

/SG

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.

(3) REVISED. ✓

13/01/2010

DATE

SIGNATURE

DATE:
CASE NO: 1772/2006

21/1/2010

In the matter between:

SPRINBOK BOX (PTY) LTD
t/a SUMMIT ASSOCIATED INDUSTRIES

APPLICANT

And

G M DIKGALE AND 170 OTHERS
(ANNEXURE "A")

1ST AND FURTHER
RESPONDENTS

JUDGMENT

SITHOLE, AJ

A. INTRODUCTION

1. This is an application in which the Applicant approached this Court by way of a *rule nisi* as a matter of urgency sometime during January 2006. The matter has had a somewhat tortuous trajectory in that it was first heard by my learned brother VOSTER AJ on 23 January 2006. He made a draft order an order of Court marked "X" which was slightly amended but which is similar to the relief sought by the Applicant, which relief is mentioned below, and issued the relevant *rule nisi* on the same date.

2. Thereupon the matter served before my learned brother BOSIELO J on 24 February 2006, and he extended the *rule nisi* until 16 May 2006 to the opposed roll. Costs were reserved.
3. The matter was subsequently heard by me on the opposed roll of 16 May 2006, ie on the extended return day of the *rule nisi*. Having heard the arguments of counsel for the parties, I thereupon reserve judgment, more so that there appeared to be two diametrically opposed approaches to the matter, namely, that this application concerns a simple common law interdict to protect the property and business assets of the Applicant which have been unlawfully infringed, on the one hand, and on the other, that this matter concerns the furtherance of a protected legal strike by the Respondents to demand wage negotiations from the Applicant. These standpoints needed further research.
4. What seems to be an inordinate time has since passed before I could come round to finalise and complete writing my judgment in this matter. This is on account of circumstances beyond my control, which included poor health and the pressure of work on the Bench during my acting stints in Pretoria and Mafikeng. Any inconvenience which may have been occasioned to the parties by the said delay is hereby deeply regretted. Suffice it to say that my judgment in the matter follows below.

5. The relief sought by the Applicant is set out in the relevant *rule nisi* dated 23 January 2006 and is couched in the following terms –

“1. That the Respondents, whose names appear in annexure “A”, be interdicted from –

- 1.1 Presenting, obstructing, harassing, victimising or intimidating any person from entering or leaving the Applicant’s premises in Jobson and Sloan Street, Rosslyn, Pretoria;
- 1.2 Assaulting or threatening to assault any person, entering or living on the said premises;
- 1.3 Damaging or threatening to damage any property, including the throwing or propelling of any objects, to any person or property, including vehicles, belonging to the Applicant or any person entering or living on the said premises;
- 1.4 Any barricading ... or obstructing of the gates and the entrance and exit areas and excess roads of and to the said premises;

2. That the Respondents, whose names appear in annexure “A”, be interdicted from coming within the radius of 200m (two hundred meters) from the parameter of the Applicant’s premises in Jobson and Sloan Street, Rosslyn, Pretoria.
3. That the Respondent be ordered to pay the costs of this application jointly and severally, the one paying the other to be absolved, on a scale as between attorney and client, alternatively on the scale between party and party;
4. That prayers 1 to 3 shall operate with immediate effect as an interim order pending finalisation of this application on Tuesday 24 February 2006.
5. That this order be served in the following way:
 - 5.1 By affixing a copy of the order to the main entrance of the premises of the Applicant at Jobson and Sloan Streets, Rosslyn, Pretoria; and
 - 5.2 That the relevant sheriff shall serve copies of the order everyday this week until 27 January 2006 on any of the Respondents present outside the

Applicant's premises at Jobson and Sloan Streets,
Rosslyn, Pretoria.

6. That the sheriff shall be directed to bring to the attention of any of the Respondents on whom he is able to serve this order, the provisions of Rule 6(12)(c) with regards to the reconsideration of the order.
7. That the Applicant be allowed to approach the honourable Court on the same papers and amplified if necessary, for the committal of the Respondents, upon failure of the Respondents to adhere to the interim order granted in terms of prayer 4 above."

B. FACTUAL BACKGROUND

6. The facts of this application indicate that:

- 6.1 The Applicant is Springbok Box (Pty) Ltd t/a Summit Associated Industries, with its factory and offices at Sloan Street, Rosslyn, Pretoria. It is common cause that the Applicant is involved in the manufacture of wooden cable drums and industrial packaging materials, which are supplied on a tender and a contract basis to cable manufacturers which supply cables to essential services such as Telkom, Eskom in the mining industry as well as other national and users electrical optical

fibres and telecommunication cables. In this application the Applicant is legally represented by Mr B C Van den Heever SC.

