



IN THE GAUTENG DIVISION, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

12/5/15
CASE NO: 8595/2015

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~
(3) REVISED ✓

DATE: 12-5-2015 SIGNATURE: [Signature]

In the matter between:

JRMM TECHNOLOGIES (PTY) LTD

MICHAEL JOHN PRINSLOO

And

ROBIN DOUGLAS BALL

JEFFREY MORGAN

1ST APPLICANT

2ND APPLICANT

1ST RESPONDENT

2ND RESPONDENT

JUDGMENT

MSIMEKI J:

INTRODUCTION

[1] The applicants, in this application, seek an order as follows:

- "1. That the forms and service provided in the Uniform Rules of Court be dispensed with in terms of Rule 6 (12) and that the application be enrolled and adjudicated as an urgent applicant (sic);

2. That the First and Second Respondents be interdicted and restrained from:
 - 2.1 Divulging to anyone any of the First Applicant's confidential information and/or trade secrets, which include but is not limited to the identity and contact details of the First Applicant's customers, suppliers, service providers, agents, equipment sourcing costs, price lists, and pricing structures and the identities of any of the First Applicant's trade connections;
 - 2.2 Using any of the confidential information and/or trade secrets of the First Applicant as set out in prayer 2.1 hereinabove either directly or indirectly in any way whatsoever, including for the purposes of canvassing the First Applicant's customers, suppliers, service providers, and/or trade connections or soliciting the business of the First Applicant's customers, suppliers, service providers, agents and/or trade connection;
 - 2.3 Soliciting or seeking any business whatsoever from any person, firm or company who was a customer or trade connection of the First Applicant during the First and Second Respondents' period of employment with the First Applicant;
 - 2.4 Passing off their business as that of the First Applicant and/or being associated with the First Applicant, and/or as representing the First Applicant, and/or as being connected in the course of trade with the First Applicant, and/or using the First Applicant's name and/or get-up or any name and/or get-up which is confusingly or deceptively similar to the First Applicant's distinctive name and/or get-up;

3. That the First and Second Respondents be ordered to hand over to the First Applicant all of the soft and/or hard copies of documentation containing information relating to the identity and/or contact details of the First Applicant's customs and/or suppliers, and/or service providers, and/or agents and/or equipment sourcing costs and/or price lists and/or pricing structures and/or trade connections within two days from date of this order;
4. That the First and Second Respondents be ordered to hand over to the First Applicant all assets and equipment of the First Applicant in the possession and/or control of the First and/or Second Respondents, including all Integra Intelligent Motor Controllers, demonstration units, measurement equipment and sellable units, within two days from the date of this order;
5. That the First and Second Respondents be ordered to pay the costs of this application on a scale as between attorney and client, only in the event of First and/or Second Respondents opposing any of the relief sought herein.
6. In the alternative to prayer 2 to 5 above:
 - 6.1 That interim relief with immediate effect be granted in favour of the Applicants against the First and Second Respondents in terms of prayers 2 to 4 above, pending the outcome of this application and/or pending the outcome of final relief sought by the Applicants against the First and Second Respondents in an action to be instituted by the Applicants against First and Second Respondents within 30 days from the date of this order;
 - 6.2 That the First and Second Respondents show cause on a return date to be determined by this Court why the interim relief should not be made final and why First and Second Respondents should not be ordered to pay the costs of this application on a scale as between

attorney and client, which costs order will be sought against the First and Second Respondents only in the event of any one or more of them opposing any of the relief sought herein.

7. Further and/or alternative relief as may be required to be awarded to the Applicants."

- [2] Adv P A Swanepoel (Mr Swanepoel) (assisted by Adv C A Boonzaier) and Adv R J Groenewald, (Mr Groenewald) respectively, represented the applicants and the respondents when the matter was heard.

BRIEF FACTS

- [3] The applicants' version is that the deponent to the founding affidavit, Mr Michael John Prinsloo (Mr Prinsloo Junior), Prinsloo senior and the respondents agreed to start a business. The respondents, at this stage, do not include Prinsloo Junior as one of those who attended the meeting. This, according to the respondents, was during or about February 2014 whereas according to the applicants, this happened during January and February 2014. Up to here, the parties agree. The purpose of the business was to import and distribute Integra Intelligent Motor Controllers (Integra Controllers) which calibrate and control rock crusher units in mining operations. On 18 February 2014 the parties agreed that a shelf company had to be bought to speed up the process of registration and to commence with the business as soon as possible. A shelf company called Kerlister (Pty) Ltd was purchased. The name, in due course, would be changed to JRMM Technologies (Pty) Ltd. JRMM represents the parties' names which are Jeff, Robin, Mike and Michael. The shareholding would be as follows:

