



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

NOT REPORTABLE

Case no: 2025-072515

In the matter between:

TWK AGRI (PTY) LTD

Applicant

and

DE LANGE, COERT FREDERICK

First Respondent

INTERSURE FINANCIAL SERVICES (PTY) LTD

Second Respondent

Heard: 13 June 2025

Delivered: 30 June 2025. Served on the parties by email, and case lines.

Summary: Urgent application re restraint of trade. Requirements established for final order interdicting disclosure of confidential information and conducting business contrary to restraint agreement.

JUDGMENT

DANIELS J

Introduction

[1] The applicant seeks a final interdictory relief, on an urgent basis, to enforce a restraint of trade covenant, and confidentiality undertaking, against the first respondent.

Preliminary issues

[2] The applicant served and filed its application on 21 May 2025, enrolling the dispute for hearing on 13 June 2025. The first respondent was required to file its answering affidavit on 30 May 2025, and did so.

[3] Thereafter, on 6 June 2025, the applicant filed an amended notice of motion with a supplementary founding affidavit. The object of doing so was to bring a restraint agreement to the court's attention and seek relief based on that agreement. The deponent to the supplementary founding affidavit explained that the applicant had been unaware of the existence of the restraint at the time that the application was launched. It was only after the answering affidavit was received that the applicant's memory was jolted, and it began a search for the restraint agreement. The restraint agreement was located in the applicant's archives.

[4] It seems to me that the filing of the supplementary founding affidavit was not deliberate, and has occasioned no prejudice to the first respondent. The respondent has, in fact, filed an answering affidavit in response to the supplementary founding affidavit. This court has a discretion to admit the supplementary affidavits and will generally be inclined to admit the affidavit except where the facts contained in the supplementary affidavit were omitted due to culpable remissness or male fides.¹ It is in the interests of justice and fairness that the court determine the dispute on the basis of all the pertinent and relevant facts. In the circumstances, I admit the supplementary founding affidavit and the amended notice of motion.

¹ *Transvaal Racing Club v Jockey Club of South Africa* 1958 (3) SA 599 (W) at 604

Urgency

[5] The applicant became aware of the alleged breach of the restraint by the first respondent on 6 May 2025. It set about investigating the issue, and consulting with its attorneys immediately. It finalised the court application by 15 May 2025 and approached the Registrar for a date for the hearing of the matter. It was only on 20 May 2025 that the Registrar only provided a date for the hearing of the matter. The application was served the following day. This was not unreasonable.

5.1 The applicant approached the court on an urgent basis, but allowed sufficient time for the filing of opposing papers and full opposition by the first respondent. It is trite that, although applications seeking orders in restraint of trade are said to have the “inherent quality of urgency” the applicant must nevertheless show that the application is urgent.² The applicant set out the grounds of urgency, in detail, in its founding papers, which I see no reason to repeat. I accept that the applicant proceeded with expedition while taking appropriate steps to try to avoid litigation.

[6] There can be no question that the applicant cannot achieve substantial redress in the normal course, by which time its rights would likely have been extinguished by the passage of time.

[7] Having considered the submissions, and the applicable principles,³ I am satisfied that the applicant has made out its case for urgency.

Factual matrix

[8] The applicant is a diversified group of entities providing services in the agricultural, forestry, grain, mining, and financial sectors. One of its divisions falls within the insurance industry where the first respondent was employed as a short

² *Vumatel (Pty) Ltd v Majra & others* (2018) 39 ILJ 2771 (LC) at paras [4] to [8]

³ *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* [2011] ZAGPJHC 196; *Jiba v Minister: Department of Justice & Constitutional Development* (2010) 31 ILJ 112 (LC); *AMCU & others v Northam Platinum Ltd & another* (2016) 37 ILJ 2840 (LC) paras [20] to [26]

term insurance broker, operating from the Groblersdal – Marble Hall area. The industry is highly competitive, and one in which the relationship of trust between the broker and the client is critical.

[9] As an employee of the applicant, the first respondent has no clients of his own. The clients are those of the applicant. In other business of a similar nature, the brokers are permitted to treat certain of the clients as their own in lieu of a retirement plan.

