



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-023243

In the matter between:

THE FX GROUP (PTY) LTD

Applicant

and

MAARTEN STEYN

First Respondent

PG BISON (PTY) LTD

Second Respondent

Heard: 16 April 2025

Delivered: 5 May 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by email and/or by uploading it on *CaseLines*. The date of hand-down is deemed to be 5 May 2025.

JUDGMENT

MAKHURA, JIntroduction

[1] The applicant in these proceedings (FX Group or the applicant), is a private company which operates in the wood manufacturing industry. The second respondent, PG Bison (Pty) Ltd (PG Bison or second respondent), is also a private company operating in the wood manufacturing industry. It is not in dispute between the parties that PG Bison holds at least 80% of the wood manufacturing industry market share in South Africa, followed by Sonae Arauco (Pty) Ltd (Sonae) with 15% and the applicant with 5%. In addition to manufacturing, the three companies sell wood-based panels.

[2] The first respondent is Maarten Steyn (Steyn). Steyn was employed by the applicant on a fixed-term contract from 2 November 2020 as a Production Coordinator at the Lothair operations in Mpumalanga before he was appointed on a permanent basis as a Plant Manager with effect from 1 May 2021.

[3] Steyn held the position of Plant Manager until his resignation with immediate effect on 1 February 2025. He joined PG Bison as its employee in the capacity of Manufacturing Excellence Specialist, which was later amended or clarified as Operations Manager, with effect from 1 February 2025.

[4] In reaction to Steyn's departure, the applicant launched these current urgent proceedings to enforce a restraint of trade agreement. The application was brought in two parts. Both parts of the application were opposed by Steyn, with full support from his new employer, PG Bison.

Factual background*The restraint of trade agreement*

[5] Steyn's original contract of employment as a Plant Manager contained a restraint clause which prohibited him from being employed by a competitor within a 100 km radius of the applicant's operations for a period of 24 months. However, this changed on 13 November 2023 when he signed a new contract of employment, albeit for the same position. This new contract was concluded after Steyn requested a salary increase. In response to Steyn's request, the parties concluded two separate agreements – a new contract of employment and a Non-Disclosure, Restraint and Confidentiality Agreement (NDA).

[6] These two agreements were concluded and signed on 13 November 2023. They both contained restraint of trade clauses. The upshot of this new agreement was that Steyn would sign a new restraint agreement which extended the geographical area from a 100km radius to the whole of South Africa in return for compensation of just over R10 400.00 per month. Therefore, as the applicant pleaded, Steyn was paid his monthly salary, which he earned prior to November 2023, plus R10 400.00 as compensation for agreeing to a restraint clause that *inter alia* applies to the whole of South Africa.

[7] The restraint agreement contained in the contract of employment reads as follows:

'15.7 The employee will not, following termination (for any reason whatsoever) of his/her employment and for a period of 60 months, and whether for his/her own account or for the account of any other person seek to procure or solicit business, or respond to the request to do business with, the customers and suppliers of the employer.

15.8 In this regard, the employee undertakes that ... should a customer or a supplier approach him/her (as opposed to her soliciting business from the customer or supplier) the employee shall decline the customers or suppliers request to do business with it.

...

15.11 That the employee should not whether for his/her own benefit or for the benefit of any other person whether directly or indirectly offer employment to and/or procure employment (or consultancy services) for any employee (past, present or future) of the employer, unless at least 60 months has lapsed from the date of termination of that employee's employment with the employer and the new "proposed" employment.

15.12 The employee further undertakes that after the termination of his/her employment by the company (irrespective as to the reason for such termination) that he/she will not, for a period of 24 months approaching, whether directly or indirectly take employment with a competitor of the company who operates within the Republic of South Africa.'

[8] The restraint clause contained in the NDA is set out in clauses 2 and 4. Clause 2.14 states that:

"the Restraint period" shall mean a defined period of 2 (two) years from the date of signature of this agreement within which time and after which time [Steyn] has been privy to / part of discussions, has information, documentation either in hard copy or in electronic format, whether received from [FX Group] or any of their nominated agents, held regarding the business of, of any information relating to [FX Group]. [Steyn] confirms that the restraint, in the geographical proximity of the entire Republic of South Africa (as per the territory) and for the time periods listed, is important, necessary and reasonable;

"The Restraint amount" shall mean that the employee will receive an additional amount per month in lieu of enforcing the restraint period.

"the Territory" shall mean the Republic of South Africa...' (Own emphasis)

[9] Clause 4 provides that:

'4.1 [Steyn] irrevocably undertakes in favour of [FX Group], for the restraint period, that he/she shall not, anywhere in the territory, whether directly or indirectly...

4.1.1 be engaged, interested or involved whether financially or otherwise and whether directly or indirectly, in or with any company, business, firm, person or undertaking carrying on a business or undertaking which is the same or similar to the above business of [FX Group]...

