IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 1836/18

In the matter between:

THE REFINERY POST PRODUCTION

FACILITIES (PTY) LTD **Applicant**

and

CHARMAINE LAUTRE **Respondent**

Heard: **12 June 2018**

Delivered: **16 August 2018**

JUDGMENT

MAHOSI.J

<u>Introduction</u>

[1] This is an application brought by the applicant for an order on the following terms:

‘1. That this application be heard as an urgent application and that the requirements pertaining to service and time periods be dispensed with.

2. That the respondent, for a period of 18 months of the date from this order be interdicted and restraint from directly and indirectly:

2.1 use for her own benefit or for the benefit of any person, and disclose, any trade secrets or confidential information to which the respondent became *privy* during the course of her association with the applicant, other than those persons directly connected with the applicant who are required to know such information solely for the conduct of their performance, duties and functions, on behalf of the applicant.

2.2 disclose or attempt to disclose or attempt to circumvent any of the commercial relationships of interest that the applicant may have with its existing and/or prospective clients, associations, transactions, projects, investments or deals and project flow.

2.3 disclose trade secrets and confidential information or methods or working supplied by or procured on behalf of the applicant to any third party.

3. That the restrictions detailed in prayers 2.1 to 2.2 be limited to the Gauteng Geographical Region.

4. Breach her common law duty to act in good faith towards the applicant, to protect the interest of the applicant and not to place herself in a position where her interest conflicts with said duty.

5. Breach her common law fiduciary duties to the applicant, by disclosing, divulging, exploiting and/or used in whole or in part by the respondent, or any third party, whether natural or juristic, information relating to any customer, potential customer, worker, employee or persons with whom she has dealt whilst in the employ of the applicant.

6. Breach her common law fiduciary duties to the applicant by disclosing, divulging, exploiting, and/or used in whole or in part, by the respondent or any third party whether natural or juristic, the respective names, identities and/or contact details of any applicant's customers, potential customers, employees and/or workers, with whom she dealt whilst in the employ of the applicant.

7. Breach her common law fiduciary duties to the applicant by disclosing, divulging, exploiting, and/or used in whole or in part, by the respondent or any third party whether natural or juristic any details of contracts between the applicant and its respective customers and/or potential customers.

8. That the cost of this application be paid by the respondent on the scale as between Attorney and Client.'

[2] Prior to outlining the applicant's claims in detail and to considering the issues to which they give rise, it is necessary to summarise the facts which form relevant background to the dispute between the parties.

<u>Relevant background facts</u>

[3] The nature and scope of the applicant's work consist of, *inter alia*, production services, post-production, studio rental, equipment sales and equipment rentals.

[4] The applicant employed the respondent from 5 March 2014 as a post producer. Her function was to manage and oversee the rendering of cinematographic material (mainly advertising material) in a format known as a digital cinema package (DCP) which makes it possible to display the material in cinemas.

[5] During the period between February and April 2018, the applicant underwent a process of retrenchment and dismissals due to operational requirements. During this period, the respondent was offered the position of General Manager which offer she rejected for reasons which are not important for the purpose of this judgment. On 30 March 2018, the respondent tendered her resignation.

[6] On 1 April 2018, the respondent commenced employment with Beyond Sound (Pty) Ltd (Beyond Sound) which employment relationship still subsists and is doing the duties of the production of DCPs.

[7] The parties did not conclude a Restraint of Trade Agreement. The applicant brought this application in reliance on certain common law duties which it alleges are owed by the respondent as well as on certain provisions of her employment contract. Some of the provisions of the contract of employment the applicant seeks to rely on, which are relevant to this application, read as follows:

> '10. CONFIDENTIAL INFORMATION
>
> 10.1 The employee is obliged to enter into the Confidential Undertaking Agreement with the employer. The employee is obliged, while employed and thereafter, not to disclose in any form, any trade or professional secrets or any confidential information about the employer's business or its methods or its clients, nor may he/she use such secrets or information for his/her own advantage or for the advantage of any third person. This includes any information relating to specialized knowledge, special processes and ideas, methods and research.
>
> 10.2 For the purposes of this clause:
>
> "10.2.1 "confidential information" shall mean any information relating to the business of Refinery, and its successors in title, assigns or affiliates, including but not limited to information in respect of Refinery's staff engagement policies, contractual relationships with third parties, Refinery's contact and customer base, broadcasting distribution mechanisms and strategies, discounting policies, marketing strategies, the internal operation and control of Refinery, trade secrets, Refinery's financial performance and structure, Refinery's future and long-term plans and any other information of a proprietary nature regarding Refinery's business; and,

10.2.2 The employee acknowledges that, as a result of his engagement with the Refinery and in respect of his responsibilities towards Refinery, the employee will have access to the confidential information, and have opportunities to develop personal relationships with clients, customers, and other third parties and will acquire knowledge related to the confidential information and materials and other goodwill established by Refinery. The employee further acknowledges that the only reasonable and effective manner for Refinery to protect its rights in respect of confidential information, client relationships and trade secrets is the imposition of the provisions of Clause 10.3 below.

10.2.3 The employee shall not during his/her engagement by Refinery or any time after its termination for any reason whatsoever, disclose to any person or persons whatsoever or otherwise make use of any confidential information and materials which the employee may have come into his/her possession in the course of your engagement by the Refinery relating to the business of Refinery or its associated companies.

10.2.4 The employee undertakes that he/she will not during the term of this agreement, have an interest in or be engaged, whether directly or indirectly, in any capacity, including but not limited to, proprietor, shareholder, partner, member of a close corporation, consultant, advisor, director, manager, employee, contractor and agent, in any entity which is, whether directly or indirectly, in competition with Refinery.

10.2.5 The employee further undertakes that he/she will not during the term of the agreement perform any of the services for which he has been engaged by the Refinery for any third party. Without derogating from the generality of the above, the employee shall not during the term of this agreement:

10.2.5.1 deal, whether directly or indirectly, with any of Refinery's suppliers, distributors or other clients and/or customers of Refinery other than for the benefit of Refinery; or,

10.2.6 Carry on the business of Refinery for his/her own benefit or the benefit of any third party.

10.2.7 The employee acknowledges and agrees that the provisions of the above clauses are to be interpreted in their widest sense and that the limitations herein contained are reasonable as to subject matter and area."

[8] In its founding affidavit, the applicant submitted that the respondent used her knowledge of the applicant's clients and business relationship obtained during her employment with the applicant to solicit business in direct competition with the applicant.

[9] On 15 April 2018, the applicant's attorneys served the respondent with a letter of demand wherein, *inter alia*, various written undertakings were sought from the respondent within 24 hours in relation to her abiding by the terms of the contract of employment. According to the applicant, the respondent solicited some if its client's business associates to follow her to her new employer and she further disclosed confidential information about its business or its methods of business.

[10] On 20 April 2018, the respondent's attorneys, responded disputing that the conduct of the respondent had been in breach of any duties owed by her to the applicant and pointed out that the applicant was not restrained by any agreement preventing her from competing with the applicant. Nonetheless, the undertaking was given that the respondent would not disclose any trade or professional secrets or any confidential information about the applicant's business or its methods or its clients and that she would not use such secrets or information for her own advantage or the advantage of anyone else.

[11] On 2 May 2018, the applicant's attorney wrote to the respondent's attorney

expressing its dissatisfaction with the applicant's failure to provide an undertaking as demanded, further demanding such an undertaking by 7 May 2018 and threatened to bring an urgent application to this Court on 10 May 2018. The respondent's attorney wrote to the applicant's attorney and made it clear that the respondent was not prepared to give the undertakings as demanded by the applicant and that any application brought by it would be opposed. The applicant then launched this application on 29 May 2018.