[10] It was common cause that brokers in the industry are encouraged to, and do in fact, establish intimate bonds with the clients. Brokers are required to familiarise themselves with the needs of clients. It is common for clients to follow the brokers when they leave their employer. The first respondent conceded that he had established bonds with the clients he previously serviced. In the applicant's words, the first respondent carries the clients in his pocket.

[11] Brokers of the applicant are permitted full access to the information of the applicant including client information, *modus operandi*, products and services, pricing, margins, and service principles. This information is not publicly available and is of economic value in the industry.

[12] At the time of his departure from the applicant, at the end of March 2025, the first respondent was a successful broker and held a substantial portfolio.

[13] Before joining the applicant, the first respondent conducted his own insurance broking business. During 2017, the first respondent decided to contract with the applicant as an independent contractor. The independent contractor arrangement contemplated a restraint of trade covenant and a confidentiality undertaking as well.

[14] However, a few months thereafter, the first respondent and the applicant agreed that the first respondent would become a full time employee. He was issued with a letter of employment, and subsequently signed a confidentiality agreement on 26 July 2017. Under the confidentiality agreement, the first respondent undertook not

to divulge the trade secrets of the applicant following termination of employment. In addition, the first respondent agreed that, for a period of one year after he ceased to be an employee, he would not solicit, interfere with, entice, or endeavour to entice away from the applicant any customer or supplier.

[15] On 31 March 2022, the first respondent gave the applicant one month notice of his resignation. Before the notice period expired, he withdrew it, on 27 April 2022. On 14 May 2022, the applicant and the first respondent agreed to new terms and conditions of employment. Throughout this period, the first respondent continued to work for the applicant.

[16] According to the applicant, the first respondent signed a restraint agreement on 12 July 2022.

16.1 In clauses 1.4.2 and 1.4.4, read with clause 1.6, the first respondent gave the applicant an undertaking to keep confidential and secret all information relating inter alia to the applicant's customers, suppliers, business methods for twenty four months after the termination of his employment with the applicant.

16.2 In clause 1.5.1, read with clause 1.6, the first respondent undertook that he would not be engaged, employed, or otherwise interested, in any business that sells or supplies any commodity or goods in competition with the applicant for a period of twenty four months after the termination of his employment with the applicant.

16.3 In clause 1.5.2, the first respondent undertook, for a period of thirty six months after the termination of his employment with the applicant, that he would not solicit the custom including the customers and suppliers of the applicant.

[17] On the face of it, the restraint appears to have been signed by the first respondent on 12 July 2022. Though the first respondent disputes the existence of the agreement, he does not dispute that his signature appears on it.

[18] The first respondent contends that, on 25 July 2024, Mr Connie Vermaak the General Manager: Insurance, attended at his office in Groblersdal and demanded that he sign a restraint of trade agreement. The first respondent refused to do so.

[19] On 18 March 2025, one of the managers of the applicant informed Mr Vermaak that he had seen an email from the first respondent in which he requested another brokerage, the second respondent, to secure a quote for a client. Mr Vermaak contacted first respondent for an explanation.

[20] A short while later, on 31 March 2025, the first respondent gave notice of his resignation to the applicant in order to take up employment with the second respondent, from 1 April 2025.

[21] The second respondent is a financial services provider, conducting business in direct competition to the applicant. It operates from Gauteng and has little or no customer base in Mpumalanga.

[22] Upon his resignation, the applicant required the first respondent to meet with the clients and conduct a handover of the clients to another broker, Mr Stian Grobler ("Stian"). The applicant alleges that the first respondent engineered the handover such that he engaged with the clients beforehand, and solicited their business. The first respondent denies this and contends that he arrived (at the premises of the clients) before Stian because Stian was late.

[23] On 6 May 2025, one of the clients serviced by the first respondent cancelled its policy and advised that it intended to follow the first respondent to his new employer. The applicant alleges that the first respondent solicited its custom and clients. The first respondent denies this and says that, since he left, several former

clients contacted him, apparently because of the poor service they received from the applicant.

