

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No. : 351/08

In the matter between:-

THE WORKFORCE GROUP (PTY) LTD First Applicant

FADS (PTY) LTD Second Applicant

FEMPOWER PERSONNEL (PTY) LTD Third Applicant

PHA PHAMA AFRICA STAFF Fourth Applicant

SERVICES (PTY) LTD

TOPELVEL PERSONNEL (PTY) LTD Fifth Applicant

WORKFORCE HEALTHCARE (PTY) LTD Sixth Applicant

WORKFORCE INFOTECH (PTY) LTD Seventh Applicant

FORCE HOLDINGS (PTY) LTD Eighth Applicant

TRAINING FORCE (PTY) LTD Ninth Applicant

and

BEZUIDENHOUT, HENDRINA MAGDALENA First Respondent

HALL, DESIRE Second Respondent

HARTSLIEF, ALBERTUS STEPHANUS Third Respondent

MBA PROJECT LABOUR Fourth Respondent

MANAGEMENT (PTY) LTD

HEARD ON: 19 FEBRUARY 2008

JUDGMENT BY: VAN DER MERWE, J

DELIVERED ON: 26 FEBRUARY 2008

- [1] This is an application, brought on urgent basis, for interdictory relief based on contractual provisions and/or common law principles in respect of unlawful competition.
- [2] The application was preceded by an application for an order authorising the search of the premises and motor vehicles of the first to third respondents and the seizure of any documentation belonging to the applicants in order to preserve evidence for purposes of the institution of the present application. Such order was granted in this Court on 14 December 2007 in application no. 6762/2007. This order was executed on 18 December 2007. As a result, numerous documents were seized by the sheriff and are presently held by the sheriff in terms of the order.
- [3] In my view, the application is sufficiently urgent to justify the departure from the normal rules of court that did take place. The infringement of rights alluded to by the applicants and the resultant alleged prejudice are such as to justify an order in terms of Rule 6(12). In the particular circumstances of this case the applicants proceeded with due expedition in launching this application. All the parties have since filed

comprehensive papers on the merits of the application, totalling some 1000 pages. In these circumstances counsel for the respondents, rightly in my view, did not press the argument that I should refuse to hear the application due to lack of urgency.

- [4] The applicants are a group of closely interrelated and interdependent companies. They share a common database as well as methods of conducting business. This application focuses on the part of the applicants' business that is commonly referred to as labour broking. In essence labour broking entails the following: The applicants provide its business customers ("customers") with labour in accordance with the specific needs of the customer. In the process contracts are entered into between the applicants and the customers and relationships are built up in this regard. In the case of the applicants' Bloemfontein branch mostly unskilled and semi-skilled labour are provided for whatever period needed by the customer. The labour is provided by the applicants from a labour pool of employees ("employees")

and placed by the applicants with the customers. The applicants then charge the customer an appropriate rate for the period that the employees are so placed. The employees are therefore not employed or paid by the customers but by the applicants. It is clear therefore that the secret to success in labour broking is to be able to meet the specific requirements of the customers with appropriate employees from the labour pool.

[5] The first respondent entered into a written employment agreement with the applicants on 28 July 2006. In terms of this employment agreement the first respondent commenced employment as branch manager of the Bloemfontein branch of the applicants from approximately 1 August 2006. The first respondent resigned from her employment with the applicants on 1 November 2007 with effect from 30 November 2007.

[6] The second respondent entered into a written employment agreement with the applicants on 3 August 2005. In terms of this agreement the second respondent entered into the employment of the applicants as branch manager of the Bloemfontein branch. As from 1 August 2006 the second respondent served as area manager for the applicants for the Free State and Northern Cape regions. As a result the

first respondent became the branch manager of the Bloemfontein branch. On 18 October 2007 the second was demoted to the position of service consultant. There is a dispute between the parties as to whether the second respondent was permanently appointed as area manager or not as well as in respect of the validity of the demotion. These disputes are the subject of proceedings in terms of the Labour Relations Act that are not yet finalised. However, on 5 December 2007, the second respondent resigned from employment with the applicants with immediate effect.

