



**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: 27 August 2024

Case No. 2024-073186

In the matter between:

CARRICK WEALTH (PTY) LTD

Applicant

and

CHRISTOPHER JANSE VAN RENSBERG

First Respondent

RAYMOND GOMBERA

Second Respondent

KENECHUKWU MICHEAL OKAFOR

Third Respondent

ARCK WEALTH (PTY) LTD

Fourth Respondent

ADRIAN GRANT JOSSEL

Fifth Respondent

GROWTHHOUSE (PTY) LTD

Sixth Respondent

JUDGMENT

WILSON J:

- 1 The applicant, Carrick, is a wealth management company. The first, second third and fifth respondents (Mr. Janse van Rensburg, Mr. Gombera, Mr. Okafor and Mr. Jossel) are Carrick's former employees. They have incorporated the fourth respondent, Arck Wealth, which is also a wealth management company and which Carrick complains is trading on confidential information obtained when Mr. Janse van Rensburg, Mr. Gombera, Mr. Okafor and Mr. Jossel were in its employ. Carrick also complains that Arck Wealth is in the process of luring Carrick's clients away from it.

- 2 Carrick says that all of this is in breach of confidentiality undertakings and restraints of trade entered into by each of its former employees. The restraints of trade applicable to Mr. Janse van Rensburg, Mr. Gombera and Mr. Okafor are still in force. The restraint applicable to Mr. Jossel has expired, but Carrick points out that Mr. Jossel's duty to keep information subject to the confidentiality undertakings secret is not time-bound. Carrick says that Mr. Jossel's use of the confidential information through Arck Wealth with three other people who are still subject to restraint is a classic example of spring-boarding: the unlawful use of confidential information to acquire an unfair competitive advantage.

- 3 The former employees and Arck Wealth each deny that they have breached their confidentiality undertakings. Mr. Janse van Rensburg, Mr. Gombera and Mr. Okafor also deny that they have acted in breach of their restraints of trade. However, it seems to me that, on the undisputed facts, Carrick has at the very least a reasonable apprehension that the restraints of trade and the

confidentiality undertakings will be breached in future, notwithstanding the former employees' averments in the answering affidavit. Carrick is accordingly entitled to an order enforcing Mr. Janse van Rensburg, Mr. Gombera, Mr. Okafor and Mr. Jossel's contractual obligations.

- 4 In what follows, I set out my reasons for reaching this conclusion.

The breadth of the restraints and the confidentiality undertakings

- 5 Counsel for the respondents spent some time in their written submissions rehearsing the well-known principles applicable to the enforcement of restraints of trade and confidentiality undertakings. These are, in a nutshell, that a court will not enforce an unreasonably broad restraint – usually one that effectively prevents a person from obtaining employment in the section of the labour market to which their skills and qualifications are tailored – and that a confidentiality undertaking may only be enforced in respect of information that actually exists and which is objectively confidential.

- 6 However, in this case, Carrick seeks only to restrain Mr. Okafor from poaching its existing clients for a year after his employment with it ends. In the cases of Mr. Janse van Rensburg and Mr. Gombera, Carrick also asserts the right to extend that restraint for a further year, in light of the fact that each of these individuals signed an exit agreement extending the restraint to two years in return for an additional payment. Mr. Woodrow, who appeared together with Mr. Whittington for the respondents, could not say why a restraint of that nature is overbroad, except to complain that Mr. Janse van Rensburg and Mr. Gombera ought not to be held to the extended restraint they agreed to in their exit agreement, because the enforcement of the extended restraint is

dependent on a further payment from Carrick that has not yet been made. However, that difficulty, if it is a difficulty, can be catered for by directing Carrick to perform its obligations in terms of the exit agreement. Mr. Botha, who appeared for Carrick, readily agreed to such an order.

7 Accordingly, the restraints seem to me to be perfectly reasonable and enforceable. There can be no quarrel with an interdict giving effect to them, so long as Carrick can show that they are being breached or that Carrick reasonably apprehends that they will be.

8 As to the confidentiality undertakings, Mr. Woodrow was unable to explain why the information subject to them is not actually existing information that is genuinely confidential. The information to which the undertakings apply is set out in annexure “C” of the former employees’ contracts of employment with Carrick. It covers a broad range of material generated by Carrick in the course and scope of its business, such as client lists, trade secrets, operating procedures, strategic plans and so on. Carrick’s case is that this information is being used to target its existing clients and lure them over to Arck Wealth.

9 Mr. Woodrow was critical of the breadth of annexure “C”, but he was only really able to criticise it at its furthest extent. For example, it was suggested that, by deeming knowledge of, and influence over, Carrick’s “business associates” to be confidential, the confidentiality undertaking could conceivably apply to Carrick’s suppliers – the identity of which cannot be considered confidential. I do not think that is a fair construction of the document. What the document clearly aims to do is prevent the disclosure of business associations which are material to Carrick’s core functions: the management of its clients’ money.

Constructed in that way, the identities of Carrick's business associates is clearly confidential.

10 In any event, I am satisfied that, on a sensible construction of annexure "C", Carrick has a protectable interest in keeping the information listed there confidential.

11 The restraints and the confidentiality undertakings are accordingly enforceable on their face.

Whether the restraints and the confidentiality undertakings have been breached

12 The real dispute between the parties is whether the restraints and confidentiality undertakings have been breached. Carrick says that the first to fifth respondents have been actively courting its clients, and using the confidential information acquired during Mr. Janse van Rensburg's, Mr. Gombera's and Mr. Okafor's employment with Carrick to do so. The first to fifth respondents deny this. They allege that the restraints have not in fact been breached, and that any confidential information in their possession has been deleted or destroyed. They also undertake to "act lawfully" in future.

