



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: J1572/17

In the matter between:

ONE CAPITAL SPONSOR SERVICES (PTY) LTD

First Applicant

ONE CAPITAL ADVISORY (PTY) LTD

Second Applicant

and

CALVIN CHELLAN

First Respondent

UBS SOUTH AFRICA (PTY) LTD

Second Respondent

UBS SOUTH AFRICA HOLDINGS (PTY) LTD

Third Respondent

UBS CORPORATE FINANCE SOUTH AFRICA (PTY) LTD

Fourth Respondent

UBS SWITZERLAND AG

Fifth Respondent

Heard: 8 August 2017

Delivered: 18 September 2017

Summary: Application to enforce restraint of trade and confidentiality agreement – application granted

JUDGMENT

MYBURGH, AJ

Introduction

- [1] This is an urgent application to enforce a restraint of trade and confidentiality agreement entered into between One Capital Sponsor Services¹ (“One Capital”) and Mr Chellan² (“the restraint”). The restraint also protects the interests of One Capital Advisory³ (which together with One Capital comprises the One Capital Group) and it has the right to enforce the restraint against Mr Chellan by virtue of a *stipulatio alteri* contained therein. The application is opposed only by Mr Chellan, with the second to fifth respondents having undertaken to abide the decision of the court.
- [2] Mr Chellan was employed by One Capital as a JSE sponsor executive. On 14 August 2015, he entered into the restraint in return for consideration of some R100 000 net. On 2 April 2017, Mr Chellan tendered his resignation from One Capital in writing. On 30 June 2017, Mr Chellan left One Capital without serving out his full notice period, which expired on 31 July 2017. On 3 July 2017, Mr Chellan took up employment with UBS South Africa⁴ (“UBS”) as a sponsor executive (with his new contract of employment itself containing a restraint of trade). This gave rise to the present application.
- [3] The application was launched on 11 July 2017 and served the next day, and was enrolled on 28 July 2017. On the latter date, the application was postponed to 8 August 2017 to enable the applicants to finalise and deliver a replying affidavit. By the time the matter was argued on 8 August 2017, the

¹ The first applicant.

² The first respondent.

³ The second applicant.

⁴ The second respondent.

applicants had delivered a replying affidavit and a confidential affidavit, with Mr Chellan having brought an application to strike out parts of the replying affidavit (and annexures thereto) and having objected to the introduction of the confidential affidavit. Further to the argument of the matter, Mr Chellan's attorneys brought a further judgment to my attention on 24 August 2017 dealing with the issue of urgency, with the applicants' attorneys having made some submissions about it on 5 September 2017.

- [4] In addition to the merits of the application, the following issues stand to be determined: the issue of urgency; the application to strike out; and the opposition to the introduction of the confidential affidavit.
- [5] The papers in this matter are voluminous – running to close to 700 pages, with the parties also having filed lengthy heads of argument. In addressing the issues for determination, I intend to deal only with what I consider to be the crux of them, and do so without recounting the evidence in any detail.

The issue of urgency

- [6] As this court has previously held, applications to enforce restraints of trade are – by their very nature – urgent.⁵ No doubt mindful of this, Mr Malan (who appeared for Mr Chellan) did not contend that the matter was *per se* not urgent, but rather that the urgency had been self-created.
- [7] At the heart of this controversy is when the applicants came to know definitively that Mr Chellan intended joining UBS on 3 July 2017: was it on 3 April 2017 (as contended by Mr Chellan) or on 30 June 2017 (as contended by the applicants)? If the latter date, then there can be no issue of self-created urgency, as this application was launched seven court days later.

⁵ *Vox Telecommunications (Pty) Ltd v Steyn & another* (2016) 37 ILJ 1255 (LC) at para 11; *ARB Electrical Wholesalers (Pty) Ltd v Grove & others* (C335/14) [2014] ZALCCT 31 (3 June 2014) at para 20; *Pinnacle Technology Shared Management Services (Pty) Ltd & another v Venter & another* (J1095/15) [2015] ZALCJHB 199 (14 July 2015) at para 6.