The first and second respondents would be allocated 25% each of the shares while the second applicant would be allocated 50%. Prinsloo senior would be the funder. The first respondent would be responsible for the marketing division while the second respondent would be in charge of sales. Prinsloo Junior and the two respondents were to be the directors. The collection of the shelf company from Mr Marc Lindsay (Lindsay), a business associate of Prinsloo senior, according to the applicants, was left to the second respondent who was also to effect the change of the name of the company at the companies and intellectual properties commission ("CIPIC"). He would see to the allocation of shares and the appointment of directors. Due to slow progress by the second respondent, the parties, according to the applicants, mandated Mr Lindsay (Lindsay) to do the job. This included the opening of the applicant's bank account. In the meantime, World Focus CC's bank account, an entity operated by the first respondent, would be used to receive all funds that would be payable to the first applicant. This would be the arrangement until the first applicant got its own bank account. Once the bank account was opened the first respondent would then transfer the first applicant's funds from World Focus account into the new account.

During March 2014 the first applicant commenced its business. On 27 June 2014 the first respondent, representing the first applicant, concluded a Value Added Resellers Agreement with the first applicant's main supplier-Suresense Technologies Ltd (Suresense) based in the United Kingdom. Mota-Engil one of the applicant's main clients and others were approached regarding the sale of the Integra Controllers. On 18 August 2014 the bank account at the First National Bank (the nominated bank) was opened in the name of JRMMC. This, according to the applicants, was caused by the change of name to JRMM which had not yet been effected. The process was completed on 3 December 2014. On 26 August 2014,

and at the first applicant's principal place of business, a meeting was held by the first and second respondents, Dr Mark Hall ("Hall"), Lindsay, Prinsloo senior and Mr Davies (Davies) who represented Capital Mineral Resources Investment Limited (CMRI). A conditional offer for an investment in JRMM Technologies (Pty) Ltd was signed by the parties. This is annexure "D" to the founding affidavit. The term sheet as it is called contained the commercial terms as well as the rights and responsibilities of the parties to the agreement. Matters relating to the business of the respondent were discussed and Dr Hall was appointed the General Manager of the first applicant. The applicants contend that the first respondent misappropriated funds while the second respondent benefited and concealed information which should have reached the applicants. The first and second respondents were suspended and ultimately subjected to a disciplinary hearing in their absence after they decided not to attend the disciplinary hearing.

They, at the disciplinary hearing, faced various charges. They were at the end of the hearing convicted as charged. They were then advised of the outcome of the hearing by email dated 28 November 2014. The outcome is dated 1 December 2014. Developments after the hearing resulted in this application which was launched on 5 February and by way of urgency. The application is opposed by the respondents. The second applicant, under case 9414/14 brought another application seeking a final winding up order of the respondent (first applicant) and that its estate be placed in the hands of the Master of this court. That application is also opposed by the respondents

- [4] The parties agreed that the issue of urgency was first to be dealt with. The parties argued and submitted their reasons why the matter was urgent or not urgent. I ruled that the matter was urgent. The parties then dealt with the merits of the application.

- [5] A dispute arose between the shareholders of the first applicant. The applicants contend that the respondents are:
- divulging the applicants' confidential information and/or trade secrets; wrongfully using the applicants' confidential information and/or trade secrets; soliciting or seeking business from persons, firms or companies who were or which were customers of the applicant during the period the respondents were employed by the first applicant and passing off their business as that of the first applicant, and/or as representing the first applicant, and/or as being connected in the course of trade with the first applicant, and/or using the first applicant's name, and/or get-up or any name and/or get-up which is confusingly or deceptively similar to the first applicants name and/or get-up. The applicants contend that the respondents, because of their wrongful conduct, ought to be interdicted and restrained from such wrongful conduct. The respondents dispute and deny this.
- [6] To the founding affidavit, and as annexures, the applicant has annexed the documents relating to the winding up application. The respondents are not happy therewith.
- [7] The respondents are also not happy with the fact that the first applicant features as an applicant in the application. The parties, however, are in full agreement that the second applicant features as an applicant because he is a shareholder. This then settles the problem of *locus standi* particularly once the first invalid resolution of the first applicant was replaced by the resolution of 17 February 2015 through which the actions by the company were ratified.