6.2 Whereas the Applicant alleges that the Respondents are all (170 of them) current or previous employees of the Applicant, the Respondents deny that any of them are previous employees of the Applicant. They regard themselves as employees of the Applicant who are engaged in a protected strike action due to failed wage negotiations with the Applicant. They described themselves as employees of the Applicant who are opposing this application exercising their constitutional right to strike. The Respondents are duly represented by Ms M B Matlejoane.

6.3 It is common cause that on 13 October 2005 the Respondents embarked on a protected strike and that the Applicant subsequently locked them out from the workplace premises in terms of the relevant legislation. At the time of the strike and the lockout the Respondents were apparently still on strike and had not yet called it off. Consequently, they were still picketing outside the Applicant's premises.

6.4 It would appear that on 18 October 2005 the Applicant applied for a restraining order against the Respondents in the Labour Court, on the basis of unruly behaviour within the situation of a protected strike by them. The Respondents, however, state that

the said application is similar to the present one and that on the return date of the said application it was discharged with costs on the basis that the allegations therein, which are similar to the present ones, were found to be untrue. They therefore accuse the Applicants of “forum shopping” and lacking in candour to the Court. In its reply, however, the Applicant denies the aforesaid accusations and that the present application has any bearing on the previous one in the Labour Court, more particularly that the present one is not based on any labour principle but is based purely on “the Respondents’ unruly behaviour, which is not tolerable in law in general”.

6.5 On 24 October 2005, the property of the Applicant was damaged in an act of arson, which the Applicant believes was linked to the strike and the Respondents. Furthermore, on 13 December 2005, the Respondents caused a petrol bomb to be hurled at a bus transporting temporary replacement workers of the Applicant. Some of these workers were injured and the bus was damaged. The Respondents, on the other hand, deny that any of them were engaging in any criminal or unruly conduct on the said day and they put the Applicant to the proof of his allegations in this regard.

6.6 It is alleged by the Applicant that on account of the strike and to avoid adverse production at his factory, it recruited temporary

replacement workers (“the workers”) to take over production once the strike had started. The Applicant also states that it normally closes its operations for the holiday period on 15 December each year, but was forced to continue its operations during 2005 until 30 December 2005 and to reopen earlier on 10 January 2006 in order to catch up with its loss of production. These allegations are denied by the Respondents, who state that they are within their legal rights to demand wage negotiations with the Applicant in that the latter hired temporary staff before the strike action commenced; that if Applicant has suffered any loss of production, it is its own doing because it hired buses to transport the temporary staff on a daily basis for a fee. It is common cause that Applicant has contracted the services of a transport company called Grundling Buses, which operates two shifts in the morning and in the afternoon to transport the workers to and from work.

- 6.7 Whereas the Applicant alleges that on Tuesday 10 January 2006, when the bus transporting the workers arrived at its premises, Respondents gathered in front of the premises gates in Sloan Street, Rosslyn, Pretoria and not only prevented the bus from entering the premises, but also intimidated and threatened the workers in the bus as well as the bus driver. The Respondents on the other hand, deny Applicant’s allegations above and state that since the commencement of the strike

action, they have not engaged in any behaviour that is unruly or any way criminal. Besides, they say, the fact that the workers transported daily at the Applicant's expense are temporary workers from a legal point of view, the employer cannot hire permanent staff if employers are engaged in a protected strike.

6.8 The Applicant states that it was forced to call the Riot Unit of the South African Police Services (SAPS) to assist and to protect the workers; that after SAPS arrived, they held discussions with the Respondents after which the bus was allowed to enter the premises of the Applicant; that SAPS left vehicles with SAPS members at the gate of the premises in order to maintain order for the rest of the day. These allegations by Applicant are denied by the Respondents. They state that the SAPS members had always been present at the Applicant's premises since the commencement of the strike action; that the police even tried to broker negotiations between the parties which negotiations resulted between the parties meeting on 17 January 2006 to try to break the deadlock.

6.9 It would appear that the SAPS, who had been requested by the Applicant to provide assistance and protection to the workers on the Applicant's premises on the morning and afternoon of 10 January 2006 onwards, indicated that they cannot do that indefinitely, as police assistance can only be given if and when

resources are available. They therefore advised Applicant to consider obtaining an interdict against the Respondents. The Respondents, however, denied these allegations by Applicant and state that if Respondents were ordinary members of the public, the Riot Unit of the SAPS would have arrested them; that the reason why the police never arrested anyone of them is because the police realised that the Respondents are engaged in industrial action and peaceful picketing, for that matter.

6.10 Whereas the Applicant alleges that from 10 January 2006 to 16 January 2006 SAPS maintained a presence and general law and order at its premises, the Respondents, however, deny this allegation and state that since the commencement of strike action the police were at all times present and all management arrived and left with police escort.