4.1.2 solicit or procure work with any other party directly or indirectly related to the “business” [of FX Group]...

4.4 ... for the restraint period, [Steyn] shall not, neither for his/her own account nor as representative or agent for any competing undertaking, persuade, induce, encourage or procure any entity, which is a client, agent, employee or competitor [FX Group].’

[10] Clauses 3.3 and 8.4 of the NDA novate all prior agreements between the parties. The applicant’s primary argument is that the restraint clause contained in the contract of employment, whereas Steyn contends that it is the NDA clause that is applicable. I will deal with this later in the judgment.

The application and opposition

[11] The applicant seeks a final interdict to restrain Steyn from being employed by PG Bison in contravention of the restraint agreement contained in the contract of employment signed on 13 November 2023, alternatively, the restraint agreement contained in the NDA. It contends that it is entitled to the enforcement of the restraint agreement because Steyn had knowledge of its business, had formed relationships with its customers or suppliers and had knowledge of its operational capacity and human resources assets.

[12] In response, Steyn observes that the applicant seeks to interdict him from being employed by PG Bison “*in any capacity throughout South Africa*” for a period of 24 months, alternatively until November 2025. Steyn does not dispute (1) that he signed a restraint agreement contained in the NDA, (2) that the applicant and PG Bison are competitors (albeit only in respect of the particleboard products but not the MDF

products) and (3) that during his employment, he gained access to information relating to the applicant's business and suppliers and the relationships formed therewith, and the applicant's operational capacity and HR assets. In simple terms, Steyn concedes that the applicant has proprietary interests. However, he contends that whilst these proprietary interests exist and the applicant may *prima facie* be entitled to protection, it would be unreasonable to enforce the restraint agreement against him for various reasons, which include primarily that:

12.1 The applicant and his new employer (PG Bison) compete only in respect of the particleboard products and not the Medium Density Fibreboard (MDF) products. He is employed by PG Bison in the MDF production based in Boksburg. The applicant does not manufacture the MDF products.

12.2 To the extent that he accessed the applicant's confidential information and/or dealt with the applicant's customers, that access or information or trade connection would not be prejudicial to the applicant, alternatively, the risk of prejudice would be negligible to warrant and enforcement of the restraint agreement.

12.3 Considering his employment with PG Bison in MDF, knowledge of the applicant's "*HR business model*", which refers to the relationship with employees, relates to its particleboard business and not MDF and is therefore irrelevant.

12.4 The applicant has previously failed to enforce a restraint agreement against a team leader, Samuel Letsosa (Letsosa). Letsosa, who, according to Steyn, had access to the same similar information that the applicant seeks to restrain him for, was not restrained.

Competition: Particleboard v MDF

[13] It is common cause that the applicant, PG Bison and Sonae are the three players in the wood manufacturing industry. Steyn detailed his employment history in the industry, which started in 1991 when he was employed by Sappi Nova Board, now Sonae, as a Woodyard Foreman. He contends that from 1993, his work focused on the MDF production, and in 1995, he was promoted to MDF Press Superintendent,

managing the process of MDF production. In 1996, he was promoted to the position of Relief Manager and also acted as a Dry Preparation Manager for MDF.

[14] In 2001, he was transferred to Sonae Panbult, where he occupied the position of Commercial Manager and was responsible for the particleboard production line. Steyn also held the position of Production Manager until he was appointed as a Plant Manager at the Sonae Panbult operations in 2004. In 2007, he was transferred to Sonae White River, where he was responsible for Sonae's MDF line. Steyn describes his responsibilities as Plant Manager responsible for the MDF line as follows:

'In 2007, I was transferred to White River as Sonae's Plant Manager for its MDF line. To be clear, I oversaw the entire MDF production - commencing at the woodyard and finishing at the sanding line. I worked in this position for about two months and then I took on the extension project for the installation of a separate particleboard line next to the old MDF line at Sonae. I managed the entire site including MDF production from 2007 to 2016 (about 9 years). It is the skills and experience that I garnered, particularly during these 9 years, that have contributed significantly to me being a suitable candidate for PG Bison's MDF plant in Boksburg.'

[15] Steyn was retrenched by Sonae in December 2016. Between 2018 and 2020, he held temporary positions at two other companies until he was employed by the applicant.

[16] As the applicant's Plant Manager, so the applicant pleaded in its founding affidavit, Steyn was responsible for:

'the project management of the completion of the construction of the Applicant's particleboard manufacturing plant in Lothair, Mpumalanga;
supervising the commissioning of all aspects of the equipment on the plant; and
establishing a team to run and sustain the plant.'