THE ISSUE

- [8] The issue to be resolved is whether the respondents engaged in the conduct that the applicants complain about. Put differently, the issue is whether the applicants have made out a case to be entitled to the relief that they seek.
- [9] On 23 February 2015 the respondents filed a Notice in terms of Rule 7 (1) of the Uniform Rules of Court disputing the second applicant's authority as well as that of Barnard Inc. Attorneys to act on behalf of the first applicant. Mr Groenewald did not seriously pursue the dispute which I regard as having been out of the way.

COMMON CAUSE FACTS

- [10] These are admitted facts and facts which are not seriously challenged or placed in dispute. These are:
1. That the respondents have been canvassing and conducting the business of the first applicant;
 2. that the respondents performed services in terms of contracts in which the first applicant is the service provider;
 3. that the respondents contacted the first applicant's clients and told them that there were people who were hi-jacking the first applicant and its business and that the clients should deal directly with them;
 4. that the respondents did business in the name of "originale Venture partners" which simply referred to the first applicant;
 5. that the respondents on Friday 30 January 2015 contacted Mr Louis Botha (Botha), the first applicants' agent, of Blue Torch Electrical in Cape Town attempting to get information from him relating to first applicant's client details in the Western Cape and that WhatsApp messages were also sent to

Botha regarding this information. Botha has provided a confirmatory affidavit in connection therewith and the affidavit is annexure "MJP9". The applicants contend that the conversation between Botha and the first respondent reveals that the first and second respondents intend taking over the first applicant's business clients, suppliers, trade connections, agents, and using the first applicant's confidential information and trade secrets, equipment and stock to the detriment of the first applicant and to the exclusive benefit of the first and second respondents.

6. that the respondents accepted funds in the bank accounts of numerous entities, which the respondents control, received from first applicant's clients.
7. that they are in possession of an unspecified amount of Integra Controllers. They however, contend that the Integra Controllers were paid for by an entity that is controlled by the first respondent, namely Champion Tours CC.
8. that on 17 December 2014 the second respondent unlawfully and without the first applicant's authorisation took possession of two Integra Controllers valued at R210 000.00 from the first applicant's suppliers. The units were not delivered to the first applicant.
9. that World Focus CC received R1 628 727.00 from Mota-Engil
10. that First and second respondents represented to the first applicant that only an amount of R1 140 108.90 and not R1 628 727.00 had been paid to World Focus CC by Mota-Engil.
11. that the business of the first applicant was conducted under the name of JRMM Technologies
12. that Mr Prinsloo senior funded the business activities of the first applicant including buying the Integra Controllers.

13. that World Focus CC received an amount of R1 140 108.90 from Mota-Engil in its bank account and only paid R199 794. 49 into the bank account of the first applicant. World Focus CC is the entity that was run and controlled by the first respondent.
14. that the first and second respondents are aware of the whereabouts of all the first applicant's Integra Controllers that they did not return to the first applicant.
15. that the first and second respondents contend that they are entitled to represent the first applicant.
16. that the respondents admitted attending to the order placed by the applicant during 2014.
17. that the respondents and Prinsloo senior agreed to set up business together. It seems to me that the directors would eventually be the second applicant and the respondents.
18. that Mr M P Lindsay is the sole registered director of the first applicant as borne out by annexure "B" the CIPIC report on page 63 of the papers.
19. that to solve the problem of the bank account, which the first applicant did not have, it was agreed that the bank account of World Focus CC would, in the meantime be used.
20. Once the first applicant was properly registered after the name change, the first respondent would have to transfer applicant's money from World Focus CC's account into the first applicant's opened account.

[11] Although the decision was to have the respondents and the second applicant as directors, for the reasons that I shall deal with shortly, the only registered director is still Mr Lindsay.

[12] Mr Groenewald, for the respondents, submitted that the application was replete with factual disputes necessitating the dismissal of the application or its referral to trial.

The following factual disputes, according to him, relate to:

1. The authority to represent the first applicant.
2. who the current directors of the first applicant are
3. whether the respondents were validly dismissed as directors of the first applicant
4. whether Hall was duly appointed as the general manager of the first applicant
5. whether the second applicant is properly authorised to act on behalf of the first applicant
6. the owner of the movables which the applicants seek to claim from the respondents
7. whether the respondents have the right to represent JRMM
8. whether the second applicant and his father are attempting to exclude the respondents from the day to day running of JRMM
9. whether the respondents' conduct was unlawful
10. whether the first applicant is possessed of any confidential information or trade secrets which the respondents may be intending to use for personal benefit or to the detriment of JRMM
11. whether such information is confidential and worthy of protection.