- [7] On 18 January 2007 the third respondent entered into a written employment agreement with the applicants. In terms of this agreement the third respondent was employed by the applicants as contract manager in Bloemfontein with the main duties and functions of serving customers, obtaining new customers, including the recruitment, interviewing and placement of employees. The third respondent resigned from his employment with the applicants on 2 November 2007 with effect from 2 December 2007.

- [8] It is common cause that the fourth respondent is a direct competitor of the applicants in Bloemfontein and that the market in which they compete is a highly competitive one. It is also common cause that shortly after their respective resignations, the first, second and third respondents entered into the employ of the fourth respondent in Bloemfontein. The first respondent is now the national sales and marketing manager of the fourth respondent, but manages and controls the fourth respondent's Bloemfontein branch. The second respondent is the area manager of the fourth respondent responsible for the Free State and Northern Cape regions. The third respondent is employed by the fourth respondent as contract manager since 3 December 2007.
- [9] I deal firstly with the applicants' case against the first, second and third respondents. The employment contract of each of these three respondents with the applicants contains the following provisions:

“10. RESTRAINTS

10.1 The Employee shall at all times throughout the employment and forever thereafter:

10.1.1 keep confidential and refrain from divulging the confidential information and every part thereof to anybody and everybody whomsoever, save only to the extent that the performance of the duties of the employment necessitate his acting otherwise;

10.1.2 refrain from exploiting the confidential information or causing it to be exploited, in whole or in part, except in the course of the duties of the employment;

10.1.3 refrain from disclosing either directly or indirectly to any person, firm or company;

10.1.3.1 any information relating to the details of the business of the Company;

10.1.3.2 any information relating to any customer, worker, employee or persons with whom the employee has dealt with while in the employ of the Company;

10.2 The Employee shall at all times throughout the employment and, throughout the period of two years immediately following the termination date, howsoever and whenever the employment terminates:

10.2.1 keep confidential and refrain from divulging

the know-how and every part thereof to anybody and everybody whomsoever, save only to the extent that the performance of the duties of the employment necessitate his acting otherwise;

10.2.2 refrain from exploiting the know-how or causing it to be exploited except in the course of the duties of the employment.

10.3 The Employee shall not at any time during the employment, and throughout the period of two years immediately following the termination date, howsoever and whenever the employment terminates, either for his own account or benefit or for any other person, solicit the custom of, interfere with, or endeavour to entice from the Company or the Group:

10.3.1 any worker;

10.3.2 any employee;

10.3.3 any customer;

10.3.4 any personnel registered with the Company

for placement by the latter either in permanent, temporary or contract labour, whilst the employee is in the employ of the Company.

10.4 The Employee undertakes that he shall not for the period of two years after the termination of his

employment, howsoever and whenever the employment terminates, with the Company:

10.4.1 directly or indirectly, and whether alone or with another or others, and whether or not for his own sole or partial benefit or the benefit solely or partially of others, carry on or be engaged, employed or financially interested in any business which:

10.4.1.1 at any time during that period competes with the business conducted by the Company and

10.4.1.2 conducts such business within fifty kilometer radius from any office/branch where the Employee was employed or at which the Employee undertook or was given any responsibility during the duration of his employment with the Company.

10.4.2 whether for his own benefit or that of any other person, firm or company solicit the

custom, of interfere with, or endeavour to entice from the Company any customer with whom the Company has;

10.4.2.1 conducted business during 12 months prior to the termination of the Employee's employment with the Company; or

10.4.2.2 conducted business during the course of the Employee's employment with the Company; or

10.4.2.3 entered into negotiations with a view to conducting business with that customer within six months prior to the termination of the Employee's employment with the Company;

10.4.3 furnish any information or advice (oral or written), to any customer or use any other means or take any other action which is directly or indirectly designed, or in the ordinary course of events calculated, to result in any customer terminating his association with the Company and transferring his business to any person other than the Company.

10.5 The Employee acknowledges that the foregoing restraints are fair and reasonable in the circumstances and reasonably required for the protection of the Company's proprietary interests.