[12] It is the applicant's submission that the respondent was introduced to all networks and clients that existed within the applicant, and that she was provided with strategies on how to grow the business, together with the contact details of clients and contact persons. Further that she was entrusted with the applicant's intellectual property and substantive client list, relating to every aspect of the how, what, when and where of the business.

[13] The respondent opposed the application and submitted that the common law duties contended by the applicant are not owed and that, properly construed, the provisions of her employment agreement do not prevent her from competing with the applicant. The respondent further contends that the alleged conduct of which the applicant complains, at the very best for the applicant, is of past wrongs which are not capable of redress by way of interdictory relief.

[14] Furthermore, the respondent submitted that this application should be dismissed solely on the basis of lack of urgency. I am of the view that the matter ought to be dealt with as one of urgency.

<u>The applicable legal principles and analysis</u>

[15] The applicant seeks final relief against the respondent on the basis that she allegedly breached her common law fiduciary duties and confidentiality undertaking afforded to the applicant during her period of employment and further on the basis of her alleged breach of common law rights resulting in unlawful competition with it.

[16] The law on restraints of trade agreements is quite clear. In order for a restraint covenant to be enforced by way of a final interdict, an employer has to show that there is a valid restraint of trade agreement, that the same has been breached or there is a reasonable apprehension that same will be breached, and that the employer will suffer irreparable harm. Thereafter, the *onus* shifts to the employee to show that the covenant is either invalid or unenforceable because it is unreasonable and/or because it is against constitutional values and public policy.

[17] The respondent, in summary, states her defence thus: Firstly, that an enforcement of the covenant would be an infringement of her Constitutional rights to freedom of trade, occupation and profession. Secondly, the applicant has no interests which are deserving of protection and finally that the applicant failed to meet the requirements for a final interdict.

Enforceability of the confidentiality clause

[18] As aforesaid, the confidentiality clause that the applicant relies on is an expressed clause in the employment contract. It is an established principle that employment contracts are binding on parties and are therefore enforceable unless it can be shown that the parties were not on an equal footing when entering into the contract, or that the employment contract was invalid *ab initio*, or that it is contrary to public policy or it is an illegal contract.

[19] When evaluating the bargaining power between the parties, the Court will take into account the position and status of the employee to the contract. It is clear from the facts of this matter that the respondent did not hold a low-level position that could be seen to have been exploited by the applicant in entering this type of agreement. In fact, the respondent never raised any concerns with regards to the employment contract. Therefore the only reasonable conclusion that could be drawn is that the employment contract is binding on the parties to it.

[20] It is trite that the restraint owes its origin, exists and is defined in terms of the contractual arrangement between the parties.[1] Therefore a restraint clause, however, couched, which is incorporated into an employment contract is *prima facie* enforceable against an employee. Further, it cannot be argued that the resignation of the employee brought the agreement as contained in the employment contract to an end. A confidentiality clause endures beyond the contract.[2]

[21] In this matter, the employment contract had an expressed clause providing for, *inter alia*, that the respondent should not disclose any information even after the termination of the employment contract. Since the respondent agreed to the confidentiality clause, she is therefore bound by same.

[22] The Respondent argues quite articulately that the doctrine of *"pacta sunt savanda (is) not a sacred cow that should trump all other considerations."* I fully agree that the values as enshrined by our Constitution need to be taken into account when deciding when this doctrine can be interfered with. However, in this agreement, I see no reason that is contrary to public policy and our constitutional values that would make me interfere with it. Therefore a restraint of trade encompassed in an employment contract is enforceable if shown to be reasonable.[3]

[23] The applicant seeks final interdictory relief against the respondent. For this Court to grant a final interdict, the applicant must establish three requisites all of which must be present. These are a clear right, injury actually committed or reasonably apprehended and absence of an alternative legal remedy.[4]

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[1] *Singh v Adam* (2006) ILJ 385 (LC).
[2] *Penta Publications (Pty) Ltd v Schoombie and Others* [2000] 2 BLLR 199 (LC)
[3] *Labournet Holdings (Pty) Ltd v McDermott and Another* (2003) 24 ILJ 185 (LC).
[4] Prest *The Law of Practice of Interdicts* at 52.