6.11 It would appear that on the morning of 17 January 2006 SAPS were absent at the premises. The Applicant alleges that Respondents took advantage of the SAPS absence and the burned tyres and placed big rocks in Sloan Street leading into Applicant's premises; that the Respondents also barricaded the access for pedestrians entering from the main road to the front gate of Applicant's premises with a razor wire and tree stumps, thereby preventing not only the bus with the workers but also customers, contractors and employees of the Applicant from

entering its premises. The Respondents, however, denied these allegations by the Applicant and state that on that day (17 January 2006) the Applicant and the Union NACBAWU representing the Respondents, held in meeting to try to solve the dispute; that the Applicant suggested retrenchment or the reduction of the Respondents' salaries; that no resolution could be arrived at and the meeting ended in another deadlock.

6.12 Although the Respondents offered nothing more than a bare denial for this allegation, it is stated by the Applicant that the SAPS was again contacted and it was only after the Riot Unit of the SAPS had arrived and talked to the Respondents that the barricades and rocks were removed by the police and the workers' bus was let through. This resulted in substantial hours of production being lost for the day.

6.13 It is further alleged by the Applicant that on 17 January 2006, in the afternoon, while the workers were waiting inside the Applicant's premises for the bus to arrive to transport them to their homes, the Respondents started throwing stones at them and in doing so damaged a vehicle of one of the managers of the Applicant and injured some workers. The Applicant was once more constrained to call in SAPS Riot Unit to ensure that the bus leaves safely with the load of employees of the Applicant. In response to these allegations all that the

Respondents can say is to offer a bare denial and to refer the Court to what they have already stated in previous paragraphs.

- 6.14 The Applicant alleges that on 18 January 2006 at approximately 06:15 the bus with a load of workers arrived at Applicant's premises and the Respondents started throwing stones at the bus as it turned into Sloan Street; that this resulted in damage to the windows and body of the bus as well as injuries to the workers in the bus. The Respondents once again intimidated and threatened the workers in the bus as well as the bus driver; that the bus driver was forced to reverse and head for the Rosslyn Police Station in order to avoid further damage to the bus and injury to the workers; that a security officer of a private security company which the Applicant employs to protect the workers on the bus was hit by a stone and was taken to hospital and had to receive stitches to the back of his head. In response to these allegations the Respondents denied them and state that on 17 January 2006 three temporary workers of the Applicant who were identified and reported to the police assaulted a Mr H J Chauke, who was one of the Respondents; that Chauke was assaulted inside the Applicant's premises on Applicant's instructions.; that on the day of the Court appearance of the three workers they were driven by Mr Mpho Mosana, one of the directors of the Applicant.

6.15 It would appear that after the alleged incidents on 18 January 2006 Applicant once again contacted the SAPS Riot Unit to ensure the safe return of the bus to its premises. That the bus only arrived at approximately 09:00, which resulted in a two hour loss of production. The Respondents have nothing to say to these allegations except to give a bare denial and to put Applicant to the proof thereof.

6.16 In support of its allegations on the damage to the workers' bus, the Applicant has filed four photographs. It also alleges that the incident of 18 January 2006 has resulted in Grundling Buses terminating its services due to the fact that its property is being damaged and the safety of its drivers threatened. The Applicant has attached a letter marked "C" in which Grundling Buses terminates the service. It holds the Applicant liable for the damage to its bus. In response to these allegations the Respondents simply offer a bare denial and refer the Court to what they stated in earlier paragraphs.

6.17 The Applicant further alleges that it needs the workers for its survival and in order to transport them it is now forced to purchase a bus; that this will result in a further financial burden for it whilst it is currently suffering under financial constraints due to the situation. In response to these allegations the Respondents reiterate their answer in paragraph 6.6 above.

6.18 Applicant also states that the upshot of the Respondents' unlawful and criminal conduct is that its workers are without transport to and from work; that the workers are afraid to leave the premises as they fear for their lives and have been sleeping on Applicant's premises since 18 January 2006; that such situation is not conducive for human habitation as it bears its own risks; that a of the workers tried to leave the premises and could only get to taxis after SAPS was forced to protect them with service firearms. The Respondents denied these allegations and refer the Court to the response in paragraph 6.7 above.

6.19 It is also alleged by the Applicant that during the course of the morning of 18 January 2006, the Respondents also attacked a truck of one of the transport contractors called Multiloads, which the Applicant employs to transport its products; that the Respondents intimidated and threatened the driver of the truck. In a letter which the Applicant has attached, Multiloads has informed the Applicant that until the situation is neutralised and safe passage guarantee, all operations to Applicants are stopped. The Respondents merely offer a bare denial to the above allegations and they put the Applicant to the proof thereof.

