



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Reportable

Case no: J2019/15

In the matter between:

MEDTRONIC (AFRICA) (PTY) LTD

APPLICANT

and

FREDERICK THEODORUS VAN WYK

FIRST RESPONDENT

GLOBUS MEDICAL SOUTH AFRICA (PTY) LTD

SECOND RESPONDENT

Case no: J 2339/15

MEDTRONIC (AFRICA) (PTY) LTD

APPLICANT

and

CORNELIS JOHANNES POTGIETER

FIRST RESPONDENT

GLOBUS MEDICAL SOUTH AFRICA (PTY) LTD

SECOND RESPONDENT

Application heard: 11 February 2016

Judgment delivered: 24 February 2016

JUDGMENT

VAN NIEKERK J

Introduction

- [1] Mr. Fred van Wyk and Mr. CJ Potgieter were employed by the applicant (Medtronic) until 30 September 2015 and 20 December 2015 respectively. During their employment both Van Wyk and Potgieter were, broadly speaking, engaged in selling medical devices manufactured and distributed by Medtronic to orthopedic surgeons. The terms of their employment by Medtronic incorporated restraint undertakings given in Medtronic's favour. Both Van Wyk and Potgieter resigned from Medtronic to take up employment with the second respondent, Globus, one of Medtronic's direct competitors. Medtronic seeks the partial enforcement of each restraint – in Van Wyk's case, to the area that comprises the Free State and Northern Cape provinces; in Potgieter's case, to the Western Cape, Kwa-Zulu Natal and Eastern Cape provinces.
- [2] Neither Van Wyk nor Potgieter dispute that they entered into the restraint undertakings that form the basis of these proceedings, nor do they dispute that by accepting employment by Globus they are in breach of them. They contend that the undertakings are not enforceable. Two key areas of dispute emerge from the papers. The first is whether the relationships between Van Wyk and Potgieter and the surgeons to whom they sold medical devices constituted customer connections protectable in Medtronic's hands; the second is whether Van Wyk and Potgieter had access to any information at Medtronic which constitutes confidential information worthy of protection. The concessions by Van Wyk and Potgieter that they signed the restraint undertakings and that they intend to take up employment with Globus, a direct competitor of Medtronic, have the

consequence that Medtronic has discharged the onus of proving that they are in breach of the restraint of trade agreements. As will appear from the relevant legal principles recorded below, it is incumbent on Van Wyk and Potgieter to discharge the onus to show that the restraint is unreasonable and consequently unenforceable.

- [3] The two cases are the subject of separately filed applications. However, they were argued simultaneously since both raise substantially the same factual and legal issues.

Material facts

- [4] Medtronic is the South African member of Medtronic PLC, a multinational business engaged in medical technology. Medtronic sells medical devices throughout South Africa. Van Wyk and Potgieter were employed in the spine navigation and neurological technologies division. Globus, like Medtronic, sells medical devices throughout South Africa and directly competes with Medtronic in respect of spine and biologics products.
- [5] Van Wyk was employed by Medtronic on 1 August 2011 as a sales representative for the Free State and Northern Cape region. At the time of his resignation, he had been employed by Medtronic for more than four years. On 1 October 2015, Van Wyk took up employment with Globus as a product manager. In this capacity, he will have both selling and managerial functions. Globus has to date not had a direct presence in the Free State and Northern Cape.
- [6] Potgieter was employed on 1 August 2007 as a sales representative based in Bloemfontein. In July 2012, he was promoted to the position of coastal regional sales manager in Medtronic's spine and biologics division. At the time of his resignation, Potgieter had held this position for three years and four months. The coastal region extends from Vredenburg in the west to Richards Bay in the East and comprises the whole of the Western Cape, the Eastern Cape and Kwa-Zulu Natal. After prevaricating, Potgieter finally resigned from Medtronic on 20 October 2015 to take up employment with Globus. Potgieter was placed on

gardening leave and his employment with Medtronic terminated on 19 December 2015.