- [8] Mr Chellan's case of self-created urgency is based on two main legs. Firstly, that during separate meetings held with Mr Simpson and Ms Carter (of One Capital) on 3 April 2017, he told them both that he would be taking up employment with UBS with effect from 3 July 2017 irrespective of the terms of his restraint (this following his letter of resignation of 2 April 2017). Secondly, that from April 2017, he was excluded from staff meetings, prevented from corresponding with clients and excluded from price sensitive work – this being indicative of One Capital having known that he was joining a competitor.
- [9] In relation to the first leg, not only do both Mr Simpson and Ms Carter deny that Mr Chellan made the statement in question, but they both stand by their recollection of their respective meetings with him – the gist of which is that he conveyed to them that unless One Capital was willing to waive or amend the terms of the restraint (which it was not), he would not be able to take up employment with UBS and would instead move to Cape Town. This accords with the stance adopted by Mr Chellan on 2 April 2017 (the day before) when, in an email string following his letter of resignation, he appears to have become ambivalent about joining UBS when advised that One Capital intended to enforce the restraint.
- [10] Furthermore, Mr Chellan's version is also not consistent with the objective facts. If his version were true (i.e. that he told One Capital unequivocally on 3 April 2017 that he would be joining UBS on 3 July 2017), One Capital would probably have forthwith taken steps to place him on gardening leave (as envisaged by his contract of employment), take back his laptop and other company property, and communicate with him / UBS about his resignation and restraint. The fact that One Capital did not do so on or around 3 April 2017, and only reacted at the end of June 2017, when it took away Mr Chellan's laptop and other company property and sought to communicate with UBS, bears out its version – it being that it was only during a meeting on 30 June 2017 that Mr Chellan for the first time confirmed categorically that he was leaving the employ of One Capital to start at UBS on 3 July 2017, regardless of the terms of the restraint.

- [11] In relation to the second leg, while steps were taken by One Capital to transition certain work streams away from Mr Chellan during his notice period, this does not bear out his case that One Capital knew as at 3 April 2017 that he was joining UBS on 3 July 2017. As already mentioned, if it had known, it would have placed him on gardening leave and effectively removed him from the organisation. Furthermore, I accept that the steps taken by One Capital (which included prohibiting Mr Chellan's access to "admin" and "billing" folders on the server) were consistent with an understanding on its part that Mr Chellan was serving his notice period, and consequently prudence dictated an extrication process from the kinds of hands-on access that a long-term employee would enjoy.
- [12] I am also not persuaded by the "horse has bolted" argument advanced on behalf of Mr Chellan. On the authority of this court, this is not a bar to relief in the circumstances of this matter.⁶
- [13] In sum, in my view, this is not a case of an applicant sitting on its hands and being guilty of self-created urgency. Accordingly, I am of the view that the matter ought to be dealt with as one of urgency.

The application to strike out and opposition to the confidential affidavit

- [14] The application to strike out parts of the replying affidavit (and annexures thereto) and opposition to the introduction of the confidential affidavit are premised on the same contention: the contents, according to Mr Chellan, contain new matter which ought to have been included in the founding affidavit, with the result that the applicants are attempting to (impermissibly) make out a case in reply. It warrants mention that the replying affidavit (together with annexures) runs to some 300 pages, and the confidential affidavit (together with annexures) to some 200 pages.
- [15] In *Vox Telecommunications (supra)*, in rejecting a similar contention by an employee opposing the enforcement of a restraint, this court found as follows:

⁶ *Vox Telecommunications (supra)* at para 10.

"[18] ... although it is so that the confidential affidavit (and the replying affidavit) contains new matter, the issue must be placed in context. As dealt with in the section below on the legal principles applicable to restraints of trade, while Vox has the onus to invoke the restraint and prove a breach thereof, the onus then shifts to Steyn to establish that the restraint is unenforceable because it is unreasonable. In these circumstances, as submitted by Mr Whitcutt SC (who appeared for Vox together with Mr Makka), Vox's replying affidavit (and confidential affidavit) constitute, in effect, an answer to Steyn's case that the restraint is unenforceable (as opposed to a new case in reply). In *Townsend Productions (Pty) Ltd v Leech & others* 2001 (4) SA 33 (C) at 41A-D, the High Court sanctioned the very approach adopted by Vox."