[17] Steyn admits the above allegations. In addition, he contends that:

'I was always in its particleboard plant (because the FX Group does not have a MDF plant). As Plant Manager, I was responsible for ensuring the consistent production of particleboard and managed the employees in the plant. I was also responsible for procuring timber for the Lothair site and entered into the supply agreements. This will not be part of my duties at PG Bison.'

[18] Steyn contends that he is employed by PG Bison as Operations Manager and would be confined to monitoring quality control issues at the PG Bison's MDF plant at Boksburg. He contends that this role does not interact with the particleboard side of PG Bison, including interactions with the suppliers and therefore his knowledge of suppliers in the particleboard would be of no use to PG Bison. He is not expected to procure any supplies as Operations Manager, and that in any event, PG Bison has concluded supply agreements with both particleboard and MDF suppliers for the next five years.

[19] The difference between the process of manufacturing the particleboard and MDF products is common cause between the parties. This process was described by the applicant as follows:

'The manufacturing process for the most dominant type of wood based panel, particleboard, starts with sourcing timber from forest owners and saw-millers and tree-fellers, then chopping the timber up into fine particles, treating and pressing the particles together to form a stiff board, and finally pressing decorative resin-coated paper onto the outside to form an attractive waterproof exterior.

The production of medium density fibreboard ("MDF") is slightly more involved with wood chips being boiled under pressure, defibrated, and treated with resin; resulting in a more sophisticated product that more closely resembles solid wood. Particleboard represents approximately 75% of the wood manufacturing market, with MDF making up the other 25%.

PG Bison, Sonae and FX Group all manufacture particleboard, but only PG Bison and Sonae also manufacture MDF. FX Group therefore has to purchase core MDF boards from PG Bison and Sonae (or obtain same through importation)

whereafter FX Group will imprint glass or matte finishes of its own design onto the core MDF boards. PG Bison, Sonae and FX Group all sell their wood based panels to third party distributors and retailers, but FX Group also sells its wood based panels directly to carpenters and other “end-users” via FX Group’s vertically integrated chain of 33 retail outlets across six provinces trading under the name HDS Cut and Edge (“HDS”).’ (Own emphasis)

[20] For the above reasons, Steyn contends that whilst PG Bison competes with the applicant, it does not compete in the MDF production and that in his position as PG Bison Operations Manager, his focus would solely be on the production of and quality assurance of MDF products, which the applicant does not produce. Steyn contends, therefore, that enforcing the restraint agreement would be unreasonable because the applicant has nothing to protect insofar as the MDF products are concerned.

Access to confidential information and trade connections

[21] Steyn contended that he was not privy to the applicant’s pricing structures, that he was not responsible for selling the panel board to customers and that he was not involved with sales strategies, budget processes, price strategies or customers. Further, he contended that he would not be engaged in the procurement of timber at PG Bison.

[22] In reply, the applicant contended that Steyn was indeed involved with price strategies and budget processes. Whilst acknowledging that Steyn was not “*regularly updated on the exact prices paid by end-users*”, the applicant alleged that he attended every Wednesday meetings with the applicant’s Chief Executive Officer, Mohammed Bera (Bera) and the General Manager, Roddy Payne (Payne) where he was informed about the applicant’s entire financial model, and they discussed the applicant’s financial and operational status. Further, that Steyn would be informed of where the applicant was losing out on sales, where sales were picking up, the applicant’s tactics regarding thin margins on certain products for strategic purposes, the input costs on particleboard

sales and costing modelling for the particleboard plant. The applicant then concluded that Steyn was a “*trusted confidant*” with whom Bera and Payne shared everything.

[23] Steyn denied that he was a “*trusted confidant*”. He further denied that he was privy to or that he was provided with information relating to the applicant’s financial and operational status or model, sales figures, tactics regarding margins or otherwise, input costs which include more than just timber, for example, wax, resin, ammonium sulphate and/or costing modelling.

[24] The applicant contended that Steyn knew how it produced and sold its various products, who its suppliers are, how much it paid them for different products, how much capacity those suppliers have for the next two years, its operational capacity to process different types of wood in its production of its panels, its operational capacity to make various types of wood panels, the input costs relating to each of wood panels, how much it charged third party distributors and retailers and the profit margin it makes from selling various types of wood panels, how much its retail outlet, HDS Cut and Edge (HDS) charges carpenters and other end-users for its types of wood panels and the profit margins associated therewith. The applicant submitted that this information would be useful to PG Bison and it could be used to target the applicant’s suppliers and offer them larger orders at reduced prices and seek to establish new relationships, and also the information could be used to undercut the applicant in the market by pushing certain competing products at reduced prices and/or larger quantities.