6.20 Furthermore, so alleges the Applicant, that during the evening of 18 January 2006, at approximately 22:00, the Respondents attacked with petrol bombs a truck consisting of a horse and trailer which is the property of the Applicant, in the access service road to the Applicant's premises and approximately 100 meters from the Zenex petrol filling station; that the driver escaped with injuries resulting in him receiving medical attention and has not returned for work since the incident; that the said truck was totally destroyed resulting in a loss of approximately R350 000.00 for the Applicant. The Applicant has attached four photos allegedly depicting damage by fire to the truck. In response to these allegations the Respondents simply deny them and put Applicant to the proof thereof. They also reiterate that they have not engaged in any criminal or unruly behaviour since the beginning of the strike.

6.21 The allegation and proposition are further made by the Applicant that it is clear that Respondents have no respect for the lives of the Applicant's employees and property; this includes the lives of members of the public in general; that it fears to think about the consequences if one of the petrol bombs were misdirected directed and it exploded near the storage areas of the Zenex petrol filling station. In response, the Respondents merely give a bare denial and simply say they put the Applicant to the proof thereof.

6.22 The Applicant states that since 10 January 2006, the Respondents have intimidated and threatened any vehicle, the driver and occupants of such vehicles approaching the Applicant's premises, be it customers, contractors, employees or suppliers; that this is of great concern to it as this is detrimental to its business. In response, Respondents merely deny the Applicant's allegations and refer to what they have already stated in previous paragraphs.

6.23 The allegations is also made that on 19 January 2006 Applicant received a letter from one of its suppliers, to wit, Vaal Timbers (TVL) CC, stating that they have cancelled all deliveries as a result of the conduct of the Respondents. This letter is annexed to Applicant's papers. The Respondents offer only a bare denial in response to the Applicant's allegations and merely refer the Court to previous answers.

6.24 Applicant states that another letter was received by it from a company called Hans Merensky Holdings (Pty) Ltd, informing it that on account of the fact that their drivers are being threatened, all deliveries would be withheld until such time that the problem of intimidation is sorted out. This letter has also been attached by Applicant to its papers. In response, Respondents take note of the contents of the letter referred to

and deny the allegations stated by Applicant. Respondents also raise the question: if they are engaging in this (*sic*) unruly and criminal behaviour, why is it that with the presence of the police no one has been arrested if this behaviour does occur?

6.25 The Applicant further states that both Vaal Timbers (TVL) CC and Hans Merensky Holdings (Pty) Limited are major timber suppliers to it and should the Respondents be allowed to sabotage its operations with their conduct, this will result in job losses and suffering among families of his employees. In response, Respondent give a bare denial and simply put the Applicant to the proof of its allegations.

6.26 Applicant expresses the fear that if Respondent are allowed to continue with this type of conduct, it will definitely soon result in serious injuries to the workers, customers, other employees and its property and might lead to the total closure of its business. The Respondents merely deny these allegations by Applicant and put it to the proof thereof.

6.27 It is also alleged by Applicant that individual Respondents are acting collectively, incite action and do whatever they can to disrupt the normal business operations of the Applicant, including public indecent alcohol abuse at Applicant's factory gate, that the Respondents' conduct requires constant vigilance

of the SAPS Riot-Unit, which cannot be provided forever. Once more, the Respondents offer a bare denial to these allegations and refer to previous answers they gave.

6.28 Lastly, the Applicant states that it is in possession of a video recording of approximately two and a half hours which has captured the Respondents' misconduct and criminal behaviour; that it is in the process of making photos of some of the incidents from this video recording, and these will be made available at the hearing of the matter, should it become able to produce the photos in time. The Respondents have simply taken note of these allegations.

C. THE ISSUES TO BE DECIDED

7. It is evident from the comprehensive factual background above that Applicant has, in its application papers, given a long litany of its woes. Some of Applicant's serious allegations are denied by the Respondents, while others are met with bare denials coupled with repetitions. At the heart of the matter, however, is whether Applicant is, on the basis of the facts, entitled to the relief it has applied for and whether such relief can be trumped by the Respondents' defence, to wit, that their conduct is lawful in that it is in furtherance of a protected legal strike to demand wage negotiations from the Applicant. For the Applicant to succeed in its application, which is for a final interdict, it will have to prove its case on a balance of probabilities that:

- 7.1 It has a clear right;
- 7.2 There is an injury actually committed or reasonably apprehended; and
- 7.3 There is an absence of similar protection by any other ordinary remedy (see *Setlogelo v Setlogelo* 1914 AD 221 at 227).

D. THE CASE FOR THE APPLICANT

Whether Applicant has a clear right?