- [7] Medtronic promotes and sells its products to surgeons. The duty of a sales representative is to call on the surgeons resident at hospitals within the geographic area for which he or she has a responsibility, to promote and demonstrate Medtronic's products to them, to sell those products and to provide technical assistance and information on the safe and effective use of Medtronic products and equipment to the surgeons. There is some dispute about the exact role of the sales representative in theatre, but it is common cause that their role may in certain cases extend to being present during surgery, both in and outside of the sterile zone, to hand over the product and provide any additional or alternative devices that may be required.
- [8] Van Wyk had face to face contact with surgeons in the area for which he was responsible, performing the above functions broadly described above. Potgieter headed up a sales team and thus performed more of a managerial role, but he does not deny having contact with surgeons and hospital staff when he "co-travelled" with a member of the sales team to a hospital, or when he was required to "fill in" for a member of his team at a surgery when that member was unavailable.
- [9] The nature and purpose of the products sold by Medtronic and Globus assumed some significance in these proceedings. In this regard, Van Wyk states:
20. On the applicant's own version its products are highly technical and specialised medical devices. The products were invented to treat a variety of different injuries and pathologies affecting the human spine including biologic intervention, neuromodulation and a range of neurovascular issues.
 21. Each product serves a specific purpose and may or may not be applicable in any given situation. The surgeon will assess each patient on a case-by-case basis and, according to the medical condition presented,

the surgeon will recommend that the hospital he works at purchases a particular product.

22. The applicant and second respondent do not sell all exactly the same products. Each product is unique and, without exception, registered and patented so that only the owner of that intellectual property can sell a particular product

- [10] Van Wyk and Potgieter aver that because the products supplied by Medtronic and Globus are not interchangeable, they tend to sell according to the surgeon's preference, based on his or her personal experience and knowledge. It follows, they say, that it would be difficult for them to convince Medtronic's clients to use Globus products because in the surgeon's view, the product selected by him or her is tried and tested and familiar to the surgeon, who has a high degree of expertise in its use. In other words, a surgeon does not choose from a range of similar products and expect the same outcome from each one - the decision about which product to use for a particular patient is the surgeon's alone. This is a decision made regardless of price and without regard to any relationship a surgeon may have with a sales representative. On this basis, Van Wyk and Potgieter deny that Medtronic has a legitimate protectable interest.
- [11] Medtronic does not dispute that there are differences in design between its products and those manufactured and marketed by Globus, but contends that the products are interchangeable, at least in the sense that they serve the same function and purpose when treating a particular pathology. In other words, there is not one spinal product that can treat a particular pathology and that pathology alone – there are many interchangeable products in the sense that a surgeon can responsibly choose any one of them to treat a particular condition. Medtronic does not suggest that the salesperson or any relationship between salesperson and surgeon is the sole determinant of the particular device to be used; rather, Medtronic contends that the primary function of its salespersons is to promote its products and thereby contribute to the array of products from which a surgeon might choose. In this sense, and particularly in respect of

competing products that perform the same job, it is the salesperson's function to explain one product's advantages over another, in the hope of possibly securing a sale. This is the customer connection on which Medtronic relies in order to defend the reasonableness of the restraint undertakings.

Relevant legal principles

- [12] The principles regulating the enforcement of restraint of trade agreements are relatively well-established. Restraint of trade agreements are enforceable unless and to the extent that they are contrary to public policy because they impose an unreasonable restriction on the freedom to trade or to work (*Magna Alloys and Research (SA) (Pty) Ltd v Ellis* 1984 (4) SA 874 (A) at 891B-C)). Put another way, the restraint of trade agreement is valid and enforceable unless it is unreasonable. A restraint will be considered to be unreasonable and thus contrary to public policy, and therefore unenforceable, if it does not protect a legally recognisable interest of the employer, but merely seeks to exclude or eliminate competition (see *Magna Alloys (supra)* at 893C-G and 897H – 898D). An applicant seeking to enforce a restraint of trade agreement need only invoke the contract and prove a breach of the contract; the onus to prove that the restraint is unreasonable and therefore unenforceable rests on the party resisting its enforcement.
- [13] When it determines the reasonableness of the restraint, a court is required to make a value judgement, bearing in mind two principal considerations. The first is the public interest that requires a party should comply with contractual obligations that he or she has undertaken (*pacta sunt servanda*); the second is the broader public interest that requires all persons to be productive and to be permitted to engage in trade and commerce (*Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA)).