[25] Steyn disputed that he knew every single aspect of how the applicant produced and sold its various particleboard wood panels. He stated that the process of producing particleboard has remained the same for 30 years, with the only development coming from the technological side. He contended that this information is in any event irrelevant because in his new role at PG Bison, he is in charge of the operations for the MDF plant in Boksburg, the applicant does not manufacture MDF, that the applicant uses technology which PG Bison stopped using some 17 years ago, namely a Daylight Press and that PG Bison uses a Conti Roll Press which *inter alia* provides a higher

production rate and often produces more consistent board quality. Further, Steyn submitted that this is not a trade secret and even if it were, it was known to David Rossouw (Rossouw), who was previously employed by the applicant until September 2023 as a Production Manager before joining PG Bison's particleboard plant at Ugie in October 2023 as a Production Manager. The contention that Rossouw had knowledge of the production of the particleboard is not in dispute.

[26] Steyn conceded that he had access to confidential information of the applicant's suppliers. However, he referred to the evidence of Pieter de Wet, PG Bison's Executive: Supply Chain and North Eastern Cape Forest (De Wet), who stated that he started securing contracts with PG Bison's suppliers two years prior to the start of operations at MDF plant; that contracts are negotiated for a period of at least five years; about 75% of PG Bison's suppliers have a well-established relationship with PG Bison; PG Bison procures from co-operatives which consist of more than 100 farmers and that there is a glut in the market. The applicant disputes that PG Bison has five-year contracts with its suppliers and contends that "*at most may be one or two*". Equally, the alleged well-established relationship with about 75% of PG Bison's suppliers is disputed and the applicant submits that this is in any event of no assistance to Steyn given that there are more than 20 000 small to medium timber growers in South Africa who could move to and/or change their relationship with PG Bison.

[27] Steyn contends that by virtue of the wood manufacturing industry in South Africa being so small, it is impossible for any person working in this industry not to know the suppliers of timber in the market and that he knew the suppliers from when he was employed by Sonae. As a result, the suppliers would generally supply any of the three wood manufacturing companies.

[28] He concedes that he was responsible for timber procurement and would negotiate timber supply prices and volumes with the supplier at the applicant, based on the pricing guidelines. However, he contends that he would not be responsible for

procurement at PG Bison and would equally not be concluding agreements with the suppliers.

Poaching of the applicant's employees and inconsistency

[29] The applicant contends that Steyn was responsible for the recruitment, training and negotiating remuneration and benefits offered on behalf of the applicant to its employees. It complained that over the past two years, PG Bison poached eight of its employees, although none of these employees *"were senior enough to warrant enforcement of any restraint undertakings which they may have provided"*. The applicant alleged that Steyn had knowledge of how many employees it had at Lothair, how much these employees were paid and their ability and skills to do their job in the wood manufacturing business and for these reasons.

[30] Steyn contends that, based on the applicant's complaints pertaining to millwrights, forklift and process control employees, the application has little to do with the applicant seeking to protect its proprietary interests but has everything to do with the applicant's gripe with PG Bison for *"poaching its staff"*. He contends further that since he is employed by PG Bison to work in MDF and not particleboard, knowledge of the applicant's *"HR business model"* relates to its particleboard business and not MDF and is irrelevant.

[31] It is common cause that one of the applicant's employees who joined PG Bison is Samuel Letsosa (Letsosa). Letsosa joined PG Bison in March 2024 from the applicant, where he was employed as a team leader. The applicant alleged that Letsosa was poached and that he was not sufficiently senior for it to enforce a restraint agreement.

[32] Steyn, backed by PG Bison, contended that Letsosa was recruited in terms of PG Bison's recruitment process. Further, that despite being a team leader *"who could just as easily be said to have access to the FX Group's 'Human Resources Assets', no*

attempt was made to enforce his restraint of trade". The applicant's reply was that Letsosa was:

'more junior than Mr Steyn, and deciding to not enforce Mr Letsosa's restraint was a commercial fact dependant decision.'

[33] Steyn further contended that in this industry, employees move between Sonae, PG Bison and the applicant all the time. He referred to Rossouw, who was previously at Sonae before joining the applicant and then later PG Bison, and Jacques de Beer, PG Bison's Operations Manager based in Ugie, who was previously at Sonae before being employed by PG Bison. This allegation is not disputed by the applicant.

The legal principles

[34] The legal principles for the enforcement of restraint agreements are well established.¹ Where the restraint agreement has been invoked and the breach established, a respondent who seeks to escape the enforcement of the restraint agreement bears the onus to demonstrate on a balance of probabilities that the restraint agreement is unenforceable because it is unreasonable.