- 9. In his head of argument counsel for the Applicant contended and submitted that:
 - 9.1 It is common cause that Applicant is in the business of the manufacturing of wooden cable drums industrial packaging material at its factory and business premises situated at Sloan Street, Rosslyn, Pretoria. As such the Applicant has a clear right to trade and to do business and to be commercially active without undue interference and disturbance by persons such as the Respondents. Furthermore, the Applicant is entitled to so conduct its business and engage in its commercial activities without fear of outside intimidation of its customers and personnel and without fear of damage to its assets or property. This is not in dispute. It follows that, on the papers, the

Applicant duly established a clear right, which if infringed, deserves the protection of the Court.

An act of interference

10. The Applicant's case in this regard is that which he set out in paragraph 6, 7 and 8 of the founding affidavit. These paragraphs contain factual allegations by the Applicant in respect of the actions performed by the various Respondents on the various dates set out therein. These actions include the intimidation, obstruction, arson, malicious damage to property, assault and others clearly infringe upon the right of the Applicant to freely conduct its business as it is entitled to do. It is furthermore threatening to the safety and security of its personnel, its customers and suppliers have resulted in major damage in some of its assets. In this respect the Applicant referred the Court to the following annexures in support of the above submission:

10.1 Annexure B, which is a letter by Multiloads, one of Applicant's suppliers, dated 18 January 2006 addressed to Applicant.

10.2 Annexure G, a letter of HM Holdings also a supplier of the Applicant, dated 18 January 2006 and addressed to the Applicant.

- 10.3 Annexure F, a letter of another supplier of the Applicant called Vaal Timbers (TVL) CC dated 19 January 2006 and addressed to the Applicant.
- 10.4 Annexure C, a letter of Grundling Buses faxed to Applicant on 19 January 2006 as well as annexures B1 to B4 which are photographs depicting damage caused to one of the Buses owned Grundling Buses.
- 10.5 Annexures E2 to E4 which are photographs depicting damage caused to Applicants horse and trailer which was allegedly set alight and totally destroyed by the Respondents on 18 January 2006.
- 10.6 The Applicant's right to freely conduct its business in a peaceful and undisturbed manner and its right to use and enjoyment of its property have been and are still being seriously infringed by the Respondents' conduct. Besides the Respondents have persisted in such criminal activities, despite the Applicant's efforts to curtail and to put a stop to the activities by calling in the help of the South African Police Services (SAPS). Once the SAPS left the premises, the Respondents resumed their illegal and criminal activities.

Absence of any other remedy

11. The Applicant has no other remedy but to approach the Court for an interdict restraining the Respondents from performing their actions as more fully set out in the draft order, the Respondents are impecunious and the Applicant has no prospect of recovering its losses caused by the illegal actions of the Respondents from them in a civil suit. As pointed out in the founding papers, the SAPS have informed the Applicant that it cannot be present at the Applicant's premises continuously to offer protection to its business, its customers, its suppliers and its property. As stated already, as soon as the SAPS leave the premises, the Respondent resume the illegal and obstructive activities.

On the Respondents' case

12. The Respondents seems to be labouring under the impression that the Applicant has, in the present application, chosen the wrong forum. This is so in the light of the allegation by Respondents in their answering affidavit that an application was brought by the Applicant in the Labour Court in October 2005 in that the present application is merely a reshaping of that case by the addition of new facts and the changing of dates. Applicant submits that the present application is not based on any employment contract between the Applicant and any of the Respondents. Also, it does not curtail or restrain the Respondents from exercising any of their lawful rights to participate in the protected strike, to picket lawfully, and to insist on wage

negotiations. It concerns the protection of the Applicant's clear right in respect of the conduct of its business and the use and enjoyment of its assets and property. Furthermore Applicant submits that it is common cause that the strike and the lockout referred to in the application where the background facts leading to the application are set out, comply with the provisions of the Labour Relations Act and are therefore protected. It follows that section 68 of that Act is not applicable. This section only applies to an unprotected strike or lockout. It also follows that this Court has the necessary jurisdiction to entertain this application. Besides, the temporary interdict that was granted in the Labour Court on 18 October 2005 which interdict was discharged on 23 October 2005 was not founded on the illegal and criminal actions which form the basis of the present application, which actions only occurred after 23 October 2005.

On whether Respondents' version discloses a defence or whether it results in material disputes of fact being raised on the papers

13. The Applicant further submits that the Respondents' version as set out in paragraphs 18 to 47 of the answering affidavit in response to Applicant's material factual allegations and cause of action as set out in paragraphs 6, 7 and 8 of the founding papers amounts to a bare denial of the essential facts. It follows that no real dispute of fact arises in respect of any material factual allegation made by the Applicant in setting out its cause of action. In support of the above

submissions the Applicant referred the Court to the work by Herbstein & Van Winsen “*The civil practice of the Supreme Court of South Africa*” 4th ed page 238 as well as the following case law.