- [14] The test for reasonableness of restraint of trade provisions remains that expressed in *Basson v Chilwan and others* 1993 (3) SA 742 (A) where the court said the following, at 767A-D:
- a. Is there an interest of the one party which is deserving of protection at the termination of the agreement?
 - b. Is such interest being prejudiced by the other party?
 - c. If so, does such interest so way up qualitatively and quantitatively against the interest of the other party that the latter should not be economically inactive and unproductive?
 - d. Is there any other facet of public policy having nothing to do with the relationship between the parties but which requires that the restraint should either be maintained or rejected?
- [15] Some decisions have added a fourth requirement in the form of an enquiry into whether the restraint goes further than is necessary to protect the interest claimed. Others have considered that this enquiry is part and parcel of the test reflected above. What matters for present purposes is that the reasonableness enquiry extends to both the geographical and temporal components of restraint.
- [16] The interests that can be protected by a restraint agreement for the purposes of the first leg in the *Basson v Chilwan* enquiry include confidential information (sometimes referred to as trade secrets) regarding the running or carrying on the business which could be used by a competitor, if disclosed, to gain a relative competitive advantage. Whether information is confidential is a question of fact and may be predictable even if in the public domain where the respondent obtained the information within the context of a confidential relationship (see *Multi Tube Systems (Pty) Ltd v Ponting and others* 1984 (3) SA 189). Generally speaking, confidential information capable of protection includes information received by an employee about business opportunities available to the employer, information received in confidence by an employee while in employment, and information relating to the specifications of a product or a process of manufacture

which has been arrived at by the expenditure of skill and industry and has been kept confidential (see *Meter Systems Holdings v Venter* 1993 (1) SA 409 (W)).

- [17] The second protectable interest is the employer's relationship with customers, potential customers and suppliers (sometimes referred to as 'trade connection') of the business, being a component of the incorporeal property known as goodwill. The need of an employer to protect its trade connections arises where the employee has access to customers and is in a position to build up a particular relationship with the customer so that when he or she leaves the employer service, the customers could easily be induced to follow the employee to a new business. This is also factual enquiry, and relevant criteria include the duties of the employee, the employee's personality, the frequency and duration of contact with customers, where the contact takes place, what knowledge the employee gains of the customer's requirements and business, the general nature of the relationship between them, the degree of competitiveness between the rival businesses, the type of product being sold, and the like (see *Rawlins & another v Caravantruck (Pty) Ltd* 1993 (1) SA 537 (A) at 541).

Analysis

- [18] The issues to be determined are first, whether the relationship between Van Wyk and Potgieter and the surgeons with whom they worked constitutes a protectable interest in Medtronic's hands and secondly, whether Van Wyk and Potgieter had any access to information which constitutes confidential protection and therefore protectable in the hands of the applicant.
- [19] I deal first with the issue of customer connection. As I have indicated, the substantive point of dispute that emerges from the papers is the interchangeability of products and in particular, whether the fact that a particular product might fulfil the same purpose when treating a particular pathology makes it interchangeable.
- [20] To some degree, each party has sought to cast the position of the other in absolute terms. Medtronic has sought to emphasise the role of the salesperson

and the nature and extent of the salesperson's engagement with the surgeon in support of its contention that the salesperson's role and relationship with a particular surgeon is highly influential in decisions that surgeons make about choice of product. Van Wyk and Potgieter on the other hand have sought to portray the salesperson as having little if any role in product choices made by surgeons.