The factual disputes, according to Mr Groenewald, cannot be resolved in motion proceedings. His submission is that the applicants ought to have foreseen the disputes arising.

- [13] Mr Swanepoel, for the applicants, contends that the application is devoid of factual disputes of note.

THE LAW

- [14] Farlam and others in Erasmus: Superior Court Practice at B1-50A say:

“The Court will dismiss an application if the applicant should have realised when launching his application that a serious dispute of fact, incapable of resolution on the papers, was bound to develop.”

This view is echoed in **Gounder v Top Spec Investments (Pty) Ltd 2008 (5) SA 151 (SCA) at [10]**; **Tamarillo (Pty) Ltd v B N Aitken (Pty) Ltd 1982 (1) SA 398 (A) at 430G-431A**; **Burnkloof Caterers Ltd v Horseshoe Caterers Ltd 1976 (2) SA 930 (AD) at 938**; **Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd 1957 (4) SA 234 (C) at 235E-G**; **Transnet Ltd t/a Metrorail and Others v Rail Commuters Action Group and Others 2003 (6) SA 349 (SCA) AT 368 C-D and G-H** and **Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T) at 1162 and 1168**.

It is therefore clear to the court that where a party makes a wrong choice by following the route of motion proceedings where serious disputes of fact, incapable of resolution on the papers are bound to surface, does so at his/her peril.

- [15] An application, where there are disputes of fact can only be granted if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order. The facts alleged or admitted by the respondent are paramount in the consideration whether the application should go through or not. Facts which cannot be denied though not formally admitted must be regarded as admitted. **Stellenbosch Farmers' Winery Ltd (supra)**.

THE SECOND APPLICANT'S AUTHORITY TO ACT ON BEHALF OF THE FIRST APPLICANT

[16] The challenge here is based on the validity of the special board resolution annexure "MJP1" to the founding affidavit. The annexure clearly has been signed by Prinsloo senior and the second applicant. The document is invalid simply because they are both not registered directors with CIPC. Lindsay is the sole registered director of the first applicant. This cannot be denied. The defective resolution was substituted by the resolution that was passed by the director of JRMM at a meeting which was held on 17 February 2015. The resolution, which is annexure "MJP16", appearing on page 377 of the papers ratifies the actions by the company (the first applicant). The actions are the following:

- "1. 1.1. Institution of urgent legal proceedings in the High Court of South Africa, Gauteng Division, Pretoria under case number 8595/2015 against Messrs R D Ball and J Morgan;

1.2 that the company be authorised to instruct attorneys and legal counsel to attend to any such legal proceedings;

1.3 that the company may perform all such action and sign all such documents as may be required to receive the interdict and protect the business of the company.
2. That MICHAEL JOHN PRINSLOO (ID 820901 5126 08 8) be authorised to sign all such documents, to depose to affidavits and do all such things as may be necessary to give effect to the above resolutions"

The resolution relates to the directors of JRMM TECHNOLOGIES (PTY)

LTD with registration number 2014/034536/07 and has been signed by the sole director Mr Marc Paul Lindsay.

It is noteworthy that ratification is permissible. **See LYNN NO and Another v Coreejas and Another 2011 (6) SA 507 (SCA) at 510 B-C and Smith v Kwanonqubela Town Council 1999 (4) SA 947 (SCA)**

- [17] That the ratifying resolution is signed by the sole registered director cannot be denied. Mr Groenewald, however, submits that the resolution has not been signed by any of the persons who are supposed to be the directors of the first applicant. Evidence evinces that no other person, save Lindsay, at the time, had become a director of the first applicant. Evidence further evinces that Lindsay, because of the problem that had been experienced when forming the first applicant, had to become the director who would be in a position to effectively bring the first applicant into existence and also open its bank account. It seems to me, that the respondents and the second applicant becoming directors was overtaken by the souring of the relationship between the respondents and the Prinsloos and that resulted in the two applications - this and the winding up application. No one has to date brought an action or an application challenging the directorship of Lindsay. One gains an impression that Lindsay became a director by agreement between the parties. The fact that the resolution of 17 February 2015 has not been signed by any of the persons who were supposed to be directors for the reason stated above, is neither here nor there. Only the sole registered director was authorised to sign. This put paid the issue of authority raised by the applicant and argued and submitted by Mr Groenewald.

- [18] What I say in paragraph 15 above effectively tells who the current legitimate directors are.