13.1 *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 3 SA 1155 (T) 1165;

13.2 *Soffiantini v Mould* 1956 4 SA 150 at 154G-H; and

13.3 *Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 3 SA 623 (A) 634H-635B. Applicant submits that in view of the foregoing authorities, if the bare denials of the Respondents of the factual allegations made by the Applicants in paragraph 6, 7 and 8 of its founding affidavit are carefully scrutinized, they do not, in the sense described above, raise a real genuine or *bona fide* dispute of fact. This is strengthened by the presence of the police at the scene which is common cause. Also annexures B1 to B4 and E1 to E4 and F and G strengthen the above submissions. The bare denial thereof does not raise any real dispute of fact. As to annexure G the Respondents in their answering affidavit, merely take note of the contents thereof, without denying it. Consequently, the Applicant submits that:

- (a) A proper case has been made out by the Applicant for an order in terms of prayers 1, 1.1, 1.2, 1.3, 1.4, 2 and 3 of the draft order;
- (b) The Respondents disclosed no defence against the Applicant's case; and
- (c) No real and *bona fide* genuine material dispute of facts exist on the papers.

- 14. The Applicant therefore request the Court to grant an order as set out in paragraph (a) above and to order the Respondents' to pay the costs of this application jointly and severally on an attorney and client scale.

E. THE CASE FOR THE RESPONDENTS

- 15. In her heads of argument counsel for the Respondents, after giving a summary of the Applicant's version, set out the Respondents' version, contentions and submissions as follows, that:

15.1 It cannot be disputed that all the Respondents are still employees of the Applicant and have since October 2005 being engaged in a protected strike regarding wage negotiations.

15.2 It is submitted that a protected strike loses its protection in terms of section 67 of the Labour Relations Act when the underlying

dispute is settled. The Applicant is not telling the truth when saying that it is not sure about the status of the strike.

15.3 Strikers engaging in a protected strike are entitled to protection against unlawful interference with the exercise of their right to strike and picket even after they have been dismissed. Reference is made to the case *FGWU and Others v The Minister of Safety and Security and Others* 1999 (4) BLLR 332 (LC).

15.4 The dictum of ZONDI J in *Picardi Hotels Limited v FGWU and Others* 1999 (6) BLLR 601 (LC) is quoted by the Respondents to illustrate that the learned judge arrived at the same conclusion as in subparagraph 16.3 *supra*.

15.5 It is submitted on behalf of the Respondents that Applicant's version that the Respondents are all current or previous employees cannot be accepted so too the Applicant's version that some of the employees were on fixed term contracts and such contracts have lapsed, because a refusal to renew a fixed term contract is also a form of dismissal. This implies that the employment relationship outlives the contract in circumstances such as those in the present matter.

15.6 In the light of the foregoing, serious doubt is thrown upon Applicant's version that the fact that some of the Respondents have been dismissed or their fixed term contracts have lapsed gives the Court jurisdiction. All the Respondents are still employees of the Applicant. This application involves a relationship between employer and employee and further involves strikes and lockouts which fall within the exclusive jurisdiction of the Labour Court.

15.7 It is common cause that the Applicant brought a similar application in October 2005 in the Labour Court. The application was similarly brought in the nature of this application in that the allegations were similar to the present allegations.

15.8 The allegations similar to those *in casu* were bound to be untrue by the Labour Court. The Applicant is not telling the truth by saying that the *rule nisi* in the Labour Court was uplifted (*sic*). The rule was discharged and VAN ZYL AJ gave reasons which were that the Applicant is accusing the Respondents with all these allegations but fails to present evidence to that effect. The learned judge said the Applicant mentions assault of temporary employees but fails to mention who were assaulted and by whom. There were also no medical records to that effect.

15.9 The Applicant mentions that on 24 October 2005 its property was damaged in an act of arson. This allegation was not mentioned in the application in the Labour Court. Further, the Applicant fails to mention he was involved in that (*sic*).

15.10 It is submitted that the Respondents deny that they are involved in any unruly behaviour alleged by the Applicant. The Respondents maintain that they are engaged in a protected strike and they picket peacefully outside the Applicant's premises. It is also submitted that since the commencement of the strike action, the police were present and the Respondents would have been arrested if they engaged in any criminal activities.

15.11 On January 2006 the Applicant and NACBAWU, representing the Respondents, held a meeting to try to resolve the dispute. The Applicant suggested retrenchment or deduction of Respondents' salaries. No resolution was reached. The Applicant is not telling the truth by saying that on 17 January 2006 the Respondents barricaded access to the Applicant's premises. The Respondents were waiting for their union to come and report about the meeting whilst waiting, they could not have anticipated another deadlock and behave in an unruly manner.