[21] In both instances, this is a one-dimensional rendering of the facts. Neither party suggests that the relationship between salesperson and surgeon is the sole determinant of product choices. Surgeons make choices from a range of available products and are responsible for their choices. In this sense, the real issue in these proceedings is less about the nature and extent of any qualitative differences between the products marketed by Medtronic and Globus respectively, and more about the role of the salesperson in autonomous decision-making by surgeons based on their own analysis, experience and preferences.

[22] A useful starting point is the caution raised by Wallis AJ in *In Den Braven SA (Pty) Ltd v Pillay and another* 2008 (6) SA 229 (D), where he cautioned against the subconscious temptation to regard the person engaged in sales as 'just a salesman'. The court went on to say:

However, in any business dependent for its profits on the sale of its products, the sales function is of fundamental importance and the salesperson's ability to damage the business of the employer may be very considerable or even fatal, notwithstanding the fact that the salesperson may seem to stand fairly low in the staff hierarchy....

It must be borne in mind that what is referred to in the cases as a customer connection is often constituted by intangibles such as the relationship on personal issues between salesperson and purchaser; the reputation of the salesperson for dealing with complaints and problems and his or her all round willingness to 'go the extra mile' in order to secure a sale.

- [23] The ‘intangibles’ to which the court refers manifest themselves in the present proceedings on the respondents’ own version. Neither Potgieter nor Van Wyk dispute that at the most basic level of engagement, they were “trained up” on the specifications of each product so that they could communicate that information to surgeons who may have needed to use the product. Both acknowledge that they were required to know the specifications of each product so that they were sufficiently competent, in Van Wyk’s case, to sell the product and in Potgieter’s case, ensure that his sales team were sufficiently competent to sell the products. Potgieter says the following:

The products are sold on the basis of a detailed explanation provided to the surgeons in respect of the products; which then allows them to differentiate the products offered by the multitude of companies in the market and make a medically sound decision.

- [24] The role of a salesperson, contrary to the image that Van Wyk and Potgieter seek to portray, is not limited to conveying technical information and specifications that might otherwise be discerned from the cold reading of a catalogue. Were this to be so, it is difficult to imagine why suppliers such as Medtronic and Globus employ salespeople – surgeons could simply select the desired device and place an order with the relevant supplier for delivery. The act of selling necessarily entails the presentation of not only the product range, but of new products and an explanation of the benefits and in particular, their advantages over similar products manufactured and marketed by competitors. This role is perhaps best articulated in the fourth affidavit filed by Potgieter, where he says the following

7.4. It is my case that surgeons make choices based on their analysis of the products and the outcome that they can expect arising from that quality as well as ease of use of the products, that is to say the comfort factor which a surgeon experiences when using particular devices.

7.5. It is irrelevant for the purposes of determining customer connection that more than one product can treat a particular pathology.

7.6. The situation is rather how well a particular product treats a particular pathology, in the opinion of the surgeon, and the ease of use of the product.

7.7. In relation to pathology there are a range of products available from different companies each of which has features which may be more or less attractive to individual surgeons and which must be evaluated by them in making the decision of which product to use...

7.8. There are differences between the products and the applicant can only contend that the difference (sic) are cosmetic. The applicant and many other companies in the industry have huge research and development arms which constantly strive to better their products and develop new technologies in order to gain a competitive edge in the marketplace. Were this not the case, they would be complete stagnation in the field, which is the reverse of what the applicant contends....

7.10. It is by definition part of the duty of surgeons in this field to be in touch with the market, developments and technology across the scope of brands. Technologies may change quickly and the surgeon would necessarily look to acquiring the best product for his patient.

7.11. It cannot be asserted that technology developed simultaneously in all of the various companies that produce the relevant devices. There will always be one company that is first to market with a particular technology. Other companies may or may not introduce that technology. In the circumstances a surgeon must be in a position to choose based on medical factors and the benefit of the technology in relation to his patient's needs.