[35] In *Basson v Chilwan and Others*², the Supreme Court of Appeal (SCA) set out the test to determine the reasonableness of the restraint agreement. This test has been applied in many judgments, including the SCA judgment in *Reddy v Siemens Telecommunications (Pty) Ltd*³ (*Reddy*). There are four questions that should be asked when considering the reasonableness of a restraint:

'(a) Does the one party have an interest that deserves protection after termination of the agreement? (b) If so, is that interest threatened by the other

¹ See: *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* 1984 (4) SA 874 (A); [1984] 2 All SA 583 (A); *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA); (2007) 28 ILJ 317 (SCA) at paras 10 and 16; *Automotive Tooling Systems (Pty) Ltd v Wilkens and others* 2007 (2) SA 271 (SCA); (2007) 28 ILJ 145 (SCA) at para 8; *New Justfun Group (Pty) Ltd v Turner and Others (New Justfun)* [2014] ZALCJHB 177; (2018) 39 ILJ 2721 (LC) at paras 9 and 10; *Labournet (Pty) Ltd v Jankielsohn & another* (2017) 38 ILJ 1302 (LAC); [2017] 5 BLLR 466 (LAC) at paras 41 – 43.

² [1984] ZASCA 51; 1993 (3) SA 742 (A) at 541C and D - I.

³ *Reddy* (supra).

party? (c) In that case, does such interest weigh qualitatively and quantitatively against the interest of the other party not to be economically inactive and unproductive? (d) Is there an aspect of public policy having nothing to do with the relationship between the parties that requires that the restraint be maintained or rejected?’⁴

[36] The SCA in *Reddy* continued that:

‘Where the interest of the party sought to be restrained weighs more than the interest to be protected the restraint is unreasonable and consequently unenforceable. The enquiry which is undertaken at the time of enforcement covers a wide field and includes the nature, extent and duration of the restraint and factors peculiar to the parties and their respective bargaining powers and interests.’⁵

[37] The confidential information and/or trade connections which the employee had access to which he could transmit to his new employer must be useful to the applicant in the sense that if transmitted, would cause prejudice to the applicant. The information or connections should not be in the public knowledge or should be known to a restricted number of persons and should be of economic value to the applicant.⁶ This is a factual enquiry. Considering the right in section 22 of the Constitution⁷, which gives every citizen the right to choose their trade, occupation or profession freely, the restraint agreement would be unenforceable because it would be unreasonable to prevent an ex-employee after termination of his or her employment from exercising his right to partake in trade or commerce or occupation without a corresponding interest of the other party deserving of protection.⁸

⁴ *Reddy* at para 16.

⁵ *Reddy* (supra).

⁶ *Townsend Productions (Pty) Ltd v Leech and others* 2001 (4) SA 33 (C) at 53J - 54B; *Mpact Operations (Pty) Ltd t/a Mpact Plastics Wadeville v Whitehead and Another* [2015] ZALCJHB 442 at para 27; *New Justfun* at para 13.

⁷ The Constitution of the Republic of South Africa, 1996.

⁸ *Reddy* at para 16.

[38] These being urgent motion proceedings for a final interdict, the Court will approach and resolve any disputes of fact in terms of the *Plascon-Evans* principle⁹:

‘It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or *bona fide* dispute of fact... Moreover, there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers...’

Analysis

The applicable restraint clause

[39] The applicant invoked the restraint agreement contained in the contract of employment, alternatively in the NDA. Whilst the NDA novates all prior agreements, the applicant made it clear that it is uncertain which of the contract of employment and the NDA was signed first.

[40] Steyn contends that he understood the applicable restraint clause to be that contained in the NDA. He makes a well-grounded argument that without the contract of employment being in place between the employee and the employer, there would be no need for a non-disclosure agreement, particularly one relating to the employer's trade secrets and connections. Therefore, an NDA between an employer and employee can only be signed after the establishment and existence of the employment relationship.

⁹ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E – I and 634A – C.

[41] For the above reasons, I accept that the restraint clause applicable is that contained in the NDA, and that the period of the restraint is, as the parties agreed, 24 months from the date of signature of the NDA. This 24-month period, which commenced on 13 November 2023, expires on 12 November 2025. The judgment of *Natal Joint Municipal Pension Fund v Endumeni Municipality*¹⁰ applies, and there is no case made out to read what is clearly an unambiguous clause to mean otherwise than what it expressly stated. The Court will not establish a new contract or the term of a contract for the parties. The alleged common intention between the parties that the 24 months start running after Steyn leaves the applicant's employment is unsubstantiated,¹¹ and the Court rejects any invitation to redraft the unambiguous term of the contract for the parties, particularly because there are no other facts pleaded by the applicant to suggest otherwise.

(Un)enforceability and (un)reasonableness of the restraint agreement

[42] These are application proceedings instituted on an urgent basis to seek a final interdict. The requirements for final interdict therefore apply, which require that an applicant for a final relief must show a clear right, a threat to or a breach of such right and the absence of an adequate alternative remedy.¹² I do not understand the legal principle relating to the issue of onus in restraint applications to suggest that the applicant is exempted from satisfying these requirements. As *Reddy* also told us:

'A final order can be granted in motion proceedings if the facts stated by the respondent together with the admitted facts in the applicant's affidavits justify the order, and this applies irrespective of where the onus lies.'¹³ (Own emphasis)

[43] In this matter, Steyn has conceded the contract and that the applicant has proprietary interests. Further, he conceded that PG Bison is the applicant's competitor.

