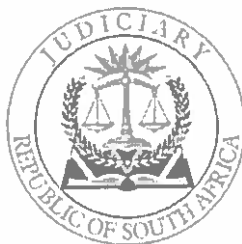



REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 81541/2017

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED YES
<i>10 Dec 2019</i>	
	

In the matter between:

MEINTJIES AND MEINTJIES

REKENMEESTERS CC (REGISTRATION NUMBER: 1998/024722/23)

[IN DEREGISTRATION]

APPLICANT

And

ENGELA D.M. ANNANDALE

FIRST RESPONDENT

OLD MUTUAL TRUST (PTY) LTD t/a

OLD MUTUAL TRUST

SECOND RESPONDENT

(Registration Number: 1927/000328/07)

JUDGMENT

COLLIS J:

INTRODUCTION

[1] Pursuant to the order by the court on 20 November 2018, the applicant and the first respondent presented oral evidence before this court on the nature and terms of the oral agreement concluded between the parties.

[2] The first witness to testify on behalf of the plaintiff was Mrs. Heila Meintjies whose evidence can be summarized as follows: It was her evidence that she is the surviving spouse of Mr Meintjies who died on 27 April 2015. He was an accountant by profession and the sole member of the plaintiff. The second respondent cited in these proceedings is the appointed executor in the estate late of her deceased husband. Upon her husband's untimely death she wanted to continue with the business because of its clientele but because she was not an accountant herself, and as a result of the business not having another accountant in its employ, she had to contract the services of an outside accountant. In achieving this, she first obtained permission from the executor of the estate and this permission was given to her.¹The first respondent (Ms. Engela Annandale) was referred to her by one Ernst Grobbelaar. She met the respondent for the first time on 13 June 2015 and on this day she was present with Ms. Wanda Koen, one of the administrative clerks, and on her instruction the latter concluded an agreement with Ms. Annandale. In essence the terms of this agreement was that the services of Ms. Annandale will be contracted to attend to all the professional work and that she will be compensated one third of the net profits after all deductions had been made. On the strength of this agreement, Ms. Annandale was contracted by the business from June 2015 until her services were terminated during July 2017. She refuted the version of Ms. Annandale that an agreement was concluded that she will take over the plaintiff as a defunct business for the sum of

¹ Exhibit A p 20

R 218 000 in the form of work which she that would perform.

[3] During cross-examination, Mrs Meintjies conceded that on 20 May 2015, she was given permission by the executor of her late husbands' estate to continue with the business. She also reiterated that Ms. Koen negotiated on her instructions with the first respondent although she was present during the entire negotiations. She vehemently denied the version of the first respondent that she took over the business and clientele of the applicant and that she became responsible for the payment of salaries, rental to Mrs Meintjies and the insurance for the furniture of the business and that indeed that Mrs Annandale became the owner of the business. She was adamant that the executor of her late husband never gave her permission to sell the business to the first respondent.

[4] Ms. Wanda Koen testified that she has been in the employ of the applicant since 1999. It was her testimony upon the death of Mr. Meintjies, his surviving spouse, Mrs. Meintjies was given permission by the executor of the deceased estate to continue with the business of the applicant. This she bears knowledge of as the said correspondence was received via email on her computer and appears on Exhibit A p 21. She denied that the executor ever gave Mrs. Meintjies permission to sell the business or that she had been given permission by the executor to allow the first respondent to take over the business of the applicant. Mrs Koen confirmed that she was given permission by Mrs Meintjies to negotiate an agreement with the first respondent for Mrs Annandale's services to be contracted to work as an accountant for which she would be compensated one third of the net profit after deductions and the applicant would receive the remaining two thirds. She denied the version of the first respondent that since the time that her services was contracted that the administrative staff was in her employ. It was further her testimony that since the first respondent was an accountant and tax practitioner, their letterhead had to reflect the details of her business as she was providing the professional services and that her details had to be used when she was servicing their clients. She also confirmed that she negotiated these terms of the agreement with the first respondent on instructions of Mrs. Meintjies and that she at all times had informed Mrs. Meintjies on what was agreed between herself and Mrs. Annandale.