[16] The finding by the High Court in *Townsend Productions (supra)* was this:

"Counsel for the respondents complained that the applicant's affidavits in reply contain new matter and that the applicant has attempted to make out a case in reply. The onus is on the respondents to establish, as their defence, that the applicant has no proprietary interests worthy of protection, and they were required to set out facts germane to those contentions in their answering affidavits. The applicant was entitled to deal with such facts in its replying affidavits. The respondents would have been entitled to apply for leave to file further affidavits to deal with the matter raised in reply by the applicant"

[17] In argument, Mr Whitcutt SC (who appeared together with Ms Bosman for the applicants) undertook a useful analysis of the application to strike out parts of the replying affidavit (and annexures thereto). Of the 24 parts that are sought to be struck out (which constitute a significant amount of material), 21 of them set out facts relating to confidential information or customer connections held by Mr Chellan, while the other 3 parts involve a standard reply to issues raised in the answering affidavit. On the authorities referred to above, it was permissible for the applicants to plead in reply facts relating to confidential information and customer connections held by Mr Chellan – this being a response to his defence that the restraint is unenforceable. In the result, there is no merit in the application to strike out. For the same reason, there is also no merit in the objection to the introduction to the confidential affidavit, which

is, in effect, the confidential part of the replying affidavit. Leave is accordingly granted to introduce the confidential affidavit into evidence.

- [18] Given the operation of the onus in relation to restraints of trade, it is commonplace for a respondent to file a fourth set of affidavits in response to the applicant's replying affidavit. The fact that Mr Chellan did not do so places him in a difficult position, in that, to a large extent, the applicants' opposition to his defence is unanswered. Having failed in his attempt to strike out what are damaging allegations against him, and not having answered them, Mr Chellan must live with the consequences.

Restraints of trade: legal principles

- [19] Before dealing with the merits of the application, this is a convenient point at which to deal with the legal principles applicable to restraints of trade.⁷ An agreement in restraint of trade is enforceable, unless it is unreasonable (and thus contrary to public policy). A restraint of trade will generally be considered unreasonable if it does not protect some legally recognisable interest of the party in whose favour it is granted, but merely seeks to eliminate competition.⁸
- [20] A party seeking to enforce a restraint agreement is required only to invoke the restraint and to prove a breach of its terms (this being the applicant's onus). Once this has been done, the onus is on the respondent to prove on a balance of probabilities that the restraint agreement is unenforceable because it is unreasonable.⁹
- [21] The enquiry into the reasonableness of a restraint is a value judgment that involves a consideration of two policy considerations, namely the public

⁷ See for an exposition thereof: *New Justfun Group (Pty) Ltd v Turner and Others* (J786/14) [2014] ZALCJHB 177 (14 May 2014); *ARB Electrical (supra)*; *Shoprite Checkers (Pty) Ltd v Jordaan & another* (2013) 34 ILJ 2105 (LC); *Vox Telecommunications (supra)*.

⁸ *New Justfun Group (supra)* at para 8; *ARB Electrical (supra)* at para 25; *Vox Telecommunications (supra)* at para 25.

⁹ *New Justfun Group (supra)* at para 9; *ARB Electrical (supra)* at para 26; *Vox Telecommunications (supra)* at para 26.

interest, which requires that parties to a contract must comply with their contractual obligations, and the principle that a citizen should be free to engage or follow a trade, occupation or profession of his or her choice.¹⁰

[22] In *Basson v Chilwan* 1993 (3) SA 742 (A) at 767C-H, the court set the following test for determining the reasonableness or otherwise of a restraint agreement:

- 1) Is there an interest of the one party (in this case One Capital), which is deserving of protection at the termination of the agreement?
- 2) Is such an interest being prejudiced by the other party (in this case Mr Chellan)?
- 3) If so, does such an interest so weigh up qualitatively and quantitatively against the interest of the latter party that the latter (i.e. Mr Chellan) should not be economically inactive and unproductive?
- 4) Is there another facet of public policy having nothing to do with the relationship between the parties which requires that the restraint should either be maintained or rejected?

Insofar as the interest in (3) exceeds the interest in (1), the restraint would be unreasonable and accordingly unenforceable.¹¹

[23] A further consideration should be added, namely whether the restraint is wider than what is necessary to protect the protectable interest.¹²

[24] The proprietary interests (see the first consideration in *Basson (supra)*) that can be protected by a restraint agreement are essentially of two kinds. The

¹⁰ *Ball v Bambalela Bolts (Pty) Ltd and another* [2013] 9 BLLR 843 (LAC) at para 15; *Vox Telecommunications (supra)* at para 27.

¹¹ *New Justfun Group (supra)* at para 10; *ARB Electrical (supra)* at para 27; *Shoprite (supra)* at para 23; *Ball (supra)* at para 16; *Vox Telecommunications (supra)* at para 28.