10.6 The Employer acknowledges that the provisions of clause 10 have been carefully considered and the Employee agrees that the undertakings given by the obligations imposed on the Employee are in the circumstances reasonable and necessary for the protection of the interest of the Company and the Group and the members thereof. Should the employee dispute that the provisions are reasonable or contend that they are unreasonable then the onus of proving such unreasonableness will rest upon the Employee.”

[10] Following the cue of clause 10 of each of the employment agreements in question, quoted above, the applicants in the notice of motion moved for wide-ranging and overlapping orders against the first, second and third respondents. Analysis of the said clause however shows (in clause 10.4 thereof) that each of the first, second and third respondents undertook that he or she shall not for a period of two years after the termination of his or her employment with the applicants whenever and for whatever reason, be employed in a business that competes with the applicants within a radius of 50 kilometres from the applicants’ Bloemfontein branch. For the sake of convenience I will refer to this provision as the restraint of trade clause. Secondly, it appears that the said clause 10 contains provisions designed to protect confidential information of the applicants as well as customer connections of the applicants.

[11] It is clear that the essence of the case for the applicants against the first to third respondents is that the applicants seek to protect alleged confidential information and customer connections by way of enforcement of the restraint of trade clause and enforcement of the provisions protecting confidential information and customer connections, alternatively on the basis of the common law principles of unlawful competition.

[12] The law in respect of the enforcement of a contractual provision such as the restraint of trade clause in this case, is well settled and can especially be gleaned from the important judgments in the cases of **MAGNA ALLOYS AND RESEARCH (SA) (PTY) LTD v ELLIS** 1984 (4) SA 874 (A) and **BASSON v CHILWAN AND OTHERS** 1993 (3) SA 742 (A). In essence, a restraint of trade clause will not be enforced if to do so would offend against public policy. As a general rule it is against public policy to enforce a contractual provision that places an unreasonable restraint on an ex-

employee to be employed or to take part in trade or commerce. A restraint of trade provision will be unreasonable if it does not properly serve to protect a protectable interest of the employer. Whether, as is the case here, the parties agreed or recorded that the restraint is in fact reasonable, is not decisive of the matter. It is also trite that the interests that the applicants seek to protect, namely confidential information and customer connections, are in principle protectable interests worthy of protection by a contractual provision in restraint of trade.

- [13] In the **MAGNA ALLOYS**-case it was decided that the onus in a case such as this is on the respondent to show that it would be against public policy to enforce the restraint clause. Counsel for the respondents expressly accepted that the provisions of the Constitution, particularly sections 22 and 36(1) thereof, did not bring about a change in this regard. I think that this submission was properly made. This was the approach followed in two decisions of this Court, to wit **WALTONS STATIONERY CO (EDMS) BPK v FOURIE EN**

'N ANDER 1994 (4) SA 507 (O) at 511 E – H and

POLYGRAPH CENTER-CENTRAL PROVINCES CC v

VENTER AND ANOTHER [2006] 4 ALL SA 612 (O) at 615 e

– f and 617 par. [21]. I am bound by these judgments,

unless I am convinced that they are wrong. I am by no

means so convinced. The onus is therefore on the first to

third respondents to show on a balance of probabilities that it

would offend against public policy to enforce the restraint of

trade clause. This onus includes showing the absence of

any protectable interest on the part of the applicants. See

RAWLINS AND ANOTHER v CARAVANTRUCK (PTY) LTD

1993 (1) SA 537 (A) at 541 B. See also **BRIDGESTONE**

FIRESTONE MAXIPREST LTD v TAYLOR [2003] 1 ALL SA

99 (N) at 302 j to 303 b and **POLYGRAPH CENTER-**

CENTRAL PROVINCES CC v VENTER AND ANOTHER,

supra at 618 par. [29]. As the applicants seek final relief in

application proceedings, factual disputes must be dealt with

in accordance with the principles set out in **PLASCON-**

EVANS PAINTS LTD v VAN RIEBEECK PAINTS (PTY)

LTD 1984 (3) SA 623 (A) at 634 H – 635 C, even where the

onus is on respondents. See **NGQUMBA EN 'N ANDER v STAATSPRESIDENT EN ANDERE; DAMONS NO EN ANDERE v STAATSPRESIDENT EN ANDERE; JOOSTE v STAATSPRESIDENT EN ANDERE** 1988 (4) SA 224 (A) at 260 I – 263 D.