¹⁰ [2012] ZASCA 13; 2012 (4) SA 593 (SCA) at para 25 - 26.

¹¹ *Quatro Security Services (Pty) Ltd and Others v De Marionette Centre Investments (Pty) Ltd and Others* [2024] ZAGPPHC 1272 at paras 24 – 25.

¹² *Setlogelo v Setlogelo* 1914 AD 221 at p227.

¹³ *Reddy* at para 4.

The enquiry therefore moves to reasonableness. To determine reasonableness or otherwise of the restraint, this Court is required to make a value judgment with two principal policy considerations in mind – first, that the public interest requires that parties should comply with their contractual obligations and second, that all persons should in the interests of society be productive and be permitted to engage in trade and commerce or their professions.

[44] Steyn contends that whilst he is employed by a competitor, his work as an Operations Manager has nothing to do with the particleboard production as his sole focus is MDF product where his focus is on quality assurance, and that the applicant is not involved in MDF production. He also stated that in his capacity as Operations Manager, he would not be interacting or in contact with the particleboard division. The fact that the ex-employee is employed by a competitor is not, on its own sufficient to enforce the restraint agreement. Tlhohlamajie J in *World Net Express (A division of World Net Logistics (Pty) Ltd) v Aucamp and Another*¹⁴ found that an ex-employee can join a competitor and not have anything to do with the business of his ex-employer.¹⁵

[45] It is common cause in this matter that while both the applicant and PG Bison manufacture particleboard, only PG Bison manufactures MDF and therefore there is no competition insofar as the manufacture of MDF is concerned. Steyn is deployed at PG Bison's plant in Boksburg which only produces MDF. PG Bison's production of particleboard is done at the Mkhondo and Ugie plants. Therefore, the restraint agreement would be unenforceable because it is unreasonable to interdict Steyn solely because his new employer is a competitor. Steyn's version that he is employed in a different capacity and division focusing on a different product is a reasonable

¹⁴ [2017] ZALCJHB 324 at para 25.

¹⁵ See also *Payflex (Pty) Ltd v Deacon and Others* [2022] ZALCJHB 63 at para 33 where this Court held that 'Whilst the fact that the ex-employees have joined a competitor may on the face of it mean that there is a breach of restraint, this does not automatically mean that the restraint agreement is enforceable. What the ex-employees are employed to do at their new employer is an important factor to be considered whether the restraint agreement should be enforced or not. This is so because an ex-employee can join a competitor but still have nothing to do with the business of his old employer in his new role with the competitor'.

justification that though he joined a competitor, the applicant's interest would not be prejudiced.

[46] Steyn has also refuted any suggestion that his knowledge of the applicant's production of the particleboard deserves any protection. He demonstrated that this knowledge, to the extent that it constitutes a trade secret and is protectable, which he denied, cannot be used to deny him his right to partake in trade or occupation or his work. From the papers, it is not in dispute that the production process of particleboard is substantially the same, with the exception that PG Bison used a more advanced and productive technology. Further, it is not in dispute that the production of particleboard and MDF are different and that these are different products. Finally, Rossouw, the applicant's former production manager, was let loose and unrestrained to join PG Bison. If the cat is not out of the bag yet, Rossouw is free to release it anytime because he is in possession of the same or similar information the applicant seeks to protect by restraining Steyn.

[47] That Steyn advised the applicant not to enforce the restraint agreement against Rossouw is irrelevant. The issue is that ultimately the applicant elected not to enforce the restraint against Rossouw, who was an integral part of the production of the particleboard and who accessed the same or similar information before joining PG Bison. The applicant cannot now seek to enforce the restraint agreement against Steyn to protect the same information the un-restraint Rossouw accessed during his period at the applicant. Accordingly, there is no secret information in the applicant's production of its particleboard that is worthy of protection by enforcing a restraint agreement against Steyn in this regard.

[48] Insofar as Steyn's knowledge of the applicant's financial operations or model is concerned, Steyn disputed having access to or accessed this information and disputed discussing the finances during his Wednesday meetings with Bera and Payne. The applicant, faced with this version from Steyn, elected not to place the record before this Court in the form of minutes or agendas of the Wednesday meetings. Further, it did

not plead why it was or would have been necessary to discuss this item with Steyn, in his capacity as a Plant Manager, during these meetings in his capacity as a Plant Manager and why it was necessary for a Plant Manager to know the applicant's financial operations. On the application of the *Plascon-Evans* principle, Steyn's version that he did not have access to and knowledge of the applicant's financial model is more probable and accepted.