[5] During cross-examination she denied the version of the first respondent that she

had taken over a defunct business of the applicant for which she paid R 218 000 in the form of work that she would perform. The witness further denied that since the first respondent started working, that their salaries were henceforth paid by the business of the first respondent called EA Financial Services. She similarly could tender no explanation why the first respondent took out insurance for the equipment which they were utilizing at the premises of Mrs. Meintjies even before Mr. Meintjies had died. She also confirmed that from the time that the services of Mrs. Annandale were contracted that emails were dispatched to all their clients wherein they were informed that the services of a new accountant were contracted and that all clients had a choice to remain with them or sever their relationship.

[6] Ms. Antoinette Van Taak was the last witness to testify on behalf of the applicant. In essence she confirms the evidence of Mrs. Koen as to how the first respondent became involved with the business of the applicant. She confirmed that she was present when it was agreed with Ms. Annandale that she will receive one third of the sales after deductions of all expenses and vehemently denied that an agreement was reached with her that she will take over the clients of the applicant and would pay an amount of R 218 000 in the form of work that she would perform. It was her testimony that only approximately three to four months after Mr. Meintjies had died did they only manage to ascertain that R 218 000 had been received from clients but that the work for such payments had not been attended too. She denied that when the first respondent started working with them, that indeed they came to be in her employ. She confirmed that when their letterhead was change to reflect the details of the first respondent and that this idea emanated from the first respondent.

[7] The plaintiff then closed its case.

[8] Ms. Engela Annandale evidence can be summarized as follows: She was first introduced to the applicant through a friend of hers, called Ernst Grobbelaar. He had informed her that its owner, Mr. Meintjies had died and that the business needed an accountant and tax practitioner to assist it with its work. At around the 10th June 2015, she first made contact with Mrs. Wanda Koen who requested from her, her tax practitioners' number. On the 12 June 2015, a meeting was then set up at the offices of applicant where it was agreed that going forward, that she would proceed to service the clients of the firm, that she would pay rental to Mrs. Meintjies in the amount of R

10 000 per month and that she will be responsible to pay the salaries of the staff. At this meeting it was also agreed between them, that she would be appointed the accountant for the firms existing clients and that she would take over the clients of the applicant. It was never agreed between them, that she would purchase the business of the applicant for an amount of R 218 000. As far as fee structure it was agreed that one third of the generated income will go towards salaries, another third towards overheads and the last third would be her profit. It was further her testimony that at this meeting she informed all present that she had an existing practice with a trust account and that it was opened by her a few months before the said meeting. She further testified that at this meeting an agreement was reached between them that clients who at the time was making payments into the credit card of Mrs. Meintjies that all those payments would be transferred into her trust account. Ms. Annandale remained adamant that at the time when she first engaged the applicant that it had clients to service, but without an accountant that the business was unable to do so. It was also her testimony that it was later discovered that a number of clients of the applicant had paid for professional work to be done, e.g. preparing their income tax for the receiver, but that their work had not been attended to. She proceeded to attend to all outstanding work and was even responsible to attend to all queries which existing clients would have. As she was requested to insure the furniture of the applicant it was agreed between her and Ms. Koen that she will become the owner of the furniture in order to have the furniture insured in her name. As to the failure to pay bonuses she gave evidence that it was agreed that same will only be paid if the admin staff was able to generate fees to earn such bonuses. On 14 July 2017, she then received an email from the attorneys from Ms. Meintjies wherein a demand was made that she paid over two-thirds from the income generated by the business for the period June 2015 to June 2017.² As a result of this demand, she then proceeded to send out emails to all clients informing them about the latest developments and in response some clients elected to remain with her. She also during July 2017 decided to cancel the insurance for the furniture as her relationship with the applicant by then had terminated. She vehemently denied that she was ever in the employ of the applicant.

[9] During cross-examination, Ms. Annandale denied that she ever worked for the

² Exhibit A p 24

applicant. It was her testimony that when Ernst Grobbelaar first contacted her, that that he had informed her that the applicant needed an accountant to take over the business of the applicant. When she was confronted with her version as to why she negotiated with Ms. Koen and others around the three way split between her net profit, salaries and overheads she gave an explanation that they wanted certainty around as to whether they would receive rental and salaries. Ms. Annandale was also confronted as to why she considered the business as defunct, when it had in fact clients, she said that although it had clients, with the remainder of the staff employed by the applicant, that the clients could not be serviced. During cross-examination Ms. Annadale also conceded that the clients of the applicant still had the option not to become her clients if that were their choice. She further denied that she ever entered into an agreement with the applicant and it was her consistent evidence that she entered into an agreement with Ms. Koen. When she was confronted with the letter that Mrs Meintjies received from the executor, she conceded that the letter never gave Mrs Meintjies permission to sell the applicant albeit that she had never laid eyes on the said letter. Ms. Annandale further conceded although she did not know the extent of the outstanding work that had to be attended to her, she was willing to negotiate around this aspect as she knew that she would be able to do the work. During cross-examination further, she denied that Ms. Koen and Ms. Van Taak became her employees from the time that she started work at the applicant. In re-examination she confirmed that at the time when she negotiated with Ms. Koen and the others that she had labored under the impression that the applicant was being run as a sole practice and not that of a close corporation.