[25] What this exposition raises is the true role of the salesperson in the present context— while the choice of a particular product is ultimately that of the surgeon who carries sole responsibility for his or her choice, that choice is informed by what the salesperson conveys in the context of an established relationship. As Potgieter himself points out, the market is not static. The investment by companies like Medtronic and Globus and their competitors in research and development serves to inject new technology into the market and generate new choices for surgeons. It would be naive to think that the role of a salesperson in

this context is limited to that of a purveyor of technical specifications. Responsible surgeons would no doubt be open to a presentation on the claimed benefits and advantages of any new technology. In this context, the existence of a relationship between salesperson and surgeon built up over months if not years is not irrelevant. As Wallis AJ put it in *Den Braven* in response to a submission that customers would never be influenced by the connection with a sales person but would always adopt the hardheaded commercial approach of opting for the lowest price:

The second difficulty is that it thus fails to take account of such factors as customer loyalty to a particular supplier; customer inertia in continuing to purchase from an established supplier rather than going to the effort of always checking the market for the best possible price; and the fact that where two different suppliers quote very similar prices for comparable products, the trade connection established through the salesperson may well be the decisive factor.

- [26] This is the value of trade connections and customer contact. It enables any salesperson or sales manager to execute the key task of cementing existing relationships with clients and bringing in business, partly at least by drawing business away from competitors and persuading clients to move to the employer's products.
- [27] In the present instance, the relationship between salesperson and surgeon extends beyond the interface that occurs on visits to hospitals in the relevant regions. It is common cause that sales persons and surgeons meet at congresses hosted by third parties; Potgieter refers to four to six congresses per annum. These events, attended by surgeons, gave Van Wyk and Potgieter the opportunity to reinforce Medtronic customer connections and promote their brand and their new technologies. In addition, Medtronic hosts cadaver workshops, in conjunction with the Universities of Cape Town and Stellenbosch, at which instruction and training on the implanting of products are held. Van Wyk and Potgieter do not dispute having attended these workshops, which no doubt provided an opportunity to interact with surgeons based at hospitals in their

respective sales areas. Further, Van Wyk records that Medtronic sponsors international conferences and pays for doctors to attend these conferences. This he describes as 'a significant part of the applicant's business model.' Although Van Wyk concludes from this that it is not the salesman (and not him, in particular) who engenders the loyalty of the clients rather than the product, its qualities and the training and exposure to the product that surgeons receive at conferences, what this submission ignores is the fact that Medtronic establishes customer connections through the medium of its employees and in particular, its sales staff. The nature and extent of these interactions establish that the sales function has roots that extend well beyond the consulting room, and that regular exposure to Medtronic's products and their application can only serve to facilitate the face-to-face engagement between salesperson and surgeon.

[28] I must also necessarily take into account that in Van Wyk's case, Globus has to date not had a presence in the Free State and Northern Cape. Van Wyk's employment by Globus is clearly intended to establish the latter's market presence in those provinces, in circumstances where Globus is presented with the obvious opportunity to capitalise on the relationships that Van Wyk has established while in Medtronic's employ and at its expense. Van Wyk's response to this averment is to suggest that if Medtronic's products are indeed better and that surgeons in the provinces concerned form that perception, then Medtronic will be able to sell its products regardless of the identity of the salesperson. He says: *'All a Sales Rep can do is have a thorough working knowledge of the second respondent's product and a friendly demeanour; this is what will make the sale if it is to be made. However, these attributes are not proprietary to the applicant'*.

[29] While it is correct that Van Wyk's no doubt friendly demeanour and his knowledge of Medtronic's products are not interests to which Medtronic can lay any proprietary claim, his assertion rests on a limited conception of the sales and marketing function which, for the reasons stated above, cannot be sustained. The marketing function in the medical device business extends beyond a sales

pitch and a smile; it comprises a complex web of personal relationships cemented by sponsorships, workshops and technical assistance. In any event, if as Van Wyk earlier contended surgeons are not amenable to changing their products, there would be no point in Globus introducing its products into what for it is uncharted terrain. But this is precisely what it is doing by entering the spinal market in the Free State and Northern Cape.