¹² *Shoprite (supra)* at para 24; *Vox Telecommunications (supra)* at para 29.

first is all confidential matter which is useful for the carrying on of the business and which could therefore be used by a competitor, if disclosed to it, to gain a relative advantage. This is sometimes referred to as “trade secrets”. The second is the relationships with customers, potential customers, suppliers and others that go to make up what is referred to as the “trade connection” of the business.¹³

[25] Whether information constitutes a trade secret is a factual question. For information to be confidential, it must be: capable of application in the trade or industry (i.e. it must be useful and not be public knowledge); known only to a restricted number of people or a closed circle; and of economic value to the person seeking to protect it.¹⁴ It is for the respondent to establish that he or she had no access to that information or that he or she had never acquired any significant personal knowledge of, for example, the applicant’s customer base while in its employ. All that the applicant need show is that there is secret information to which the respondent had access and which in theory the respondent could transmit to the new employer if he or she was inclined to do so. In order to enforce the restraint, the applicant does not have to show that the respondent has in fact utilised information confidential to it; it is sufficient to show that the respondent could do so.¹⁵

[26] Indeed, the very purpose of a restraint agreement is that the applicant does not wish to have to rely on the *bona fide*’s or lack of retained knowledge of confidential knowledge on the part of the respondent.¹⁶ Put differently, the applicant should not have to content itself with crossing its fingers and hoping that the former employee will not breach the restraint.¹⁷ It is for this reason that an application to enforce a restraint of trade is not necessarily defeated

¹³ *New Justfun Group (supra)* at para 11; *ARB Electrical (supra)* at para 28; *Vox Telecommunications (supra)* at para 30.

¹⁴ *Townsend Productions (supra)* at 53J-54B; *Vox Telecommunications (supra)* at para 31.

¹⁵ *New Justfun Group (supra)* at para 13; *Vox Telecommunications (supra)* at para 31.

¹⁶ *New Justfun Group (supra)* at para 13; *Vox Telecommunications (supra)* at para 32.

¹⁷ *ARB Electrical (supra)* at para 30; *Vox Telecommunications (supra)* at para 32.

by the respondent giving an undertaking that he or she will not disseminate or utilise confidential information.¹⁸

- [27] Regarding customer connections, the need of the 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 a customer so that when he or she leaves the employer's service he or she could easily induce the customer to follow him or her to a new business. Once that conclusion is reached and it is demonstrated that the prospective new employer is a competitor of the applicant, the risk of harm to the applicant if its former employee would take up employment becomes apparent.¹⁹

The merits of the application

- [28] As stated at the outset, on 14 August 2015, One Capital and Mr Chellan entered into the restraint. The restraint provides that for a period of six months from the date of termination of his employment with One Capital, Mr Chellan is restrained from being employed by a competitor of the applicants anywhere in South Africa. The restraint also provides that for a period of 12 months from the date of termination of his employment with One Capital, Mr Chellan is restrained from communicating with or soliciting away from the applicants, their clients and suppliers. Furthermore, the restraint prohibits Mr Chellan from divulging the confidential information of the applicants to any third party.

The applicants' onus

- [29] In accordance with the legal position set out above, the applicants must establish that Mr Chellan concluded the restraint and that he has breached it by taking up employment with a competitor.

¹⁸ *New Justfun Group (supra)* at para 20; *Vox Telecommunications (supra)* at para 32.

¹⁹ *New Justfun Group (supra)* at para 12; *ARB Electrical (supra)* at para 29; *Vox Telecommunications (supra)* at para 33.