[24] The applicant herein primarily seeks to protect its customer connections, which it contends; if the respondent were free to solicit and take advantage of, it would be to the detriment of the applicant.

Clear right - Protectable interest

[25] The applicant's case is underpinned by allegations concerning the respondent's conduct during the month of March 2018 while she was still employed by the applicant as well as when she was already in the employ of Beyond Sound. The following is common cause:

25.1 On 1 March 2018, the applicant sent an e-mail to Mr. Fiaz Mohamed wherein she indicated that *"please see attached some info to date. I will continue to do homework, contact more clients on my list and let them know that I'll be changing premises, but not service levels! I am quite confident that a lot of them will come with me…".*

25.2 During March 2018, the respondent addressed further correspondence attempting to set up meetings with several stakeholders. On 29 March 2018, the respondent addressed another e-mail correspondence to Kim Cox, a senior account executive at Ster Kinekor (one of the applicant's clients) in which she arranged a meeting.

25.3 On 11 April 2018, after she had left the employ of the applicant, the respondent addressed an e-mail to Paul Meyer of Luma, an entity described by the applicant as its supplier and production partner, indicating *inter alia* that she left the applicant to head up cinema post-production at Beyond Sound. She further invited him to inspect Beyond Sound's facility with a view to exploring the possibility of a future working relationship.

[26] The applicant avers that it has a protectable interest both in the form of confidential information that if disclosed to the respondent's new employer would

be detrimental to their business and secondly that the respondent has customer connections which if exploited by her new employer would cause irreparable harm to the applicant. I believe it should be mentioned from the outset that both of these do not have to be present in order for the applicant to show that it has a protectable interest. If one is shown to exist, and not the other, the applicant would still have a protectable interest.

Confidential Information

[27] The applicant contends that the respondent should be restrained because she is in possession of confidential information which if used will be to the detriment of the applicant's business. The respondent became privy to customer information due to the position she held at the applicant.

[28] The respondent's defence is that the information that is in her possession is not information that could be deemed confidential and would then not be worthy of protection. The court has found that information is considered to be a trade secret or confidential information if *"exploited by a competitor this would be to the serious detriment of the business, goodwill and best interests of the applicant."*[5]

[29] When embarking on an enquiry into whether information is worthy of protection or in other words a protectable interest, the information relied upon by the applicant has to meet the following requirements:

29.1 It relates to and is capable of application in the trade industry;

29.2 Most of it is secret and confidential;

29.3 Objectively viewed it is of economic or business value to the plaintiff.

[30] The enquiry into whether information can be found to be confidential in this context is an objective enquiry. One has to bear in mind that the classification of the information is not what cloaks it with confidentiality. Something that might

[5] *Shoprite Checkers (Pty) Ltd v Jordaan and Another* [2013] ZALGJHB 333.

seem common sense could be declared to be confidential and worthy of protection whereas information that might be useful might still not be classified as information worthy of protection.

[31] On the facts of this matter, it can be presumed that the information as to current clients and future clients and what type of work they are used to receiving from the applicant would be capable of application in the trade industry. Objectively viewed this information is of economic value to the new employer as it would help it on its way in navigating the market because he knows where he needs to reach. The question then arises is whether it is mostly secret and confidential.

[32] The respondent argues that the information is freely available in the public domain and with a little effort on the new employer's side same would have been established. I find the following quote from the matter of *Coolair Ventilator Co. (SA) Ltd v Liebenberg and Another*[6], per Marais J, apposite:

> 'Judging from the speed with which he tried to establish contact with the manufacturer on behalf of the second respondent, he realized how valuable the information could be for the second respondent. As such it would fall in all probability in the category of confidential information. If in addition it is a matter of good faith how and what information is used by an ex-employee, then clearly the first respondent acted *mala fide* in writing the letter of February 10th, *prima facie* with the intention of harming the business interests of the applicant.'