[24] At the time that the urgent application was launched, less than two months after the first respondent resigned and moved to the second respondent, approximately six clients had cancelled with the applicant and moved to the second respondent.

Factual dispute

[25] There is a dispute as to whether the first respondent signed the restraint agreement on 12 July 2022. In applications for final relief, when faced with factual disputes, our courts have consistently applied the principles set out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*⁴ which holds that, in general, the undisputed averment from the respondent constitutes the substratum upon which the dispute must be resolved.

[26] The *Plascon-Evans* principle is further clarified by *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*⁵ where Heher JA held:

“[12] Recognising that the truth almost always lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion must, in the event of conflict, accept the version set up by his opponent unless the latter's allegations are, in the opinion of the court, not such as to raise a real, genuine or bona fide dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers: *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E - 635C. See also the analysis by Davis J in *Ripoll-Dausa v Middleton NO and Others* 2005 (3) SA 141 (C) at 151A - 153C* with which I respectfully agree. (I do not overlook that a reference to evidence in circumstances discussed in the authorities may be appropriate.)

⁴ 1984 (3) SA 623 (A) at 634E - 635C

⁵ 2008 (3) SA 371 (SCA)

[13] A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter."

(own emphasis)

[27] In my view, the denial of the existence of the restraint is a bald denial. I have considered that the first respondent did not deny that his signature appears on the agreement. If the applicant had intended to fabricate an agreement, the agreement would have appeared in the first iteration of the applicant's founding affidavit. In addition, given the competitive nature of the industry, it is common to conclude a

restraint of trade agreement. This explains why Mr Vermaak, during 2024, erroneously believing that the first respondent had not signed one, and demanded that he did so. In the circumstances, I find respondent's version that no restraint agreement was concluded during 2022, to be far-fetched and untenable. It therefore falls to be rejected. If the applicant is entitled to any relief, it is on the basis of the restraint signed in July 2022.

Legal principles and analysis

Protectable interests

[28] The first respondent denies that the applicant has protectable interests because the clients are not those of the applicant. He states that, as an insurance broker, he acts as an intermediary between an individual or a business and one or more insurance companies. The broker merely "on sells" the insurance products of the insurance companies. I do not accept this.

[29] It is well established that the proprietary interests that can be protected by a restraint agreement are essentially of two kinds:⁶

29.1 All confidential matter useful for the carrying on of the business and which, if disclosed to the competitor, may assist him to gain a relative advantage. Such confidential material is sometimes referred to as "trade secrets."

29.2 The relationships with customers, potential customers, suppliers, and others that go to make up what is compendiously referred to as the "trade connection" of the business. This is an important aspect of its incorporeal property known as goodwill.⁷

⁶ See *Tension Envelope Corp. (SA) Ltd v Zeller & another* 1970 WLD 333 at 347G-H

⁷ *Sibex Engineering Services (Pty) Ltd v Van Wyk & another* 1991 (2) SA 482 (T) at 502D

[30] Whether information is confidential and protectable is a factual question, to be determined by reference to whether the information is: capable of application in a trade or industry, useful and not public knowledge; known only to a restricted number of people; and of economic value to the person seeking to protect it. The enquiry is objective. On the facts of this matter, objectively, there can be no doubt that the information is of economic value in the industry. The confidential information would extend, for example, to client identities, contact details, personal information, their financial needs and histories, and their ability to make regular payments of premiums.

[31] In *TWK Agriculture Ltd v Wagner and another*⁸ at paras [8] and [9] this court, per La Grange J held that the applicant (the same applicant in this matter) has protectable interests in the form of trade connections, clients, and confidential information. I accept the reasoning in that judgment and see no reason to stray from such findings. In any event, on the facts of this matter, the applicant has discharged the onus of showing that, objectively, it has protectable interests in its trade connections, clients, and confidential information.