- [30] The conclusion of the restraint and the terms thereof are common cause. Although Mr Chellan is ambivalent about the nature of the payment of R100 000 that he received from One Capital, it is clear that it was a restraint of trade payment. There is also some attempt by Mr Chellan to suggest that he was placed under duress to sign the restraint, in that he “felt that he had no choice” but to sign it, and that he did so when he did not know his true “market value”. Allied to this, he also states that the signing of a restraint had never been discussed with him, and that he was presented with a complex set of documents and told to sign them by the close of business the next day. All of these allegations are dealt with comprehensively in the applicants’ replying affidavit, and I am satisfied that there is no merit in them. In the circumstances, there can be no question that Mr Chellan signed the restraint under duress.
- [31] Turning to the issue of whether Mr Chellan has breached the restraint, it is common cause that Mr Chellan joined UBS on 3 July 2017. What stands to be considered is whether there is a competitive interface between UBS and the applicants. Although Mr Chellan attempts to dispute the applicants’ assertion that UBS is a direct competitor of One Capital and One Capital Advisory in the provision of JSE sponsor services and corporate advisory services, there is no merit in his denial. On an overall conspectus thereof, the evidence clearly demonstrates that UBS offer the same or similar services and accordingly competes with the applicants. By taking up employment with UBS, Mr Chellan is thus clearly in breach of his restraint. The applicants have discharged their onus in this regard.
- [32] Mention should be made under this head that Mr Chellan also attempts to suggest that his functions and duties at UBS are “materially” different from those that he carried out while employed by One Capital – the contention being that he will only be employed in the UBS corporate advisory division, while he only worked as a JSE sponsor executive while at One Capital. The contention is aimed at creating the impression that Mr Chellan will not be able to assist UBS to compete against One Capital. Again, there is no merit in this. Firstly, in circumstances where there is a clear competitive interface between

One Capital and UBS, the nature of the duties and functions which Mr Chellan will perform at UBS is irrelevant, because it is impossible for One Capital to police his actions after he has taken up employment with UBS. Secondly, and in any event, it is abundantly clear that Mr Chellan will perform duties as a JSE sponsor executive while employed at UBS. Of particular significance here is that Mr Chellan's contract of employment with UBS – which he failed to produce despite a rule 35(12)²⁰ notice having been issued by the applicants – reflects that he was appointed by UBS as a “sponsor executive”.

Mr Chellan's onus

[33] The applicants having acquitted themselves of their onus, Mr Chellan now bears the onus to show why the restraint should not be enforced, i.e. that the restraint is unreasonable and thus unenforceable. In order to do so, Mr Chellan must establish that he had no access to confidential information, and that he never acquired any significant personal knowledge of or influence over the clients of the applicants during his employment with One Capital.²¹ In relation to the latter, it is enough for the enforcement of the restraint if it is established that trade connections through customer contact exist and that they can be exploited by Mr Chellan when employed by a competitor, such as UBS.²²

[34] To begin with, it is useful to consider Mr Chellan's duties and responsibilities while employed by One Capital. As mentioned above, the applicants conduct business in the provision of JSE sponsor services, and corporate advisory services. A JSE sponsor provides JSE listed companies (all of whom must have a JSE sponsor) with a wide range of services relating to their JSE listing. In order to carry out these services, JSE sponsors interact with their clients on a daily basis so as to keep abreast of their activities and ensure compliance with JSE listing requirements. JSE sponsors, such as the applicants, employ

²⁰ Of the High Court Rules.

²¹ *Rawlins & Another v Caravantruck (Pty) Ltd* 1993 (1) SA 537 (A) at 542F-543A.

²² *Den Braven SA (Pty) Ltd v Pillay & Another* 2008 (6) SA 229 (D) at paras 17-18.

JSE approved sponsor executives, such as Mr Chellan, to provide sponsor services to their clients.

[35] Mr Chellan commenced employment with One Capital in 2014 as a graduate trainee. In August 2015, he was appointed as a permanent employee, and in March 2016, having passed the relevant JSE exams, he was appointed as a JSE approved sponsor executive. (He held this position until he left the employ of One Capital on 30 June 2017.) Although Mr Chellan seeks to downplay his role at One Capital and paint himself as a very junior employee with a marginal involvement in the business, the evidence reflects that as a permanent employee, and certainly in the 18 months prior to his departure from One Capital, he was fully immersed in both parts of One Capital's business. He had full access to the confidential information of the applicants and full exposure to their clients, such that he could establish relationships with them (see further below). In short, Mr Chellan was by no means an insignificant employee.

[36] Focusing now on Mr Chellan's access to the applicants' confidential information, the applicants assert that, during his employment with One Capital, he had, *inter alia*, full access to the contents of One Capital's centralised computer server and the files contained thereon (save for administrative, accounting and employee information files). This included access to client mandates, proposals for confidential transactions, proprietary information (such as information relating to unique transaction structures, financial models, etc), and contact information and details of key clients and business associates. While Mr Chellan attempts to suggest that he did not have access to the server, the replying and confidential affidavits – which went unanswered by Mr Chellan – establish this as being untrue. I am satisfied that the information in question is confidential and strategic, and could cause harm to the business of the applicants if it fell into the hands of a competitor.