[14] Not every connection or relationship between business people and clients or customers is worthy of protection. After all, as a general rule every person is entitled to freely carry on his trade or business in competition with his rivals. See **SCHULTZ v BUTT** 1986 (3) SA 667 (A) at 678 F – G. It has often been said that competition is the lifeblood of commerce. Compare **TAYLOR & HORNE (PTY) LTD v DENTALL (PTY) LTD** 1991 (1) SA 412 (A) at 421 J – 422 B.

Customer connections or trade connections qualify for protection only where there is a particular and special relationship between the employee and the customers of the kind described in **RAWLINS AND ANOTHER v CARAVANTRUCK (PTY) LTD**, *supra* at 541 D – H as follows:

“The need of an employer to protect his trade connections arises where the employee has access to customers and is in a position to build up a particular relationship with the customers so that when he leaves the employer's service he could easily induce the customers to follow him to a new business (Joubert *General Principles of the Law of Contract* at 149). Heydon *The Restraint of Trade Doctrine* (1971) at 108, quoting an American case, says that the 'customer contact' doctrine depends on the notion that

'the employee, by contact with the customer, gets the customer so strongly attached to him that when the employee quits and joins a rival he automatically carries the customer with him in his pocket'.

In *Morris (Herbert) Ltd v Saxelby* [1916] 1 AC 688 (HL) at 709 it was said that the relationship must be such that the employee acquires

'such personal knowledge of and influence over the customers of his employer . . . as would enable him (the servant or apprentice), if competition were allowed, to take advantage of his employer's trade connection . . . '.

This statement has been applied in our Courts (for example, by Eksteen J in *Recycling Industries (Pty) Ltd v Mohammed and Another* 1981 (3) SA 250 (E) at 256C-F). Whether the criteria referred to are satisfied is essentially a question of fact in each case, and in many, one of degree. Much will depend on the duties of the employee; his personality; the frequency and duration of contact between him and the customers; where such contact takes place; what knowledge he gains of their requirements and business; the general nature of their relationship (including whether an attachment is formed between them, the extent to which customers rely on the employee and how personal their association is); how competitive the rival businesses are; in the case of a salesman, the type of product being sold; and whether there is evidence that customers were lost after the employee left (Heydon (*op cit* at 108-120); and see also *Drewtons (Pty) Ltd v Carlie* 1981 (4) SA 305 (C) at 307G-H and 314C and G)."

[15] On the papers before me I can find no evidence of the

existence of such relationships between any of the first, second and third respondents and any of the customers of the applicants, not even on the case for the applicants. In this regard counsel for the applicants particularly relied on the evidence of the third respondent to the effect that he built up a personal relationship with members of the staff of Premier Foods Ltd t/a Blue Ribbon Bakeries at Bloemfontein ("Blue Ribbon Bakeries"). I think that this reliance is misplaced. From the evidence of the third respondent it is clear that a casual relationship developed between himself and two employees of Blue Ribbon Bakeries. Moreover, the fact of the matter is that on the evidence on behalf of the respondents that I have to accept for purposes of decision of this application, Blue Ribbon Bakeries formally became a customer of the fourth respondent with effect from 1 November 2007, that is before the resignation of the third respondent from the employ of the applicants. In my view the respondents have shown that the applicants have no customer connections worthy of being protectable interests for purposes of the restraint of trade clause. The restraint of

trade clause therefore cannot serve to protect the applicants' customer connections.