[33] The respondent argues that the e-mail of 1 March 2018 to Faiz Mahomed,[7] at worst constitutes a breach of her fiduciary duties whilst in the employ of the applicant and cannot be looked upon to constitute a breach thereafter. I find it opportunistic of the respondent to place a dividing line to differentiate her actions into the categories of "before" and "after". It is apparent from the wording of the e-mail that the information was collated in breach of her fiduciary duties and also

[6] 1967 (1) SA (686) (W) at page 691 at G.
[7] At page 30 of the Pleadings bundle.

as a way to syphon confidential information to be used in her new employ to the benefit of her new employer and to the detriment of the business of the applicant.

[34] In the e-mail, she succinctly states that she "*will continue to do homework, contact more clients on my list…"* At no point in her argument does the respondent state that she no longer has any information or that any information collated after the abovementioned e-mail has not yet been given to the new employer or that she undertakes not to divulge the information. The court in *Reddy v Siemens Telecommunications (Pty) Ltd*[8] found that an employer has a protectable interest because the employee's *"loyalty will be to his new employers and the opportunity to disclose confidential information at his disposal, whether deliberately or not, will exist."*

Customer connections

[35] The second leg of the applicant's argument is that the respondent has established customer connections with its customers and has the potential to influence them away to her new employer. They argue further that her conduct post-resignation is a direct breach of the restraint covenant and therefore the applicant has established a clear right for interdictory relief. The respondent's defence is that she already had an established relationship with Ster Kinekor, Nu-Metro and others prior to her employment with the applicant.[9]

[36] The Court in determining whether there are protectable customer connections does not merely look at the fact that the employee had contact with the customer but the connection *"must be such that it will probably enable the former employee to induce the customer to follow him or her to a new business."*[10] In other words, the employee's interactions with its employer's clients are not enough to create a customer connection that is worthy of protection. However, a restraint covenant would be enforceable if the employee "*had access to the company's customers*

[8] (2007) 28 ILJ 317 (SCA).
[9] Respondent's Answering Affidavit at para 48 onwards.
[10] *Den Braven S.A. (Pty) Limited v Pillay and Another* 2008 (6) SA 229 (D).

and could use his/her relations with the company's customers to the advantage of a competitor and to the detriment of the company."[11]

[37] It is common cause that the respondent has the intention to "deal" with the applicant's clients. The respondent has explicitly stated in her pleadings that she is not bound from competing with her former employer and has in fact already approached their existing customers with the view to lure same for her current employer. In fact, in her own words, in the abovementioned e-mail to her new employer, she states that she is *"confident that a lot of them will come with (her)."* Further in another e-mail to one of the applicant's clients, she states that she is *"lucky enough to have Ster-Kinekor and Popcorn (for Nu Metro) follow (her there), as well as all the agencies/post companies (she has) spoken to so far."*

[38] This is a clear indication of her intent of luring the applicant's customers as she argues a restraint covenant does not bind her. Further, she is implicit in her use of the wording "so far" which indicates that she is not stopping at only the clients she had already lured away from the applicant but in fact is continuing to try to use her customer connections to lure others as well. From the above, it is clear that the employee is in a position to act to the detriment of the applicant. Therefore the applicant has established that it has a clear right that it seeks to protect.

<u>Irreparable harm and lack of alternative remedy</u>

[39] Once the applicant has established that it has a clear right, the Court needs to determine whether the applicant will suffer irreparable harm and whether there is an appropriate alternative remedy but for the interdictory relief sought. Steenkamp J, stated the following in his judgment of *Continuous Oxygen Suppliers*[12]:

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[11] *Continuous Oxygen Suppliers (Pty) Ltd t/a Vital Aire v Meintjies and Another* (2012) 33 ILJ 629 (LC) (*Continuous Oxygen Suppliers*).

[12] At paras 49 and 50.