**WHETHER THE RESPONDENTS WERE VALIDLY DISMISSED AS
DIRECTORS OF THE FIRST APPLICANT**

- [19] Depending on the facts of the case, whether or not the respondents were validly dismissed as directors may not necessarily affect the launching of this application. What must be remembered is that there is a sole director who has the right to protect the interests of the first applicant in the event that they are wrongfully and unlawfully threatened. It does not appear that the respondents have challenged the suspensions and the dismissals that they refer to in their Answering Affidavit.
- [20] The question whether the second applicant is properly authorised to represent the first applicant has, in my view, been answered above.

THE OWNER OF THE MOVABLES

- [21] The confirmatory affidavit of Mr Louis Botha ("Botha") becomes very relevant in answering this question and others. Botha is the first applicant's agent. His evidence is clear, unambiguous and easy to follow. He briefly says that the first respondent, in Cape Town, contacted him and requested a meeting. They met on 30 January 2015. The first respondent advised him that the two respondents had been desirous of obtaining his services. Regarding the first applicant, the first respondent said to him:
1. that Lindsay registered the company in his own name to cut the respondents out of the first applicant ;

2. that Prinsloo senior and Dr Mark Hall ("Hall") were trying to steal the first applicant from the respondents;
3. that Hall appointed himself in some position and " just sits on his ass and does nothing"
4. that Mr Andre Swanepoel ("Andre") was fully aligned with the cause of the respondents and refused to work for the first applicant.
5. that the first respondent (and not the first applicant) had been paying the salary of the second respondent over the last few months including his computer, car and phone;
6. that the first respondent had signed an agreement with the first applicant's supplier ("Suresense") in the United Kingdom and that the agreement was with the first respondent and not the first applicant.
7. that the respondents were busy setting up their own company to deal with Integra Controllers.
8. that within the two weeks that would follow the first respondent would travel to the United Kingdom to meet Suresense representatives where he would attempt to secure a R100m funding for Integra related business;
9. that the first respondent was prepared to pay all agents 30% commission for marketing the Integra products;
10. that the respondents were busy with several large projects;
11. that the respondents were to meet with Enviroserve, another current client of the first applicant, on 2 February 2015 and they wanted him to take them to the first applicant's other clients;
12. that Prinsloo senior had only contributed R450 000.00 to the business of the first applicant for the original stock purchase;

13. the first respondent had only returned a few items of stock to the first applicant's office just to satisfy them. The first respondent had retained a lot of stock in his possession and the stock was available to react quickly to potential orders;
14. the first respondent implored Botha not to reveal this to anybody. He was not to talk to representatives of the applicant and that included Mr Bernard Gilbert who worked for Botha as he was a friend of Prinsloo senior.

[22] Botha could not keep this to himself as implored. He decided to tell Ball about this. On 2 February 2015 he received messages from the second respondent via WhatsApp. He requested Botha to send him details, addresses, contact names and telephone numbers of the first applicant's clients in the Western Cape where Botha had installed Integra Controllers. The WhatsApp messages received from the respondents are annexures "LB1" and "LB2" respectively.

[23] Evidence reveals that the respondents made several important admissions. These are, inter alia:

1. that the first respondent had met with Botha. The second respondent in the answering affidavit, does not deal with the important allegations that Botha makes regarding the respondents and their conducts;
2. that the first applicant, at all times, used the name JRMM Technologies. This is not denied;
3. that Prinsloo senior funded the business activities of the first applicant including the purchase of Integra Controllers. This is not denied;
4. that World Focus CC, controlled by the first respondent, received the amount of R1 140 108.90 from Mota-Engil in its bank account. This is not disputed;

5. that only R19 794.49 of the R1. 140 108.90 was paid to the first applicant by World Focus CC. This is not disputed;
6. That World Focus CC is implicated in invoices issued to clients of the first applicant. This is not disputed;
7. That the second respondent collected 2 Integra Controllers on 17 December 2014 which were paid for by Prinsloo senior. This is not seriously challenged;
8. that the first respondents are aware of the whereabouts of all the first applicant's Integra Controllers not returned to the applicant's possession. This is not disputed. This is further bolstered by Botha's evidence;
9. that the respondents persist in their contention that they represent the first applicant and that they are entitled to do so;
10. that they tell applicant's clients that people purporting to represent the first applicant have "hi-jacked" the enterprise and that the client must deal directly with them;
11. that the respondents are competing with the first applicant. The respondents only contest the unlawfulness of their conduct.

