



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.



SIGNATURE

DATE: 16 May 2024

Case No. 2024-050757

In the *ex parte* application of –

NETWORK FOR ANIMALS NPC

First Applicant

ANIMAL SURVIVAL INTERNATIONAL NPC

Second Applicant

in re: the matter between -

NETWORK FOR ANIMALS NPC

First Applicant

ANIMAL SURVIVAL INTERNATIONAL NPC

Second Applicant

and

TENDAYI JOHN DEWAH

First Respondent

ANIMALS FIRST AID (PTY) LTD

Second Respondent

DONRBASE (PTY) LTD

Third Respondent

JUDGMENT

WILSON J:

- 1 On 15 May 2024, I refused an *ex parte* application for *Anton Piller* relief authorising the search of the first respondent's home, and the seizure of articles and computer records said to be relevant to interdictory relief the applicants intend to pursue. I indicated at the time that my reasons would be provided in due course. These are my reasons.

The applicants and the donor lists

- 2 The applicants are animal welfare charities. The first respondent, Mr. Dewah, was once employed by the applicants as an information technology specialist. In the course of his duties in that post, he came across and removed two lists of the applicants' donors. With the assistance of a Mr. Dutta, who is an individual based in India, Mr. Dewah then used those lists to solicit contributions to the second respondent, Animals First Aid, and to the third respondent, Donrbase.
- 3 Once he was found out, Mr. Dewah admitted his wrongdoing and was dismissed. He promised not to continue using the applicants' donor lists to solicit contributions. He entered into a comprehensive confidentiality agreement, in which he acknowledged that the lists were things of commercial value, and he agreed not to use and disseminate them in any way. Mr. Dewah also assisted the applicants to contact and engage with Mr. Dutta. The applicants sought to persuade Mr. Dutta to destroy any databases constructed with the donor lists and to provide information about the extent to which the lists had already been used to solicit funds from donors on the lists. The

applicants say that, despite promising to do so, Mr. Dutta never provided the required information.

4 Notwithstanding Mr. Dewah's undertakings, the applicants say that Mr. Dewah continued to solicit contributions to Animals First Aid and Donrbase using the donor lists. They wish, therefore, to obtain interdictory relief to restrain him from doing so. The evidence the applicants wish to seize from Mr. Dewah's home is said to be necessary to pursue that relief.

5 *Anton Piller* orders are granted if, and only if, the applicant has a cause of action against the respondent they intend to pursue; if the respondent has in their possession specified documents or things which constitute "vital" evidence in substantiation of applicant's cause of action (but in respect of which applicant cannot claim a real or personal right); and if there is a real and well-founded apprehension that the evidence may be hidden or destroyed by the time the case comes to trial or to the stage of discovery (*Shoba v Commanding Officer, Temporary Police Camp, Wagendrift Dam* 1995 (4) SA 1 (A), pp 15F to 15I).

6 I have some doubts about whether a charitable organisation can restrain a competing charity from soliciting from the same donors. However, given that Mr. Dewah has himself apparently acknowledged that the donor lists are confidential things of value, and that he has undertaken not to use or disseminate them, I accept, at least *prima facie*, that the applicants have demonstrated a cause of action they intend to pursue.

7 However, the applicants have not demonstrated that the evidence they wish to seize and preserve is "vital" to substantiate that cause of action. Nor have

they demonstrated a real and well-founded apprehension that the evidence may be hidden or destroyed by the time the case comes to trial or to the stage of discovery.

Evidence not “vital” to sustain a cause of action

- 8 If undisputed, the affidavits and evidence placed before me for the purposes of pursuing *Anton Piller* relief would be more than adequate to sustain a final interdict of the nature the applicants say they intend to pursue. It follows that the evidence that the applicants wish to seize from Mr. Dewah’s home is not vital to the applicants’ case.
- 9 Mr. Choate, who appeared together Ms. Himmick for the applicants, conceded that, on the material presently before me, the applicants would have no difficulty in obtaining interim relief. Mr. Choate did not concede that a final interdict could be sought on the evidence, but his submissions on that score were unconvincing.
- 10 Mr. Choate submitted that the missing piece of evidence necessary to obtain final relief was documents that would show exactly how the information on the donor lists had been used, and whether and to what extent Mr. Dewah had been successful in soliciting donations using them. This information, as I understood the submission, was necessary to show that Mr. Dewah had actually used the confidential information to the applicants’ detriment. This, so it was argued, was necessary to prove a case of “spring-boarding”: the unlawful use of confidential information to the detriment of those from whom it was obtained (see in this respect *Harvey Tiling Co (Pty) Ltd v Rodomac (Pty) Ltd* 1977 (1) SA 316 (T), pp 323H to 326B).