[49] Steyn has conceded that he had knowledge of the applicant's suppliers. The only issue raised by him is that the suppliers are small and emerging and largely within a 50km radius of the applicant's Lothair operations. This is not disputed, or seriously disputed. There is nothing before this Court that, particularly insofar as the MDF products are concerned, that Steyn may entice the suppliers away from the applicant to PG Bison.

[50] Steyn submitted that he is not responsible for procurement and he has undertaken not to disclose the names of the applicant's suppliers to PG Bison and PG Bison has underwritten this undertaking. In any event, the undertaking is of no moment because Mr de Wet has explained that (1) there is a glut or excess in the market at the moment and suppliers are approaching manufacturers and asking to sell their timber to the likes of PG Bison and the applicant and (2) PG Bison has already secured all their medium to long term contracts with suppliers. Further, the suppliers being referred are for the manufacturing of particleboard products and not MDF products.

[51] With regard to the "*HR assets*", Steyn, whilst acknowledging that he worked with a big team of employees, about 250 as alleged by the applicant, contends that he was not employed in human resource capacity and disputes that he had knowledge of and/or remembers their salaries and that it is unrealistic to expect that he knows all of their skill levels, integrity, personal initiative and internal motivations.

[52] Steyn contends that there is no precedent for a court to hold that an applicant's employees constitute a protectable interest which may be protected by a

restraint and in light of the constitutional provisions protecting a person's right freely to choose his or her trade or profession, it is difficult to see how this could be the case. In my view, there is no need to compile a list of information that may constitute proprietary interest. The Court faced with such a case is ultimately required to determine, on the facts of that particular case, whether the information or connection constitutes proprietary interest worthy of protection. In this case, I am satisfied, based on the applicant's pleaded case, that the information and connections or part thereof constitute proprietary interest.

[53] It is unclear how many of these employees have restraint agreement. However, the applicant complained about forklift and millwright employees and other employees who were allegedly poached by PG Bison. No facts are placed before this Court why these employees, to the extent that they know or have access to the applicant's trade secrets and connections, were not restrained. The mere knowledge of these employees' capabilities, abilities and their salaries which the applicant submits Steyn may use to solicit them to join PG Bison is insufficient. In every workplace, colleagues know each other and their respective strengths and capabilities, and possibly their salary levels. These junior employees should not be a collateral to a senior employee's restraint agreement in the sense that their opportunities to join a potential employer with better opportunities and benefits would be blocked. If these employees have access to trade secrets and connections, they should be subjected to a restraint of their own. Such a restriction would be against public policy as it would prohibit employees from leaving their employers to join another employer.¹⁶

[54] In addition, the information that the applicant sought to interdict Steyn from sharing was known or accessed by the applicant's former team leader, Letsoso. As a team leader, even though considered as a junior employee by the applicant, Letsoso would have been more proximate to the employees, and Steyn would have relied on his knowledge of the employees insofar as their abilities and other factors are concerned. The applicant did not dispute that Letsoso had access to the same information or

¹⁶ *Atlas Organic Fertilizers v Pikkewyn Ghwano (Pty) Ltd and Others* 1981 (2) SA 173 (T) at 142F.

connection to that which it now seeks to use to interdict Steyn. Letsoso was unrestrained despite having a restraint agreement. He is free and was free from March 2024 to provide PG Bison with information about these employees. Therefore, this information may still be accessed by PG Bison without Steyn, and it would be unreasonable to enforce the restraint agreement in this regard.

[55] There is, in any event, no evidence whatsoever that Steyn attempted to recruit or solicit any of the employees to join PG Bison. A non-solicitation clause cannot be enforced in a vacuum. There must be some evidence, or at least a reasonable apprehension supported by facts, that the employee would solicit the employees. I am satisfied that Steyn has established that this part of the restraint agreement is unenforceable because it is unreasonable.

[56] Steyn complained that the applicant had not enforced the restraint agreement against Letsoso. In essence, his complaint is that the applicant is selective or inconsistent in its enforcement of the restraint agreement. The applicant did not dispute that it did not enforce the restraint agreement against Letsoso. Its case is that Letsoso was a junior employee. In *Altron Nexus (Pty) Ltd v Fowler and Another*¹⁷, this Court dealt with the respondent's defence of inconsistent enforcement of restraint agreements against its employees. The Court found that this is a relevant factor in the enquiry into reasonableness or otherwise of enforcing the restraint agreement. In my view, this fits squarely into the fourth legal of the test, being whether there is any facet of public policy that dictates the rejection or upholding of the restraint.

[57] To upset this defence, the applicant was required to do more than just an allegation that Letsoso was a junior employee. The applicant was required to show that Letsoso did not access or have access to the information or had connections with these employees, as it now contends against Steyn. It has failed to do so.

