the plaintiff, but could not say how much she stole. She also acknowledged that she falsified and manipulated records and hid it from her supervisors. The defendant accepted, under cross-examination, that these activities caused damage to the plaintiff. This largely neutralises her protestations, during her evidence in chief, that she did not steal anything and never admitted to it.

Conclusion

[8] I considered all the pleadings, evidence and submissions in this matter and mean no disrespect by not articulating specifics. Counsel for the defendant argued a number of issues that were not pleaded. In essence, he challenges the forensic evidence and contends that the plaintiff did not prove its quantum for claims 1 and 2. In respect of claim 1, the defendant actually acknowledged N\$743 783,74, as determined by the forensic experts. The plaintiff now proved a lower amount, being N\$666 200. In my view, the N\$550 214,22 pension money should be deducted from this amount. In my further view, Exhibit 'L' does not reflect that the defendant relinquished her pension money in full and final settlement of the plaintiff's claim in respect of the money stolen.

[9] As far as claim 2 is concerned, I am satisfied that the plaintiff proved its claim. The amount of N\$3 645 981 includes N\$240 000 for the costs of specialist consultants, N\$161 460 for the forensic specialist, N\$1 592 264 being unrecoverable losses in customer accounts as a result of the manipulation of records by the defendant and N\$1 652 257 being unrecoverable losses in cash sale accounts. In my view, due to the extent of the manipulation of the records, the plaintiff had no choice but to involve experts and additional people to assist it. The forensic evidence stands, in my view, uncontested. I am satisfied that the plaintiff established its damages in this context.

[10] Counsel for the defendant also submitted that the plaintiff has no *locus standi* before court. He asserts that there is no resolution filed and no proof of Mr Jurgen Siever's authority to act for the company. This was not pleaded, nor was Mr Sievers cross-examined on it. He testified that he is the Executive Director of the plaintiff and this was not challenged during his testimony. I am satisfied the plaintiff is properly before court.

[11] The defendant was granted legal aid, and as a result, I make no order as to costs.

[12] Consequently, I make the following order:

1. The defendant is ordered to pay plaintiff N\$115 985,78, plus interest calculated at the rate of 20 per cent per year from the date of this order.
2. The defendant is ordered to pay plaintiff N\$3 645 981 as damages, plus interest calculated at the rate of 20 per cent per year from the date of this order.
3. No order as to costs.
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G COLEMAN
Judge

APPEARANCES

PLAINTIFF:

C Van der Westhuizen
Instructed by Etzold-Duvenhage,
Windhoek

DEFENDANT:

S Kanyemba
Of Salomon Kanyemba Inc.,
Windhoek