[24] Mr Swanepoel submitted, correctly in my view, that the admission by the respondents that they were doing the first applicant's business when they denied it in the winding up application does not augur well for the respondent's case. The respondents, indeed, have admitted a number of important allegations of the applicants.

[25] The admission by the respondents that they did the first applicant's business presupposes that they are using the first applicant's confidential information and/or trade secrets which includes the first applicant's customers, suppliers, service

providers, agents, equipment sourcing costs, price lists and pricing structure as well as the identities of any of the first applicant's trade connections. This simply confirms the applicants' complaint that the respondents are using the confidential information and/or trade secrets of the first applicant for canvassing the first applicant's customers, suppliers, service providers, agents and/or trade connections or soliciting the business of the first applicant's customers, suppliers, service provider, agents and/or trade connections. This is borne out by Botha's evidence which discloses that he had an important meeting with the first respondent. Botha's evidence clearly evinces that the respondents are passing off their business as that of the first applicant and/or as being associated with the first applicant and/or representing the first applicant, and/or as being connected in the course of trade with the first applicant, and/or using the first applicant's name and/or get-up which is confusing or deceptively similar to the first applicant's distinctive name and/or get-up

- [26] Botha's evidence further shows that the respondents have the first applicant's assets and equipment including the Integra Controllers, demonstration units measurement and sellable units that they appear to have retained. Botha has got nothing to do with the case. He has no reason to lie. He acted out of concern when he decided to disclose what the respondents were busy doing to Hall. Coming by people such as Botha is a rarity.
- [27] If there is a case where the interests of a concern or a company need to be protected, this is. It is clear that the relationship between the parties has irretrievably broken down with no chance of repairing same.

- [28] When evidence is such as the court has, it can never be said that the respondents are the right people to protect the first applicant and its interests. They do not, in my view, have the desire to represent the first applicant. They were to become directors but this did not progress up to there. It was perhaps just as well that their becoming directors was delayed. There is, at this juncture, only one registered director who has the right and authority to assist the first applicant. The respondents are shareholders and never became directors of the first applicant. Had the respondents not done what they did they probably would have become the directors of the first applicant.
- [29] It does not appear that the Prinsloos are attempting to exclude the respondents from the day to day running of JRMM. After all, the idea, when the first applicant was formed, was that Prinsloo senior would only be the funder who in turn would allow the second applicant to become director of the first applicant together with the respondents. One sees no sinister or evil intention on the part of the Prinsloos. They appear to have had good intentions for the first applicant from the very word go. Most of their evidence is either admitted, not denied, not disputed or not seriously challenged by the respondents. On the contrary, the respondents started by denying and ended up admitting the applicants' most important allegations. Botha sufficiently exposed them. Their conduct, in my view, is wrongful and unlawful.
- [30] The respondents, according to evidence, and for their conduct, were suspended and removed from office. For the purposes of this application it is not necessary to determine whether the respondents were properly suspended and removed from office. The matter is capable of solution without such a determination.

CONFIDENTIAL INFORMATION AND TRADE SECRETS

- [31] Confidential information will undoubtedly include clients lists, details of suppliers, service providers, trade connections, agents, price lists and structures and equipment sourcing costs. These are things which are essential for the proper running of one's business. The information, therefore, to qualify as confidential must be useful; must not be public knowledge; and must objectively have economic value. A party claiming that information is confidential must have proprietary, quasi-proprietary or other legal interest therein. Evidence demonstrates that the applicants have satisfied the requirements. For one to properly do the applicant's business, the information which is confidential and only relating to the business of the applicants becomes a requirement. It cannot be gainsaid that the respondents had such information. It became necessary for the respondents to approach Botha who ought to furnish them with the information which they might not have had. It must be remembered that the first respondent would be responsible for the marketing side and the second respondent the sales side of the first applicant's business. They, accordingly, had access to the first applicant's confidential information and trade secrets.
- [32] Mr Swanepoel, for the applicant, correctly submitted that the respondents were unlawfully competing with the applicant. Botha's evidence supports this. I accept Botha's evidence. I have already referred to its quality. One wonders what could have happened had Botha danced to the respondents' tune.
- [33] The applicants' case is clear and well supported where necessary. The same cannot be said when it comes to the respondents' case. They failed to produce necessary evidence such as evidence relating to the two Integra Controllers which

they claim to have paid for. They could have, for instance, produced receipts to prove this. Such receipts are not there. Their denials are, in the main, bare. The denials, in my view, are of such a nature that they do not raise real, genuine or *bona fide* disputes of fact. (**Plascon Evans Paints v Van Riebeeck Paints 1984(3) SA 623(A) at 634 H-I**).