- 11 However, the affidavits as they stand make out a clear case that (i) Mr. Dewah has used the donor lists; (ii) that he has done so in breach of his undertakings of confidentiality; (iii) that he has solicited funds from donors on the lists who have in the past contributed to the applicants; and that (iv) he has done so to the applicants' detriment, at least insofar the applicants have seen a marked decline in donations from individuals on the lists over the period that Mr. Dewah has been soliciting donations using the lists.
- 12 Had the applicants been able to make out a cause of action for damages, I would understand why the details of the solicitation and the extent of its success are vital to such a case. However, Mr. Choate wisely disavowed any reliance on a cause of action for damages.
- 13 It follows that the applicants have failed to demonstrate that the evidence they wish to seize is vital to their cause.

No real and well-founded apprehension that the evidence may be hidden or destroyed

- 14 There could, in my view, be no suggestion that Mr. Dewah would destroy the evidence if he was given notice of an application to restrain him from using or disseminating the donor lists. On the applicants' case, Mr. Dewah is deriving significant financial benefits from it. There is nothing on the papers to suggest that he would dispose of information critical to his attempts to solicit money.
- 15 The real question is whether and how he could place the evidence beyond the applicants' reach. On this question the applicants' papers are threadbare. It was said in the founding affidavit that Mr. Dewah is a Zimbabwean national

and is as a result inherently likely to flee the jurisdiction. Mr. Choate did not press that point, but rather argued that Mr. Dewah's past dishonesty is a reliable guide to his future conduct. That was nowhere near enough to convince me to authorise a search of Mr. Dewah's home. The mere imputation of dishonesty to a person who cannot defend themselves because of the secrecy in which *Anton Piller* proceedings are brought will rarely, if ever, satisfy a court that they are likely to destroy or conceal vital evidence. The very least that would be required in addition is some sense that the respondent has the means and the opportunity to place the evidence beyond the reach of the ordinary mechanisms of civil discovery. The applicants did not set out facts that demonstrate this.

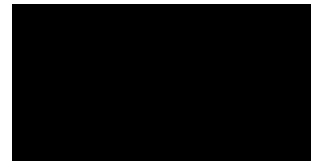
- 16 It was finally suggested that Mr. Dewah has committed fraud, in that he is using the donations he has solicited for his own benefit, and in that he is seeking to create the misleading impression that Donrbase and Animals First Aid are charities related to the applicants. However, there was no direct evidence of this placed before me, other than, perhaps, a similarity between Mr. Dewah's solicitation emails and those of the applicants. In addition, the applicants disclosed, as they were bound to do, that Mr. Dewah had in fact facilitated payments through Animals First Aid to assist animals in Serbia. That obviously indicates that his charitable purposes may be genuine.

The purpose of *Anton Piller* relief

- 17 It is important to re-emphasise just how invasive *Anton Piller* orders are. In this case, I was asked to authorise the search of Mr. Dewah's home. That kind of invasion can never be undone. It is only justified when it is demonstrated

that *Anton Piller* relief is necessary to permit the applicant to make meaningful use of legal remedies available to them. In this matter, the applicants' case fell far short of the required standard.

18 It was for these reasons that I dismissed the *ex parte* application I heard on 15 May 2024.



S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 16 May 2024.

HEARD ON: 15 May 2024

DECIDED ON: 15 May 2024

REASONS: 16 May 2024

For the *ex parte* applicants: L Choate
C Himmick
Instructed by Nirenstein Attorneys, Cape Town
and Wright Rose-Innes, Johannesburg