13 Carrick may nonetheless be granted relief in the face of the respondents' denials provided that the undisputed facts ground a reasonable apprehension that the confidentiality undertakings and restraints will be breached in future.

14 I think that Carrick has met this test, in light of the undisputed facts that Mr. Janse van Rensburg, Mr. Gombera, and Mr. Okafor concealed from Carrick their involvement with Mr. Jossel in the incorporation of Arck Wealth while they were still employed with Carrick; that Carrick has recently lost two of its clients,

both of whom were serviced on Carrick's behalf by Mr. Okafor and Mr. Jossel before they left Carrick; that at least one of these clients has probably taken his business to Arck Wealth; that, when given the opportunity to confirm that they were acting, and would continue to act, in accordance with their restraints and confidentiality undertakings, the former employees merely, and somewhat cryptically, promised no more than that they would "act lawfully"; that Arck Wealth is a juristic representative of the sixth respondent, Growthhouse, which is one of Carrick's competitors; that Mr. Janse van Rensburg, Mr. Gombera, and Mr. Okafor worked at Carrick recently enough to have personal knowledge of confidential information, even if any documents they have recording that information have been destroyed or deleted; and that Mr. Janse van Rensburg, Mr. Gombera, Mr. Okafor and Mr. Jossel admit that they have been in touch with Carrick's clients since leaving their employment (they deny only that those clients were solicited to bring their business over to Arck Wealth).

15 Accordingly, even if the former employees' version is given full credit, these undisputed facts – especially the plainly evasive undertaking to "act lawfully" – clearly ground a reasonable apprehension the restraints and confidentiality undertakings will be breached in future.

16 To put it another way, Carrick has demonstrated on the papers that it has a right to enforce the restraints and the confidentiality undertakings; that it has a reasonable apprehension that the restraints and undertakings will be breached, and that, in light of the coy promise to "act lawfully" when called upon to abide by their contracts, Mr. Janse van Rensburg, Mr. Gombera, Mr.

Okafor and Mr. Jossel cannot be trusted to do so in the absence of a court order.

- 17 It was faintly contended that Arck Wealth cannot be placed under any restraint because it has no agreement with Carrick not to disclose its confidential information, and not to compete with it. This overlooks the fact that Mr. Janse van Rensburg's, Mr. Gombera's, Mr. Okafor's and Mr. Jossel's contracts state that they may not compete unlawfully with Carrick or disclose its information "directly or indirectly".
- 18 The only way that Arck Wealth can currently compete with Carrick unlawfully or disclose its confidential information is if Mr. Janse van Rensburg, Mr. Gombera, Mr. Okafor or Mr. Jossel cause it to do so. Such disclosure or competition would amount to intentionally assisting Mr. Janse van Rensburg, Mr. Gombera, Mr. Okafor or Mr. Jossel to breach their contractual obligations, which is itself a delict. There can accordingly be no real difficulty with placing Arck Wealth under restraint (see, in this respect, *Genwest v van der Heyden* 1991 (1) SA 727 (T)).
- 19 Finally, Carrick's notice of motion also seeks to restrain the respondents from poaching any of Carrick's existing employees, but little was made of this relief in argument, and I am not convinced that a case has been made out for it on the facts.

Costs

- 20 Carrick sought counsel's costs on scale "C". However, this is a straightforward case of enforcing a relatively modest set of contractual undertakings. It raises no real complexity. The usual order for counsel's costs is sufficient.

Order

- 21 For all these reasons, I make the following order, in which the capitalised terms will bear the same meaning as is given to them in Mr. Janse van Rensburg's, Mr. Gombera's, Mr. Okafor's or Mr. Jossel's employment agreements with Carrick.

21.1 The applicant's non-compliance with the rules as to service and prescribed time periods is condoned, and this matter is treated as one of urgency under Rule 6 (12).

21.2 The first, second, third and fifth respondents are interdicted and restrained from disclosing to each other or to any other person, directly or indirectly, any Confidential Information as defined in clause 10 of their employment agreements with the applicant.

21.3 The fourth respondent is interdicted and restrained from using any of the applicant's Confidential Information disclosed to it by the first, second, third or fifth respondents.

21.4 The first and second respondents are, until 31 July 2026, interdicted and restrained, whether directly or indirectly, from -

- 21.4.1 soliciting orders from Prescribed Clients for Prescribed Services or Prescribed Products;
 - 21.4.2 canvassing business in respect of Prescribed Products or Prescribed Services in respect of any Prescribed Clients;
 - 21.4.3 selling or otherwise supplying any Prescribed Products to any Prescribed Clients; or
 - 21.4.4 rendering any Prescribed Services to any Prescribed Client.
- 21.5 The applicant is directed to perform all of its obligations under its Departure Enrichment Agreements with the first and second respondents, as and when they fall due.
- 21.6 The third respondent is, until 31 May 2025, interdicted and restrained whether directly or indirectly from -
- 21.6.1 soliciting orders from Prescribed Clients for Prescribed Services or Prescribed Products;
 - 21.6.2 canvassing business in respect of Prescribed Products or Prescribed Services in respect of any Prescribed Clients;
 - 21.6.3 selling or otherwise supplying any Prescribed Products to any Prescribed Clients; or
 - 21.6.4 rendering any Prescribed Services to any Prescribed Client.

21.7 The first to fifth respondents are directed, jointly and severally, the one paying the other to be absolved, to pay the applicant's costs, including the costs of two counsel where employed.



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 it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 27 August 2024.

HEARD ON: 20 August 2024

DECIDED ON: 27 August 2024

For the Applicants: A Botha SC
(Heads of argument drawn by A Botha SC and
R Patrick SC)
Instructed by Werksmans Attorneys

For the Respondents: C Woodrow SC
D Whittington
Instructed by Slade Shezi Attorneys