Alleged breach of restraint and confidentiality undertakings

[32] It is unnecessary for applicant to prove that the first respondent has disclosed confidential information. It suffices that the first respondent has access to such information (which he acknowledged by signing agreements to that effect) and he may do so if so inclined. Where an employee becomes engaged with a competitor, there is a risk of disclosure and the employer is entitled to protect its commercial interests. This was explained in *Experian South Africa (Pty) Ltd v Haynes and another*⁹ (“*Experian*”) as follows:

“[18] In *Rawlins and Another v Caravan Truck (Pty) Ltd* [1992] SASCA 204; 1993 (1) SA 537 (A) at 541C–D Nestadt JA, dealing with the issue of a party’s relationship with customers, stated that the need of an employer to protect his

⁸ 2015 ZALCCT 50 (12 August 2015)

⁹ 2013 (1) SA 135 (GSJ); (2013) 34 ILJ 529 (GSJ)

trade connections arises where the employee has access to customers and is in a position to build up a particular relationship with the customers so that when he leaves the employer's service, he could easily induce the customers to follow him to a new business. The learned judge referred to Heydon *The Restraint of Trade Doctrine* (1971) at 108, where it is stated that the "customer contact" doctrine depended on the notion that "*the employee, by contact with the customer, gets the customer so strongly attached to him that when the employee quits and joins a rival he automatically carries the customer with him in his pocket*". In *Morris (Herbert) Ltd Saxelby* (1916) 1 AC 88 (HL) at 709, it was said that the relationship must be such that the employee acquires "... such personal knowledge of and influence over the customers of his employer ... as would enable him (the servant or apprentice), if competition were allowed, to take advantage of his employer's trade connection ...".

...

[20] As I have pointed out above, the *onus* is on the respondent to prove the unreasonableness of the restraint. He must establish that he had no access to confidential information and that he never acquired any significant personal knowledge of, or influence over, the applicant's customers whilst in the applicant's employ. It suffices if it is shown that trade connections through customer contact exist and that they can be exploited if the former employee were employed by a competitor. Once that conclusion has been 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 were to take up employment, becomes apparent. See *Den Braven SA (Pty) Limited v Pillay and Another* [2008] 3 All SA 518 (D) at paragraphs [17] to [18].

[21] Where an applicant as employer, has endeavoured to safeguard itself against the unpoliceable danger of the respondent communicating its trade secrets to, or utilising its customer connection on behalf of a rival concern after entering that rival concern's employ by obtaining a restraint preventing the respondent from being employed by a competitor, the risk that the respondent will do so is one which the applicant does not have to run and

neither is it incumbent upon the applicant to enquire into the *bona fides* of the respondent, and demonstrate that he is *mala fides* before being allowed to enforce its contractually agreed right to restrain the respondent from entering the employ of a direct competitor (see *IIR South Africa BV (Incorporated in the Netherlands) t/a Institute for International Research v Tarita and Others* 2004 (4) SA 156 (W) at 166I to 167C). In such circumstances, all that the applicant needs do is to show that there is secret information to which the respondent had access, and which, in theory, the respondent could transmit to the new employer should he desire to do so.

[33] The purpose of the restraint is to relieve the applicant from the burden of having to show *bona fides* or a lack of retained knowledge (on the part of the respondent) concerning the confidential information. The applicant does not need to content itself with crossing its fingers and hoping that the respondent will abide by the undertakings it has given.

[34] While the confidential information cannot be expunged from the first respondent's mind, he can and should be prevented from sharing that information with third parties, or using such information to gain a competitive advantage.

[35] It is of no moment that the first respondent may not have directly solicited the clients of the applicant. What matters is the following. The first respondent is employed by a competitor, a competitor with few clients in the geographical region where the applicant is active. The first respondent is in contact with former clients of the applicant following his departure from the applicant. The first respondent has not turned such clients away. On these facts, it is plain that the conduct of the first respondent amounts to indirect solicitation. In *Experian*¹⁰ the court stated:

‘... This argument is devoid of merit: it has been held that it makes no difference whether or not an employee contacts the customers of his ex-employer or whether such customers contact him. Both forms of conduct

¹⁰ Cited in fn. 9

amount to solicitation of the customers of the ex-employer, which is impermissible ...'

[36] The need of the employer to protect its trade connections arises where the employee has access to customers, was well placed to build up a good relationship with the customer, so that on departure he can easily induce the customer to follow him to a new business.¹¹ On these facts, when the prospective new employer is a competitor of the applicant, there is risk of harm to the applicant when its former employee takes up employment with the competitor. These criteria are met.