[34] I do not therefore agree that the application has real, genuine and *bona fide* disputes of fact which prevent the court from arriving at a sound and informed decision.

[35] The facts averred in the applicant's affidavits which have been admitted by the respondents together with the facts alleged by the respondents, justify the granting of an order by the court. The respondents' allegations to me appear far-fetched, clearly untenable and so implausible as to warrant their rejection on the papers. Viva voce evidence, in my view, would not disturb the balance of probabilities evident from the papers. **See Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others 2005 (2) SA (CC) at 392 C-G; ELS v Weideman 2011 (2) SA 126 (SCA) at 138F-H and SH v GF and Others 2013 (6) SA 621 (SCA) at 626 G-H.**

[36] It is not correct that the applicants seek to interfere with the respondents' rights to trade. If that were so the need to wind up the first applicant would not arise. Mr Swanepoel, while arguing the issue of urgency, said that the bleeding of the company needed to be stopped. Looking at the evidence at the disposal of the court, his submission becomes more clearer and acceptable.

ALTERNATIVE REMEDY

- [37] Mr Swanepoel submitted that damages would be difficult to quantify. This is correct. If one was dealing with the respondents who revealed everything, the position would be different. The respondents have information regarding the applicants' assets but reveal very little. They deny allegations and thereafter, when pressed to, admit the very allegations. This strengthens Mr Swanepoel's submissions that damages would be very difficult to quantify.
- [38] The respondents did not take the applicants and the court into their confidence regarding this matter. The respondents are, indeed, passing themselves off as the first applicant as a springboard for their business activities and to the first applicant's detriment. They are, indeed, unlawfully and wrongfully competing with the applicants. Most, importantly, they admit to conduct that applicant contend is clearly unlawful
- [39] The application, in my view, should succeed. However, an interim order is more suited.

COSTS

Mr Swanepoel argued for costs against the respondents on a punitive scale – i.e on the scale as between attorney and client. They base their submission on the following

1. The respondents were warned that in the event that they opposed the application, costs on a punitive scale, would be asked for. The respondents have opposed the application.
2. The respondents have maliciously and for their own benefit taken over the business of the applicant

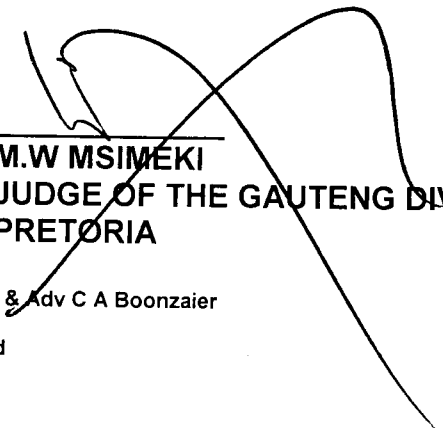
3. Their opposing the application demonstrates ill intent. Mr Swanepoel submitted that no costs would have been payable had they opted for a proper route. His further submission was that the respondents would not have opposed the application if they had the interest of the first applicant at heart.
4. The respondents failed to disclose the true financial and factual position of the first applicant's affairs and assets in their possession and under their control. This, according to Mr Swanepoel, would have demonstrated their virtue in conducting the affairs of the applicant to the benefit of all.

[40] I am persuaded to agree with Mr Swanepoel's submissions which, in my view, have merit. This matter is of such a nature that costs of two counsel are warranted.

[41] Mr Swanepoel provided me with two draft orders. The one is for a final order and the other for the interim order. I perused both of them and found that the interim order is most suited. Agreeing with the contents of the interim order, I shall then proceed to make it an order of the court.

[42] **I, in the result, make the following order:**

The Draft order I have marked "X", signed and dated is made an order of the court.


M.W MSIMEKI
JUDGE OF THE GAUTENG DIVISION
PRETORIA

COUNSEL FOR THE APPLICANT:
 INSTRUCTED BY:
 COUNSEL FOR THE RESPONDENT:
 INSTRUCTED BY:
 DATE OF HEARING:
 DATE OF JUDGMENT:

Adv P A Swanepoel & Adv C A Boonzaier
 Adv R J Groenewald

11 X 11
12.5.2015
IN THE HIGH COURT OF SOUTH AFRICA

[GAUTENG DIVISION, PRETORIA]

CASE NUMBER: 8595/15

In the matter between:

JRMM TECHNOLOGIES (PTY) LTD

1ST APPLICANT

MICHAEL JOHN PRINSLOO

2ND APPLICANT

and

ROBIN DOUGLAS BALL

1ST RESPONDENT

JEFFREY MORGAN

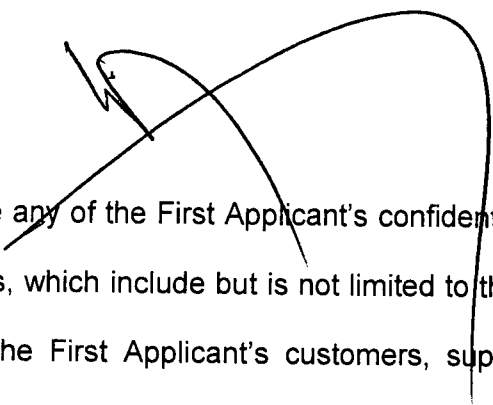
2ND RESPONDENT

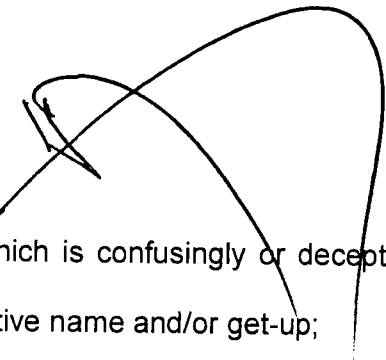
DRAFT ORDER

AFTER HAVING HEARD the representatives of the parties and having read the papers filed, the following order is made:

IT IS ORDERED THAT:

1. The First and Second Respondents are hereby interdicted and restrained from:

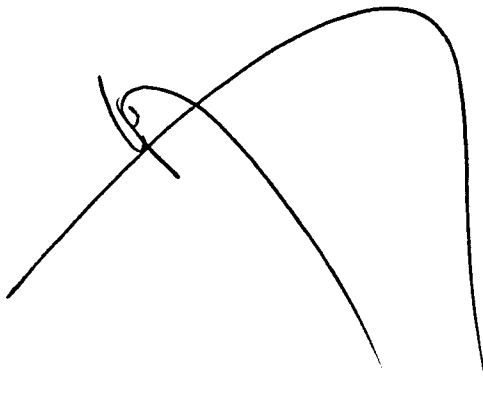
- 
- 1.1 Divulging to anyone any of the First Applicant's confidential information and/or trade secrets, which include but is not limited to the identity and contact details of the First Applicant's customers, suppliers, service providers, agents, equipment sourcing costs, price lists, and pricing structures and the identities of any of the First Applicant's trade connections;
- 1.2 Using any of the confidential information and/or trade secrets of the First Applicant as set out in prayer 1.1 hereinabove either directly or indirectly in any way whatsoever, including for the purposes of canvassing the First Applicant's customers, suppliers, service providers, agents and/or trade connections or soliciting the business of the First Applicant's customers, suppliers, service providers, agents and/or trade connections;
- 1.3 Soliciting or seeking any business whatsoever either directly or indirectly from any person, firm or company who was a customer or trade connection of the First Applicant during the First and Second Respondents' period of employment with the First Applicant;
- 1.4 Passing off their business as that of the First Applicant and/or as being associated with the First Applicant, and/or as representing the First Applicant, and/or as being connected in the course of trade with the First Applicant, and/or using the First Applicant's name and/or get-up or any



name and/or get-up which is confusingly or deceptively similar to the First Applicant's distinctive name and/or get-up;

2. The First and Second Respondents are ordered to hand over to the First Applicant all of the soft and/or hard copies of documentation containing information relating to the identity and/or contact details of the First Applicant's customers and/or suppliers, and/or service providers, and/or agents and/or equipment sourcing costs and/or price lists and/or pricing structures and/or trade connections within two days from date of this order;
3. The First and Second Respondents are ordered to hand over to the First Applicant all assets and equipment of the First Applicant in the possession and/or control of the First and/or Second Respondents, including all Integra Intelligent Motor Controllers, demonstration units, measurement equipment and sellable units, within two days from date of this order;
4. The order as set out in paragraphs 1 to 3 above will operate as an interim relief with immediate effect, pending the outcome of final relief sought by the Applicants against the First and Second Respondents in an action to be instituted by the Applicants against First and Second Respondents within 30 days from the date of this order.
5. The First and Second Respondents are ordered to pay the Applicants' costs on a scale as between attorney and client, including the costs of two counsel.

BY ORDER

A large, stylized handwritten signature in black ink, featuring a prominent loop and a long, sweeping tail.

REGISTRAR