- [30] It is sufficient for an applicant to show that trade connections through customer contact exist and can be exploited by the former employee if employed by a competitor. In *Den Braven*, the court made the point this way:

It is not in my view necessary for the applicant in the situation to winnow the wheat of trade connections and customer contact from the chaff of other factors that may influence purchasing decisions. It suffices for the applicant to show the trade connection through customer contact exist and can be exploited by the former employee if employed by a competitor.

- [31] In my view, for the reasons stated above, Medtronic has trade connections through customer contact by both Van Wyk and Potgieter which are open to exploitation by them as employees of Globus. In view of the basis on which I have come to this conclusion, it is not necessary for me to consider the affidavit of Dr Vlok, the admissibility of which was contested and which deals primarily with the issue of the interchangeability of products or otherwise.

- [32] Turning next to the element of confidential information, it is not disputed that Van Wyk has access to Medtronic's strategies for its spine and biologics division. The strategies were discussed at meetings convened, amongst other things, to discuss the successes, failures and threats to the business and to formulate strategies to improve them. Further, Van Wyk was party to Medtronic sales targets and marketing strategies. One of his duties was to implement the business plan in the region for which he was responsible. The business plans contain key elements of Medtronic's marketing strategy including the products which Medtronic intends to launch in South Africa, a determination of market share, revenue forecast and the like. Van Wyk thus has knowledge of those of

Medtronic's products that generate higher sales and which are vulnerable. While Van Wyk denies having sight of any information that is confidential to Medtronic, and to the extent that he asserts that business plans and strategies to which he was privy were couched in the broadest terms, a simple analysis of the categories of information to which Van Wyk was exposed and which would ordinarily not be available to a competitor, would be of obvious and immense assistance to a competitor, particularly a start-up operation in the provinces in which Van Wyk has been employed. In the hands of a competitor such as Globus, the information that he has at his disposal provides an invaluable tool. It will assist Globus to understand where Medtronic is weak in relation to particular product in particular hospitals. Knowledge of Medtronic's sales strategies and their successes and failures will obviously assist Globus with the formulation of its own strategy.

- [33] In Potgieter's case, similar considerations apply. He was employed in a more senior position and thus enjoyed greater access to Medtronic's confidential information relating to its business operations and plans in the region for which Potgieter had responsibility. He also has intimate knowledge of the business opportunities in the market and had put in place strategic plans to drive more growth at competitors' expense. Potgieter is aware of Medtronic's future business plans for the region. Information of this nature in the hands of a competitor which has a less significant presence in the region would place that party at an obviously unfair advantage.
- [34] Both Van Wyk and Potgieter have consented to observe the confidentiality undertakings given by them while remaining in the employ of Globus. The applicable legal principle as well established: the party seeking to enforce a restraint does not have to demonstrate that the other party has in fact utilised information confidential to it, it is sufficient to show that he or she could do so. As it is sometimes put, the applicant need not be content with having to cross its fingers in the hope that a respondent would abide by any undertakings given (see *Experian South Africa (Pty) Ltd v Haynes and another* 2013 (1) SA 135

(GSJ) at paragraph 22. The court went on to say *“It does not lie in the mouth of the ex-employee who has breached a restraint agreement by taking up employment with a competitor to say to the ex-employer, ‘Trust me, I will not breach the restraint further than I have already been proved to have done.’ ”*).