- [16] The judgment in the case of **ALUM-PHOS (PROPRIETARY) LIMITED v SPATZ AND ANOTHER** [1997] 1 ALL SA 616 (W) at 623 g to j contains a concise summary of the requirements for information to qualify as confidential information in this field, which I respectfully and gratefully adopt. These requirements are, firstly, that information must involve and be capable of application in trade or industry, that is it must be useful. Second, it must not be public knowledge or public property, in other words, it must be known only to a restricted number of people. Third, the information must objectively determined be of economic value to the person seeking to protect it. The nature of the information is irrelevant. If it complies with these requirements it is confidential.

- [17] The applicants say that with time and effort over many years they compiled a database consisting of customer files and

employee list and files in respect of their customers and employees. The customer files contain in respect of a specific customer the contact persons and contact details and the specific needs and requirements of the customer with specific reference to requirement patterns of the customer, categories of staff used as well as pay rates. Each employee file contains a profile of the employee which includes the qualifications, experience and salary requirements of the employee as well as the history of previous placements. None of this is disputed by the respondents. I accept that it is possible that this information may be gathered by others, but it will take considerable time and effort. As I have said, it is the essence of the business of a labour broker to bring the right employees to the right customers. It is clear to me that the customer files and employee files of the applicants enable the applicants to speedily determine which employees will best suit or serve the needs of each customer. On this basis the contents of the customer files and employee files of the applicants emanating from its Bloemfontein branch constitute

confidential information that comply with the abovementioned test. I am convinced, even on the basis that it has to be shown by the applicants, that this confidential information is a protectable interest sufficient to uphold the restraint of trade clause.

- [18] It is clear that the first, second and third respondents were privy to this confidential information and that in respect of each of them there is a risk of the use or disclosure thereof. This was particularly illustrated by the manner in which the first respondent dealt in her answering affidavit with each and every customer referred to by the applicants, exhibiting a thorough knowledge of the circumstances, needs and requirement of each and every customer. Moreover, on 18 December 2007 both the second respondent and the third respondent were found in possession of documents of the applicants containing confidential information of the applicants of the kind described above. The explanations offered for this by both the second respondent and the third respondent are quite unconvincing. The second respondent

stated that she gathered and kept each and every document of the applicants that she could lay her hands on, in order to make use thereof as exhibits in the aforesaid labour dispute before the CCMA. However, the documents containing information in respect of the customers and employees of the applicants could by no stretch of imagination be relevant to the decision of this dispute. This is borne out by the fact that the bundle of documents prepared for purposes of use on behalf of the second respondent at the CCMA proceedings, did not contain customer and employee lists or files or information and the fact that an arbitration award had already been made in favour of the second respondent on 15 November 2007. The third respondent simply says that he could see no reason to return the applicants' documents to it after his resignation even though these documents, for instance, included many names and particulars of customers and employees of the applicants.

[19] In a case such as the present the applicants does not have to show that the first, second and third respondent have in

fact utilised information confidential to it, it suffices that the respondents could do so, as pointed out above. In such a case the breach of the restraint of trade clause is the injury actually committed for purposes of a final interdict. In **BHT WATER TREATMENT (PTY) LTD v LESLIE AND ANOTHER** 1993 (1) SA 47 (W) at 57 J – 58 B the following was said:

“In my view, all that the applicant can do is to show that there is secret information to which the respondent had access, and which in theory the first respondent could transmit to the second respondent should he desire to do so. The very purpose of the restraint agreement was that the applicant did not wish to have to rely on the bona fides or lack of retained knowledge on the part of the first respondent, of the secret formulae. In my view, it cannot be unreasonable for the applicant in these circumstances to enforce the bargain it has exacted to protect itself. Indeed, the very ratio underlying the bargain was that the applicant should not have to content itself with crossing its fingers and hoping that the first respondent would act honourably or abide by the undertakings that he has given.

In my view, an ex-employee bound by a restraint, the purpose of which is to protect the existing confidential information of his former employer,

cannot defeat an application to enforce such a restraint by giving an undertaking that he will not divulge the information if he is allowed, contrary to the restraint, to enter the employment of a competitor of the applicant. Nor, in my view, can the ex-employee defeat the restraint by saying that he does not remember the confidential information to which it is common cause that he has had access. This would be the more so where the ex-employee, as is the case here, has already breached the terms of the restraint by entering the service of a competitor.”