¹⁷ [2024] ZALCJHB 507 at paras 39 - 41.

[58] Steyn's employment history cannot be discarded as irrelevant. He worked in the wood manufacturing industry in various capacities for over 25 years before joining the applicant. His employment with the applicant, in the capacity of Plant Manager, lasted just below 4 years, 45 months to be precise. He was remunerated monthly for the restraint clause to operate. To deny him to earn a living for skills and expertise he acquired or obtained and/or practiced for over 25 years before joining the applicant. In fact, the restraint agreement applicable in this case was only concluded approximately 15 months before Steyn's departure. It would therefore be unduly restrictive and unreasonable to deny Steyn his right to be productive, earn a living and be permitted to engage in trade and commerce or profession which he was involved in for more than 25 years in favour of a 15 year restraint clause that was applicable on a monthly basis as long as he received a monthly R10 400.00.

[59] For the all the reasons above, the application cannot succeed and stands to be dismissed.

Costs

[60] The application was brought in two parts. In part A, the applicant sought to interdict Steyn, pending determination of part B, from being employed by PG Bison in any capacity in South Africa, soliciting the applicant's customers or clients or suppliers and soliciting the applicant's employees to join another employer. The applicant also sought payment of R140 400.00 per month from Steyn until determination of part B.

[61] The notice of motion, dated 18 February 2025, informed Steyn that Part A was enrolled for hearing on 25 February 2025. Part B sought substantially the same relief, with the addition of the term of restraint to be until 1 February 2030 alternatively 1 February 2027, further alternatively 14 November 2025.

[62] Steyn was directed, in the event he intended to oppose part A of the application, to file his answering affidavit by 17h00 on 21 February 2025.

[63] Rule 39 of the rules of this Court¹⁸ regulates the process of bringing restraint application in this Court. It provides that:

- ‘(1) Unless circumstances warrant a more urgent hearing, an application in restraint of trade will be enrolled only where the procedure outlined below has been strictly adhered to by the applicant.
- (2) An applicant must make provision in its notice of motion for the exchange of four sets of affidavits.
- (3) An applicant when prescribing the time periods to be adhered to for the filing of affidavits in its notice of motion must afford:
 - (a) the respondent at least 7 days to file an answering affidavit;
 - (b) the applicant at least 5 days to file a replying affidavit; and
 - (c) the respondent at least 5 days to file a fourth affidavit.
- (4) At the time of launching the application, the applicant must apply to the registrar to allocate a provisional date for the hearing of the application, such date having been calculated so as to take into account the mandatory time periods prescribed above and the filing of heads of argument as contemplated below. The applicant must also insert a date, not less than 7 calendar days after launching the application, on which the application will be heard if it is unopposed.
- (5) The application will be provisionally enrolled for hearing during the week following the week in which heads of argument have been exchanged.’

[64] The applicant did not follow this rule in that it brought the application in two parts, which is not provided for. The relief sought in part A is substantially the same as that sought in part B as I have indicated above. The applicant’s contention that it was necessary to bring the application in this manner when it knew fully well that Steyn had already taken up employment with PG Bison on 1 February 2025 is unsustainable.

¹⁸ Rules regulating the conduct of the proceedings of the Labour Court, GG 50608, GN 4775 of 3 May 2024.

[65] I agree with Steyn that the applicant sought to circumvent Rule 39 by seeking a hearing within seven days of issuing the application. The interdict sought against Steyn in part A and an order that he pays R140 400.00 on the face of strict procedures set out in rule 39 is, in my view, an abuse of the court processes punishable with a costs order. Steyn argued that the applicant's conduct should be rebuked by ordering costs on a punitive scale. I agree. Where the rules of this Court are not adhered to, or are deliberately breached, the applicant must justify and/or properly make out a case for such breach. This was not done in this case. Accordingly, the applicant must be ordered to pay the costs of the part A application, including the wasted costs of 25 February 2025, on a punitive scale C.

[66] Steyn did not seek costs of part B, based on the principle enunciated in *Ball v Bambalela Bolts (Pty) Ltd and another*¹⁹. Accordingly, there shall be no costs order awarded in respect of part B application.

[67] In the premises, the following order is made:

Order

1. The application is dismissed.
2. The applicant is ordered to pay the costs of Part A application, including the wasted costs of 25 February 2025, on scale C, such costs to include the costs of two counsel where so employed.

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr. M Meyerowitz

Instructed by: Wright Rose-Innes Inc.

For the First Respondent: Ms. C de Witt with Ms. M Mpakanyane

¹⁹ (2013) 34 ILJ 2821 (LAC); [2013] 9 BLLR 843 (LAC) at paras 29 – 30.

Instructed by:

Norton Rose Fullbright South Africa Inc.

LABOUR COURT