15.12 The Applicant also failed to make out a case for an interdict because of the following: the final interdict affects a final determination of rights. It is granted in order to secure a permanent cessation of an unlawful course of conduct or state of affairs. For the grant of such an order there are three requisites all of which must be present:

15.12.1 Clear right: - existence of a clear right is a matter of substantive law. Whether that right is clearly established is a matter of evidence. In order to establish a clear right the Applicant has to prove on a balance of probabilities the right which it seeks to protect. See *Nienaber v Stuckey* 1946 AD 1049 at 1053.

15.12.2 No other remedy: - the Court will not in general grant an interdict when the Applicant can obtain adequate redress in some other form of ordinary relief. See *Peri-Urban Health Board v Sandhurst Gardens (Pty) Ltd* 1965 1 SA 683 (T) 684G.

15.13 Lastly it is submitted that the Applicant has an existing remedy which will afford the Applicant some results. The Applicant can resume negotiations with the union which will then suspend the strike action. The Applicant cannot avoid bargaining by jumping

from one Court to another seeking to suppress the Respondents' constitutional right to strike.

15.14 The Respondents pray that the *rule nisi* be discharged with costs.

F. EVIDENTIARY ANALYSIS AND FINDINGS

16. From the above comprehensive factual background it is clear that the following facts are common cause:

16.1 The identity of the Applicant;

16.2 The identity of the Respondents;

16.3 The fact that all the Respondents have knowledge of the application and the return date in that they are duly represented;

16.4 That at the time of the hearing of the main application all the Respondents were or still are employed by the Applicant;

16.5 That the Respondents embarked on a protected strike on 13 October 2005;

16.6 That on 13 October 2005 the Respondents were legally locked out by the Applicant;

- 16.7 That temporary workers were hired by the Applicant to avoid ...
a standstill of its business;
- 16.8 That the temporary workers have been transported by means of
Grundling Buses to and from work;
- 16.9 That the South African Police Services (SAPS) were called to
the Applicant's premises on various occasions;
- 16.10 The Respondents were picketing outside the Applicant's
premises; and
- 16.11 That for Applicant to be entitled to a final interdict it must proof
that firstly, it has a clear right, and secondly, an act of
interference and thirdly, no other ordinary remedy.

Clear Right

- 17. Whereas the Applicant submits that it conducts its factory and
business at Sloan Street, Rosslyn, Pretoria and as such it has a clear
right to trade and do business and to be commercially active without
undue interference and disturbance from people such as the
Respondents, they contend that Applicant has failed to make out a
case for an interdict because, *inter alia*, the existence of the clear right
is a matter of substantive law; whether that right clearly established is

a matter of evidence; and in order to establish a clear right the Applicant has to prove on a balance of probabilities the right which it seeks to protect. Well, the fact that it is common cause that the Applicant conducts the business of manufacturing of wooden cable drums and industrial packaging materials at Sloan Street, Rosslyn, Pretoria, where the Respondents are employed, means that it has a clear right to trade and to do business and to be commercially active without undue disturbance by a third party. This right is derived from section 22 of the Constitution Act 108 of 1996 which states that “Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.” It follows that the contention made on behalf of the Applicant that it is entitled to so conduct its business and engage in its commercial activities without fear of outside intimidation of its customers and personnel and without fear of damage to its assets or property, is valid and found by the Court as such. Moreover, apart from evidence in the papers establishing Applicant’s clear right it has also proved on a balance of probabilities that such right if infringed, deserves the Court’s protection. See *Nienaber v Stuckey* 1946 AD 1049 at 1053.

An act of interference

18. There is undoubtedly ample evidence in the papers regarding acts of interference at the Applicant’s premises which acts are directly linked to the strike action by the Respondents. The damage on the

Applicant's property on 24 October 2005; the intimidation incident of 10 January 2006 at the entrance gate of the Applicant's property; the burning of tyres and barricading of the road leading to Applicant's gate with rocks and tree stumps and the stone throwing on 17 January 2006; and the intimidation and threatening of a bus driver and employees of Applicant in a bus which occurred in the morning of 18 January 2006, indubitably serve as hard evidence of acts of interference to Applicant's business. Moreover, such evidence is supported by the contents of letters from Multi-Loads dated 18 January 2006, Vaal Timbers dated 19 January 2006, HM Holdings dated 18 January 2006 who are all suppliers of the Applicant. A letter from Grundling Buses suspending transport services to Applicant's premises dated 19 January 2006; photographs of a damage bus belonging to Grundling Buses; damaged by fire to the horse and trailer belonging to Applicant on 18 January 2006, all unquestionably indicate unlawful and reprehensible actions of those to whom the Applicant's accusatory finger points. And yet such acts of interference are not dealt with in the heads of argument filed on behalf of the Respondents. They are either studiously ignored for some reason or other, or this is a serious oversight and omission on the part of the drafter of such heads. Furthermore, I cannot fail to notice that in the answering affidavit of the Respondents they take notice of the existence of photos in the possession of the Applicant which implicate them directly. Our law on pleadings states that taking note of allegations is tantamount to admitting such allegations. (See *Ramakulukusha v Commander*,

Venda National Force 1989 2 SA 813 (V).) I am, therefore, constrained to find that the Applicant succeeded in proving the second requirement of an act of interference as stated in *Setlogelo v Setlogelo supra*.