This passage was expressly approved of by the Supreme

Court of Appeal in **REDDY v SIEMENS**

TELECOMMUNICATIONS (PTY) LTD 2007 (2) SA 486

(SCA) at p. 500.

[20] The respondents did not attack the reasonableness of the 50 kilometre radius from Bloemfontein or the period of two years of the restraint of trade clause as such. The first respondent is 49 years of age. She was previously employed, for considerable periods of time, as an accountant and as a human resources manager. It seems that she only entered the field of labour broking in August 2006, when she entered into the employment of the applicants. The second respondent is nearly 40 years old. Similarly she was previously employed, *inter alia*, as a branch manager of a life insurance company in Bloemfontein, as financial manager of

a bottling plant and she was a partner in a furniture manufacturing business. It would also appear that the second respondent only entered the field of labour broking when she entered into the employment of the applicants in August of 2005. The third respondent is 24 years of age and held several positions before he took up employment with the applicants during January 2007. Before that date the third respondent worked as a cashier, an administrative officer and a branch manager of a health care business. It would not seem therefore that if the restraint of trade clause is enforced, the first, second and third respondents would not be able to obtain other employment. In all these circumstances, the first, second and third respondents have not convinced me that it would be contrary to public policy to enforce the restraint of trade clause.

- [21] It follows from what I have said before that no order can be granted in respect of protection of customer connections. By the same token, the provisions in the respective employment contracts designed to protect confidential information should

be enforced. In this regard, I prefer not to issue an order in accordance with the rather convoluted form of the relevant contractual provisions and the notice of motion. A simple and understandable order that prohibits the use or disclosure of the applicants' stated confidential information in any manner, would suffice.

[22] The applicants seek the following order against the fourth respondent:

“4. The Fourth Respondent is hereby interdicted and restrained from directly and/or indirectly:-

4.1 inducing or procuring any one or more of the First, Second or Third Respondents to breach any of the provisions of their respective contracts of employment entered into between them and the Applicants;

4.2 soliciting, canvassing, seeking contracts from, interfere with, or endeavour to entice from the Applicants the custom of Blub Ribbon Bakeries trading as Premier Foods Limited until 30 November 2009;

4.3 exploiting the Applicants' trade secrets, know-how, techniques, methods and systems and/or confidential information, or any part thereof, and customer connections (whether orally, in writing or otherwise) in whole or in part;

4.4 unlawfully competing with the Applicants by, in any way, wrongfully interfering with and/or exploiting and/or misusing the Applicants'

trade secrets, know-how, techniques, methods and systems and/or confidential information, or any part thereof, and customer connections (whether orally, in writing or otherwise) or causing interference with, misuse and/or exploitation of the aforementioned, in whole or in part, to, in anyway advance the Fourth Respondent's business or interests and activities at the expense of the Applicants;"

[23] As stated already, it must be accepted for purposes of the determination of this application that Blue Ribbon Bakeries became a customer of the fourth respondent with effect from 1 November 2007. Even if it is presently accepted for purposes of argument that unlawful competition was involved as the applicants allege, that which the applicants seek to prohibit by paragraph 4.2, quoted above, has already taken place. An interdict is not a remedy for a past invasion of rights. See STAUFFER CHEMICALS CHEMICAL PRODUCTS DIVISION OF CHESEBROUGH-PONDS (PTY) LTD v MONSANTO COMPANY 1988 (1) SA 805 (T) at 809 F – G and PHILIP MORRIS INC AND ANOTHER v MARLBORO SHIRT CO SA LTD AND ANOTHER 1991 (2) SA 720 (A) at 735 B. In any event, on the applicants' case, a claim for damages in respect of the loss of business of Blue Ribbon Bakeries appears to be a suitable and viable alternative remedy.