[10] The first respondent then closed her case.

[11] In assessing the evidence placed before this court, this court was faced with two mutually destructive versions as to what had transpired on the day that the terms of agreement were negotiated. In evaluating the evidence remains mindful of the approach adopted in *National Employers General Insurance Co. Ltd v Jager* 1984 (4) SA 437 EDC at 440D.

[12] As to the evidence presented Mrs Meintjies, Ms. Koen and Ms. Van Taak the court

has no difficulty to accept the evidence tendered by these witnesses. They all tendered their evidence in a coherent and honest manner and throughout their versions not only corroborated one another but it remained consistent. I have no difficulty in accepting their testimonies.

[13] The same however could not be said from the evidence tendered by Ms. Annandale. Not only is her version found to be improbable, but it is also found to be opportunistic and simply false. Ms. Annandale wants this court to believe, that Mrs Meintjies desperate as she was at the time, will simply sign away her whole inheritance to a person that was unknown to her. She wants this court to believe, that her services were not contracted by the applicant, but that she was sought after from all potential accountants to merely hand over a viable business to an unknown stranger. If Ms. Annandale's version is to be accepted, why would she negotiate with Ms. Koen without establishing as to whether she had the authority to hand a viable business to her and on a silver platter? Why would she negotiate to take over the business of the applicant without knowing the extent of the work to be completed and not knowing as to whether clients of the applicant would agree to remain with her as an accountant in future? From her evidence it is clear that she was an astute businessman and this is the reason she ensured that letterheads and financials were drawn up in the name of her previous business and that all payments were made into her trust account. This is also the reasons as to why soon after she began working for the applicant she even had the email addresses of the applicant changed and had registered the employees for unemployment benefits and starting paying for insurances for the office equipment. This is also the reason that she decided to henceforth pay Mrs Meintjies a rental for using her office space, as she wanted to cover her ill-contrived plan.

[14] This court rejects her version as it is found to be improbable and it follows that the applicant is entitled to the relief which she seeks as per her Notice of Motion.

ORDER

[15] In the result the following order is made:

15.1 The income and necessary expenses of the business of the applicant from 1 July 2015 until 14 July 2017 are to be investigated, calculated and reported on by an auditor independent of the parties herein, to be appointed by the Chairperson of the Institute of Chartered Accountants, at the request of the applicant, such request to be made within ten business days of date of this order;

15.2 The first respondent shall provide the aforesaid auditor with any and all financial information and documentary material which may be requested by him/her in order that he/she may complete his/her mandate, as aforesaid;

15.3 The sum of money equivalent to two thirds of the income of the business of the applicant from 1 June 2015 until 14 July 2017, after deduction of the necessary expenses of the business of the applicant for that period and the deduction of any income already paid to the applicant by the first respondent in respect of the aforesaid period, the total thereof to be calculated by the aforesaid auditor, shall be paid to the applicant by the first respondent within ten business days of the report of the aforesaid auditor being provided to the first respondent;

15.4 The determination of which expenses were necessary and the calculations and report of the aforesaid auditor shall be final and binding on the applicant and the first respondent;

15.5 In the event that the independent auditor should determine that any amounts are due by the first respondent to the applicant, the first respondent shall pay the costs occasioned by the appointment of that auditor and in the event that the said auditor should find that no amounts are due by the first respondent to the applicant, the applicant shall pay the costs occasioned by the appointment of the auditor;

15.6 The first respondent is ordered to pay the costs of the application.



C.J COLLIS

JUDGE OF THE HIGH COURT OF

SOUTH AFRICA

Appearances:

For the Applicant:	Adv M. Coetsee
Attorney of the Applicant:	M.L.SCHOEMAN ATTORNEYS
For the First Respondent:	Adv G.V Meijers
Attorney for the First Respondent:	Dawes Law
Date of Hearing:	18, 20 & 21 June 2019
Date of Judgment:	10 December 2019