Reasonableness of the restraint

[37] In our law, agreements concluded in restraints of trade are valid, binding, and enforceable, unless their enforcement would be unreasonable.

[38] The test for determining the reasonableness of a restraint of trade agreement is set out in *Basson v Chilwan & others* ("*Basson*")¹² where Nienaber JA postulated the following: (a) Does the party have an interest that deserves protection? (b) Is the interest threatened or being prejudiced by another? (c) If so, does the 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?

[39] In *Reddy v Siemens Telecommunications (Pty) Ltd*¹³ the Supreme Court of Appeal ("SCA") suggested a further consideration, namely whether the restraint goes further than necessary to protect the interest. The SCA held that this corresponds with s 36(1)(e) of the Constitution, requiring a consideration of less restrictive measures to achieve the purpose of the limitation and that '[t]he value judgment

¹¹ *Vox Telecommunications (Pty) Ltd v Steyn and another* (J1149/15) [2015] ZALCJHB 278; (2016) 37 ILJ 1255 (LC) (4 September 2015) at para [33]

¹² 1993 (3) SA 742 (A)

¹³ (2007) 28 ILJ 317 (SCA)

required by Basson necessarily requires determining whether the restraint or limitation is “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”.

[40] Once the party seeking to enforce a restraint has established an interest worthy of protection and that the other party is threatening that interest, the onus is on the party resisting the enforcement of the agreement to prove that it would be unreasonable.

[41] In deciding whether it would be reasonable to enforce the restraint, the court must make a value judgment. Public policy dictates that agreements entered into voluntarily are binding and enforceable. The court must strike a balance between the need to respect agreements,¹⁴ the freedom of the employee to be economically active and to practice his trade, professional or occupation, the nature of the restraint, and the competing interests of the parties.¹⁵ The courts are more likely to take a more favourable view of the restraint where the parties engaged on an equal footing when the restraint was agreed.¹⁶ Although this is a question of fact, there is a general acceptance that, in the employment context, parties seldom contract as absolute equals. However, exceptions will include instances where the employee is in senior management, highly skilled, or in high demand.

[42] Here, the first respondent is a successful, skilled, and experienced broker. That he could refuse to sign a restraint during 2024 indicates that he negotiated with the applicant on a substantially equal footing. In his papers, the first respondent set out, in detail, his career and financial goals, as well as the interests of his family and dependants. These interests cannot eclipse the commercial interests of the applicant on the facts of this matter, particularly given that he will remain economically active and productive. It is in the public interest that the first respondent should be held to the agreements he voluntarily concluded.

¹⁴ *Brisley v Drotsky* 2002 (4) SA 1 (SCA)

¹⁵ *Torrente & another v Grant Monaghan & Associates Incorporated* (2024) 45 ILJ 798 (LAC)

¹⁶ *Dickinson Holding Group v Du Plessis* 2008 4 SA 218 N

[43] The first respondent did not put up facts demonstrating that the covenant is unreasonable in respect of the matter, area, or duration of the restraint. In the circumstances, the first respondent failed to demonstrate that enforcement of the restraint is unreasonable.

Costs

[44] The applicant did not vigorously pursue costs during argument. On balance, in my view, the requirements of law and fairness do not dictate that there should be a costs order.

Conclusion

[45] The applicant seeks a final interdict and must therefore satisfy three requirements¹⁷ namely: a clear right, an injury actually committed or reasonably apprehended, and the absence of any alternative satisfactory remedy. The applicant has demonstrated a clear right. There is a reasonable apprehension that its right, and proprietary interests, are threatened. There is no satisfactory alternative remedy.

Court Order

[46] I accordingly grant to the applicant the relief sought in prayers 1, 2 and 3 of the amended notice of motion.

RN Daniels
Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

S Snyman
Snyman Attorneys

¹⁷ *Setlogelo v Setlogelo* 1914 AD 221 and 227

For the First Respondent:

Adv Bester

Instructed by: Matthew Klein Attorneys

LABOUR COURT