[24] It is important to note that the case against the fourth respondent is not based on contract but on common law principles of unlawful competition. In view of what I have already indicated only the confidential information referred to above, needs to be considered. The onus is therefore on the applicants to show on a balance of probabilities on the papers that the fourth respondent is making use thereof or is reasonably apprehended to do so. I am not at all satisfied that this was proved. In my view, there is no evidence on which a finding can be made that the fourth respondent makes use of the applicants' confidential information or is likely to do so. In any event, it would seem that any need for an order against the fourth respondent falls away in view of the orders that I intend to make against the first, second and third respondents.

[25] The applicants also moved for orders that the first, second and third respondents deliver all documents and information of the applicants in their possession and that they file an

affidavit with the registrar of this Court that they have done so. It is of course not possible to issue an order that information, as opposed to documentation, be so delivered. However, each of the first, second and third respondents have testified under oath before me that after the execution of the order under case no. 6762/2007, they do not have any documentation of the applicants in their possession. There is no reason to doubt these statements and it must be accepted for purposes of the decision of this application. There is therefore no basis for these orders.

[26] The respondents did not oppose an order that the documentation seized in terms of the aforesaid order be handed over to the applicants or their duly authorised representative.

[27] The applicants are materially successful in their case against the first, second and third respondents. Therefore, the first, second and third respondents should jointly and severally be ordered to pay the applicants' costs of this application. In

clause 14 of the written employment agreement of each of the first, second and third respondents with the applicants, it was agreed that costs incurred by the applicants in enforcing its rights under the employment agreement, shall be borne on the scale as between attorney and client. There is no valid reason not to enforce this agreement in respect of this application. The first, second and third respondents should also be ordered to pay the costs of application no. 6762/2007, jointly and severally. I am not satisfied that the costs of that application can validly be said to fall within the ambit of clause 14 of the employment agreements. The applicants must, jointly and severally, pay the costs of the fourth respondent.

[28] The following orders are issued:

1. The forms and service provided for in the Rules of Court are dispensed with and the matter is heard as one of urgency.
2. The first, second and third respondents are interdicted and restrained from using or disclosing in any manner

the applicants' confidential information consisting of or emanating from their Bloemfontein branch customer files and employee files.

3. The first respondent is interdicted and restrained until 30 November 2009 from directly or indirectly, and whether alone or with another or others, and whether or not for her own sole or partial benefit or the benefit solely or partially of others, carrying on or being engaged, employed or financially interested in any business which at any time during that period competes with the business conducted by the applicants and conducts such business within a 50 kilometre radius from the applicants' Bloemfontein branch.
4. The second respondent is interdicted and restrained until 5 December 2009 from directly or indirectly, and whether alone or with another or others, and whether or not for her own sole or partial benefit or the benefit

solely or partially of others, carrying on or being engaged, employed or financially interested in any business which at any time during that period competes with the business conducted by the applicants and conducts such business within a 50 kilometre radius from the applicants' Bloemfontein branch.

5. The third respondent is interdicted and restrained until 2 December 2009 from directly or indirectly, and whether alone or with another or others, and whether or not for his own sole or partial benefit or the benefit solely or partially of others, carrying on or being engaged, employed or financially interested in any business which at any time during that period competes with the business conducted by the applicants and conducts such business within a 50 kilometre radius from the applicants' Bloemfontein branch.

6. The sheriff of this Court is authorised to release all documentation seized in terms of the order in application no. 6762 of 2007 and to hand same over to the applicants or their duly authorised representative.
7. The first, second and third respondents are ordered, jointly and severally, to pay the applicants' costs of this application on the scale of attorney and client.
8. The first, second and third respondents are ordered to pay the costs of application no. 6762/2007, jointly and severally.
9. The applicants are ordered to pay the fourth respondent's costs of this application, jointly and severally.

C.H.G. VAN DER MERWE, J

On behalf of the applicants:

Adv. L.M. Malan
Instructed by:

Symington & De Kok
BLOEMFONTEIN

On behalf of the respondents:

Adv. F.W. Botes
Instructed by:
Rosendorff Reitz Barry
BLOEMFONTEIN

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