No other remedy

19. Counsel for the Respondents, correctly, in my view, quoted the law as stated in *Peri-Urban Health Board v Sandhurst Gardens (Pty) Ltd* 1965 1 SA 683 (T) 684G that the Court will not, in general, grant an interdict when the Applicant can obtain adequate redress in some other form of ordinary relief.

20. In its founding affidavit, the Applicant has alleged that it has no other remedy because there is no prospect of recovering, by way of a civil action, damages arising from the loss caused by the illegal actions of the Respondents because they are impecunious. Besides, the Applicant alleged that the South African Police Service have informed it that they cannot be present at its premises continuously in order to offer protection to its business, customers, suppliers and property. Applicant also states that the Respondents tend to resume their illegal and obstructive activity as soon as SAPS leaves the premises.

21. In dealing with the issue the Respondents submitted that the Applicant does have an existing remedy which will afford it some results. They contend that the Applicant can resume negotiations with the union

which will then suspend the strike action; that Applicant cannot avoid bargaining by jumping (*sic*) from one Court to another seeking to suppress (*sic*) the Respondents' constitutional rights to strike.

22. The damage to Applicant's property and to the Grundling Bus has already been established beyond doubt. This is extensive damage, to say the least. Such damage did not occur on its own without human causative agency. At law it cannot just happen with impunity for the law attaches consequences to whomsoever caused it. It is reprehensible. If Respondents are indeed impecunious, that does not, *per se*, give anyone of them the licence to indulge in violent strike action which results in damage to the property of others. Neither is a protected strike a shield against criminal persecution and civil action where there is resultant damage. Impecuniosity means having little or no money at all. To sue an impecunious person is tantamount to suing a street beggar. How much would one recover as damages in a civil suit from such a person? Any order of Court for payment of damages against a penniless person would be no more than a brutal *brutum fulmen*, full of sound and fury but signifying nothing. Besides, the Respondents do not deny that they are impecunious. They instead suggest the resumption of negotiations between Applicant and their union so as to suspend the strike action. This, to my forensic knowledge, is not "any other ordinary remedy" as posited in the *Setlogelo* case, *supra*. I accordingly find that the Applicant has convinced the Court that there is, *in casu*, an absence of a similar

protection by any of other ordinary remedy, as a requirement for obtaining an interdict.

23. Lastly, it needs to be mentioned that the Applicant has been accused by the Respondents of “forum shopping” and of “jumping from one Court to another seeking to suppress the Respondents’ constitutional right to strike”. This is undoubtedly a serious allegation which indirectly impacts on the jurisdiction of this Court. Well, I do not know what happened in other Courts between the parties but in this Court the matter involved an application for a plain and simple common law interdict to protect the property and business assets of the Applicant from any further damage. The matter has nothing to do with the exercise of the Respondents’ right to strike. The right to strike is, of course also protected by our Constitution (Act 108 of 1996) in section 23 on Labour Relations. But the right to strike does not grant one a licence to damage property belonging to others. Strikes and lockouts are concepts which are applicable to the context of labour relations. One cannot be heard raising the defence of “exercising the right to strike” against a prohibitory interdict aimed at protecting life, limb and property. To do so would be absurdity of the highest order. I accordingly dismiss any submission that this Court has no jurisdiction to hear this matter because the Applicant is “forum shopping”. I also accordingly hold that the relief sought by the Applicant cannot be defeated by the Respondents’ defence that their conduct is lawful in

that it is in furtherance of a protected legal strike to demand wage negotiations from the Applicant.

G. CONCLUSION AND ORDER

24. In the light of the above analysis and findings, I arrive at the ineluctable conclusion that the *rule nisi* has to be confirmed and the Applicant has to succeed. In the result the following order is hereby made:

24.1 The rule nisi granted by this Court on 23 January 2006 is hereby confirmed.

24.2 The relief sought by Applicant in paragraphs 1 and 2 of the draft order which was made an order of Court by my learned brother VORSTER AJ on 23 January 2006 is hereby granted.

24.3 No order as to costs is made because the Applicant has abandoned the prayer for costs.



ACTING JUDGE OF THE NORTH GAUTENG HIGH COURT

1772/2006

Heard on:

16 May 2006

For the Applicant:

Adv B C Van den Heever SC

Instructed by:

Messrs Schoeman Bosch Inc, Pretoria

For the Respondents:

Adv M B Matlejoane

Instructed by:

Messrs Ramushu Morare Inc, Pretoria

Date of Judgment:

January 2010