[37] Turning to Mr Chellan's access to customers and trade connections of the applicants, it is the applicants' case that, during his employment with One

Capital, Mr Chellan was exposed to and developed close relationships with all of the applicants' JSE sponsor clients. Mr Chellan, on the other hand, downplays his involvement and interaction with the applicants' clients, describing it as "very limited" and effectively clerical in nature, and denying, for example, that he attended board meetings of clients and travelled with them or that he was involved in client roadshows. Again, Mr Chellan's version is demonstrated as being untrue in the unanswered replying and confidential affidavits. Indeed, the affidavits from Sovereign Foods and Northam Platinum (two of the applicants' clients) and other documents attached to the replying affidavit and the confidential affidavit, again, call into question not only the veracity of Mr Chellan's case, but his credibility. On a conspectus of the evidence, I am satisfied that Mr Chellan, in fact, held close and meaningful relationships with the applicants' clients.

[38] Finally, consideration should be given to the risk of harm to the applicants (this already having been established in respect of Mr Chellan's access to confidential information). On the papers, I am not persuaded by Mr Chellan's contention that he has no capacity to influence the placement of business. To the contrary, given the relationships that he has developed, it is not inconceivable that he will use them to secure a move from the applicants to UBS. The fact that this has not occurred to date is clearly not determinative.

[39] In the light of the above, and having regard to the remaining considerations in *Basson (supra)*, I am of the view that Mr Chellan has fallen well short of satisfying the onus of establishing that the enforcement of the restraint would be unreasonable.

Order

[40] In making the order that I shall make, I do not intend repeating the decisions that I have already made above regarding the urgency of the matter, the dismissal of the application to strike out, and the granting of leave to introduce the confidential affidavit. It should also be mentioned that I intend calculating the duration of the restraints of 6 and 12 months, respectively, to run from

31 July 2017, as this was the date upon which Mr Chellan's notice of termination ought to have expired – he having left the employ of One Capital prematurely on 30 June 2017.

[41] In all the circumstances, an order is made in the following terms:

- 1) The first respondent is interdicted and restrained until 31 January 2018, and in each province of South African from directly or indirectly and in any capacity whatsoever, being associated or concerned with or interested or engaged in:
 - 1.1) the business of the second to fifth respondents or any one of them; and
 - 1.2) any business which competes with, or which provides services which are similar to, or compete with the business of the applicants, in the provision of JSE sponsor and corporate finance services, as provided for in clause 2.1.3 read with clauses 4.1 and 4.1.1 of the restraint of trade and confidentiality agreement that was concluded between the first applicant and the first respondent on 14 August 2015 ("the restraint").
- 2) The first respondent is interdicted and restrained until 31 July 2018, and in each province of the Republic of South Africa from directly or indirectly and in any capacity whatsoever:
 - 2.1) communicating with or furnishing any information or advice, or soliciting, interfering with or enticing, or endeavouring to entice away from the applicants any business client as defined in paragraph 2.1.4 of the restraint ("business client"), or business supplier as defined in paragraph 2.1.8 of the restraint ("business supplier"), for the direct or indirect purpose of inducing, persuading or encouraging the business client or

business supplier to cease being a customer or supplier of the first and second applicants and/or to become a customer or supplier of any restricted business;

- 2.2) soliciting orders from any business client for the business products as defined in paragraph 2.1.6 of the restraint or any restricted products as defined in paragraph 2.1.27 of the restraint (“products”) and/or the business services as defined in paragraph 2.1.7 of the restraint and/or any restricted services as defined in paragraph 2.1.28 (“services”);
 - 2.3) canvassing business in respect of the products or services from any business client;
 - 2.4) selling or otherwise supplying any products to any business client;
 - 2.5) rendering any services to any business client; and
 - 2.6) soliciting appointment as a distributor, licensee, agent or representative of any business supplier in respect of any products and/or services.
- 3) The first respondent is interdicted and restrained from divulging or using the confidential information of the first and second applicants to any third party including the second to fifth respondents.
- 4) The first respondent shall pay the first and second applicants’ costs of the application, including the costs of two counsel.
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Myburgh, AJ

Acting Judge of the Labour Court of South Africa

Appearances

For the applicants: Adv C Whitcutt SC with Adv P Bosman instructed by Cliffe Dekker Hofmeyr Inc

For the first respondent: Adv L Malan instructed by Bowman Gilfillan Inc