> ‘[49] I have come to the conclusion that the restraint of trade agreement is enforceable and that the applicant has interests worthy of protecting. It is axiomatic that the applicant will suffer irreparable harm if it is not enforced. The potential harm caused by an employee who is in a position to divulge trade secrets to and exploit customer connections in favour of her new employer cannot be easily remedied by a damages claim in due course.
>
> [50] … The obvious alternative remedy of a damages claim is cold comfort to an applicant that seeks to enforce a legitimate restraint of trade covenant. By the time a damages claim is likely to be heard, the horse would have bolted and the harm would have been done. That harm is very difficult to repair.’

[40] Therefore the applicant has shown that it has a protectable interest that if not enforced will cause irreparable harm to its business. The applicant should not be denied urgent relief because it has an alternative remedy in due course, because such a remedy will be cold comfort.

[41] However, even if it is argued that the above is incorrect, the alternative remedy sought by the applicant in terms of the common law fiduciary duty due to it by the respondent, is an interdict based on unlawful competition.

<u>Unlawful Competition</u>

[42] I do not intend to delve deeply into the law surrounding unlawful competition. The doctrine of unlawful competition is based on the principle of *contra bonos mores* which is conduct that would be deemed to be contrary to the values of the trading industry and the community at large. The court in *Square One Power Solutions v Norval and Others (Square One Power Solutions)*[13] succinctly enunciated the principle for unlawful competition thus:

[13] [2004] ZAFSHC 11.

> '…Filching confidential information of a trader to promote the interests of another to his prejudice is one of the instances that are recognized by our law as unlawful competition. And a trader needs no restraint of trade contract to obtain protection against such unlawful conduct.'j

[43] The respondent herein raises a few grounds in defence of whether her conduct would amount to unlawful competition. The first being that the information taken was not confidential. The Court in *Square One Power Solutions* (supra) went further to state that the absence of confidentiality does not militate against the applicant's clear right. The applicant has a right to the goodwill of its business and to the protection of such right against wrongful infringement.[14]

[44] The second defence raised by the respondent is that the information was already in the public domain and had Beyond Sound searched for the information, it would have obtained the same information that was sent by the respondent. I find this argument opportunistic. The information, in the form of the rate card and equipment required, that was sent by the respondent to Beyond Sound was not in the public domain, for example, on a public billboard, or an advertisement on the television or on the company website for anyone searching to find. In other words, it was not *"readily available to the public"*[15] but was made available to the employer's competitor through the efforts of the respondent. The enquiry would have been different if in fact the competitor compiled the information and the respondent merely commented on it. However, the fact that it could have been done does not exonerate the respondent from her actions.

[45] The information with regards to the client's list provided to the competitor cannot be argued as public knowledge. I accept that competitors would have a general knowledge of some of the applicant's clients because being in the same industry would result in some of that knowledge. However a detailed list of most of the

[14] *Square One Power Solutions* at para 12.
[15] *Square One Power Solutions* at para 13.

clientele of the applicant's, with a promise of more cannot be successfully argued to have been in the public domain.

[46] The Court in *Square One Power Solutions* quoted with approval *Easyfind International v Instaplan Holdings*[16] that *"our law also recognizes certain categories of information or documents as being of a confidential nature. A customer's list is one such type of document."*[17] The fact that such a list was created by the respondent is neither here nor there. The information contained on the list was confidential as it was not readily available in the public domain and *prima facie* our law recognises the confidentiality of client lists.

[47] Another argument furthered by the respondent is that some of the clients of the applicant were her former clients with whom she established relationships in her previous employ. It is common knowledge that an employer employs an employee because of her skill and expertise as well as for the customer connections she might have had previously with the ex-employer. Does that then make those clients the employee's private property to be taken away when resigning? This cannot be so.

[48] The court in *Rawlins and Another v Caravantruck (Pty) Ltd*[18] stated that:

> 'Taking account of the realities of commerce, it is a fair inference in these circumstances that it was Rawlins' employment with the Respondent that gave him the opportunity to consolidate or even strengthen the prior rapport which he had with his customers.'