- [35] In so far as the weighing of interests is concerned (the third leg of the test in *Basson*), it should be recalled that both Van Wyk and Potgieter left Medtronic’s employ of their own accord and in circumstances where they were fully aware that they were subject to restraint of trade undertakings. Despite this, both chose to join a direct competitor. Both are able to remain economically active outside of the area of restraint and free to utilise their skills and experience within that domain. The predictable consequences of personal inconvenience and ramifications on family and career prospects are not factors that weigh against enforcement.
- [36] There is nothing within the realm of public policy that militates against the enforcement of the restraints. Further, there is nothing on the papers to suggest that the restraints, formulated as they are in terms narrower than those contemplated by the original restraint undertakings, go further than is necessary to protect Medtronic’s legitimate proprietary interests. The period of the restraint is not unreasonable having regard to the time that Medtronic adverts will be necessary to train replacement salespeople and having regard further to the useful life of the confidential information to which Van Wyk and Potgieter had access during the course of their employment by Medtronic.
- [37] In summary: Potgieter’s employment with Globus in the Western Cape, the Eastern Cape and Kwa-Zulu Natal will infringe upon Medtronic’s proprietary interests in its confidential information and customer connection respectively. It is also clear that Van Wyk’s employment by Globus in the Free State and Northern Cape provinces will have the same consequence. These are not risks that Medtronic is required to run. The applicant is accordingly entitled to the relief it seeks in the notice of motion.

Costs

[38] Finally, there is no reason why costs should not follow the result.

I make the following order:

1. In respect of the application brought under case number J 2019/15, the first respondent is interdicted and restrained for a period of 12 months from 30 September 2015, the date on which his employment with the applicant terminated, until 30 September 2016 within the Free State and Northern Cape provinces from:
 - 1.1. being employed by, or associated with, Globus Medical South Africa (Pty) Ltd, whether directly and indirectly;
 - 1.2. being employed by, associated or concerned with, or interested or engaged in, whether directly or indirectly, any entity which promotes or sells products in competition to the applicant's spinal surgery products;
 - 1.3. promoting, selling or being involved in any capacity in the promotion or sale of any products, for or on behalf of Global Medical South Africa (Pty) Ltd or any other third party, in competition to the applicant's spinal surgery products;
 - 1.4. directly or indirectly, instructing, permitting or requiring any other person to market, promote or sell any products which compete with the applicant's spinal surgery products; and
 - 1.5. inducing, inciting, soliciting, encouraging or procuring any employee, consultant, agent, representative or contractor of the applicant to vary or terminate their agreements or arrangements with the applicant, to leave the employ of the applicant, or to curtail, restrict or alter their arrangements or business dealings with the applicant in any way.
2. The first respondent is interdicted and restrained from disclosing any of the applicant's confidential information.

3. In respect of the application brought under case number J 2339/15, the first respondent is interdicted and restrained for a period of 12 months from 30 September 2015, the date on which his employment with the applicant terminated, until 30 September 2016 within the Western Cape, Kwa-Zulu Natal and Eastern Cape provinces from:
 - 3.1. being employed by, or associated with, Globus Medical South Africa (Pty) Ltd, whether directly and indirectly;
 - 3.2. being employed by, associated or concerned with, or interested or engaged in, whether directly or indirectly, any entity which promotes or sells products in competition to the applicant's spinal and biologics surgery products;
 - 3.3. promoting, selling or being involved in any capacity in the promotion or sale of any products, for or on behalf of Global Medical South Africa (Pty) Ltd or any other third party, in competition to the applicant's spinal and biologics surgery products;
 - 3.4. directly or indirectly, instructing, permitting or requiring any other person to market, promote or sell any products which compete with the applicant's spinal and biologics surgery products; and
 - 3.5. inducing, inciting, soliciting, encouraging or procuring any employee, consultant, agent, representative or contractor of the applicant to vary or terminate their agreements or arrangements with the applicant, to leave the employ of the applicant, or to curtail, restrict or alter their arrangements or business dealings with the applicant in any way.
4. The first respondent is interdicted and restrained from disclosing any of the applicant's confidential information.
5. The first and second respondents in each instance are ordered to pay the costs of the proceedings under case numbers J 2019/15 and J 2339/15, jointly and severally, the one paying the other to be absolved, such costs to include the costs of two counsel.

ANDRÉ VAN NIEKERK

JUDGE OF THE LABOUR COURT

REPRESENTATION

For the applicant: Adv. C Whitcutt SC, with him Adv. J Nicholson instructed by Fasken Martineau

For the respondents: Adv. A Snider, with him Adv. CL Robertson instructed by Cliffe Dekker Hofmeyr Inc.