[49] Therefore, even if an employee had established a relationship with the clients prior to the commencement of his/her employment, the fact that his/her current employment allowed for the relationship to be strengthened and for the employee to gain an influence over such customers would then make those customer connections an asset of the employer. Further, it has not been argued that the

[16] 1983 (3) SA 917 (W).
[17] Square One Power Solutions at para 12.
[18] 1993 (1) SA 537 (A).

relationships with all the clients on the list were from before her employ. In fact, she continuously speaks of Ster-Kinekor and Nu-Metro, however these clients were not exhaustive of the list.

[50] Finally, the respondent argues that the breach upon which the applicant relies was conduct prior to her resignation and can therefore not be used to establish a breach of a restraint covenant or prove unlawful competition. Aside from her conduct after her resignation and her clear intention to continue with her conduct, and the fact that she has indeed lured away clients from the applicant, I find the following quote from Musi J in *Square One Power Solutions* apposite:

> 'It is not the fact that the first respondent has been canvassing the clients after his resignation that taints his conduct. What does taint his conduct is the fact that he abused his relationship of trust to initiate this process of luring away the clients. He now wants to be free to complete that illegitimate process from outside. He wants to use his resignation as a magic wand to legitimize his otherwise unlawful activity. I am positive that that cannot be countenanced by the trading community and indeed by the community at large.'[19]

[51] As found above, an award of damages would be cold comfort. If the respondent's version is to be accepted, she has already lured away two important clients from the applicant and intends on luring others as well. This is clearly a detriment to the applicant's business as a business cannot function without a clientele. Further, case law shows that an interdict should be the preferred remedy for unlawful competition.

Conclusion

[52] I, therefore, conclude that the applicant has a protectable interest and will suffer irreparable harm if the respondent is not restrained. The applicant's seek to restrain the respondent for a period of 18 months however seems to be excessive. Given the relationship between the respondent and the clients a

[19] At para 18.

protracted restraint will not diminish that relationship, however, the purpose of the restraint would be to afford the applicant reasonable time to consolidate its efforts and to re-establish its connections with its clientele. I find that a restraint for a period of 12 months would suffice.

Costs

[53] I have had regard to the issue of costs. In terms of section 162 of the Labour Relations Act[20], the Court has a wide discretion in awarding costs. The Constitutional Court has recently reiterated in *Zungu v Premier of the Province of Kwa-Zulu Natal and Others*[21] that costs orders should be made in accordance with the requirements of law and fairness. In this matter, I am of the view that the requirements of law and fairness dictate that there should be no order as to costs.

[54] I accordingly make an order as follows:

Order:

1. This application is heard as an urgent application and the requirements pertaining to service and time periods are hereby dispensed with;

2. The Respondent, for a period of 12 months from date of this order is hereby interdicted and restrained from directly and indirectly:

   2.1 using for her own benefit or for the benefit of any person, and disclose, any trade secrets or confidential information to which the respondent became *privy* during the course of her association with the applicant, other than those persons directly connected with the applicant who are required to know such information solely for the

[20] 66 of 1995, as amended.
[21] (2018) 39 ILJ 523 (CC)

conduct of their performance, duties and functions, on behalf of the applicant.

2.2 disclose or attempt to disclose or attempt to circumvent any of the commercial relationships of interest that the applicant may have with its existing and/or prospective clients, associations, transactions, projects, investments or deals and project flow.

2.3 disclose trade secrets and confidential information or methods or working supplied by or procured on behalf of the applicant to any third party.

3. The restrictions detailed in prayers 2.1 to 2.2 are limited to the Gauteng Geographical Region.

4. There is no order as to costs.

D Mahosi

Judge of the Labour Court of South Africa

<u>Appearances:</u>

For the applicant:	Advocate ASL Van Wyk
Instructed by	Macintosh Cross & Farquharson Inc
For the third respondent	Advocate G. Porteous
Instructed by	Gabri Van Rensburg Attorneys