

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2025-071413

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
DATE	SIGNATURE

In the matter between:

HENRICO JOHN SCHOLTZ

First Applicant

4PL AFRICA LTD

Second Applicant

and

TMA EXPRESS ROAD (PTY) LTD

First Respondent

TMA LOGISTICS (PTY) LTD

Second Respondent

In re:

TMA EXPRESS ROAD (PTY) LTD

First Applicant

TMA LOGISTICS (PTY) LTD

Second Applicant

and

HENRICO JOHN SCHOLTZ

First Respondent

4PL AFRICA LTD

Second Respondent

JUDGMENT IN APPLICATION FOR LEAVE TO APPEAL

DJ Smit, AJ

Introduction

- [1] This is an application for leave to appeal against a judgment dated 25 June 2025 in which I enforced, on an urgent basis, a restraint of trade and confidentiality undertakings given by Mr Henrico Scholtz.
- [2] Mr Scholtz and his new employer, 4PL Africa argue that an appeal would have reasonable prospects of success, for essentially the following reasons:
- a. While I found that the interest protected by the restraint clause was the customer connections that Mr Scholtz had built up while he was in the employ of TMA Express Road and TMA Logistics, the ambit of the order I made was far wider than that and prevents him from dealing with any customers of 4PL Africa even if they had no connection with the former employers of Mr Scholtz.
 - b. By framing the interdicts as I did, I made a new contract for the parties.
 - c. There was a dispute of fact on the papers regarding whether Mr Scholtz used his former employers' confidential information (which, it appears to be common cause, was at his disposal) to further his new employer's interests. Applying the *Plascon-Evans* rule, I should have found that he did not breach his confidentiality undertakings.
- [3] In my view, there is no reasonable prospect that another court will uphold an appeal against the order made on 25 June 2025.
- [4] In the first place, the very purpose of restraint of trade clauses in general – and this clause in particular – is to prevent a former employee from working for a competitor in circumstances where that creates the opportunity for the employee

to exploit the customer connections he had built up in his previous employment. It is irrelevant to that purpose that a collateral result of the prevention of competing with the former employer is also to prevent the employee from dealing with new customers with whom he had no prior involvement. That collateral effect is justified by the primary purpose.

- [5] Put differently, it is impossible to police an obligation on the employee not to deal with former customers but only with new customers, which is why it is not disproportionate to prohibit employment (for a limited period and geography) with competitors altogether, regardless of the fact that they may also have customers who are entirely new to the employee.
- [6] In my view, these propositions are correctly stated and explained in the *Experian* judgment,¹ with which I align myself.
- [7] In the second place, Wallis AJ (as he then was) explained in *Den Braven*² that limiting the ambit of a restraint in an order to what is justified on the facts comports both with general principles and, in particular, with the prior decisions he cited. In my view, that was a correct statement of the law, and I did not understand Mr Elliot SC to contend otherwise.
- [8] Rather, counsel contended that I strayed outside the ambit of the restraint clause. I do not think, however, it is reasonably arguable that paragraphs (b) or (d) of the order add anything to the wide ambit of the wording of the restraint clause itself, which prohibits competing with the ex-employers.
- [9] Third, to be entitled to a final interdict against the dissemination of confidential information, it was not necessary for the former employers to show that Mr Scholtz actually breached his confidentiality undertaking. It was sufficient to show a reasonable apprehension of harm.³ In this case, the risk of harm was amply demonstrated by common cause or undeniable facts, such as that Mr Scholtz was in possession of the contact details of customers of his ex-employers; that he contacted them upon taking up employment with 4PL Africa;

¹ *Experian South Africa (Pty) Ltd v Haynes* 2013 (1) SA 135 especially paras 21-22

² *Den Braven SA (Pty) Ltd v Pillay* 2008 (6) SA 229 (D) paras 42-47.

³ *Experian South Africa (Pty) Ltd v Haynes* 2013 (1) SA 135 para 59

and that he was caught in the three untruths set out in paragraph 25 of the judgment.

[10] As the court noted in *Experian*,⁴ in these circumstances an ex-employer is not obliged to contend himself with “*crossing his fingers and hoping that the respondent would act honourably or abide by the undertakings that he has given.*” The ex-employer is entitled to an interdict to prevent the risk from eventuating (to the extent it has not already).

Order

[11] I make the following order:

- a. The application for leave to appeal is dismissed.
- b. Mr Scholtz and 4PL Africa must pay the costs of the application for leave to appeal on scale C.



DJ SMIT
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

⁴ *Experian South Africa (Pty) Ltd v Haynes* 2013 (1) SA 135 para 22.

Date of hearing: 4 August 2025

Date of judgment: 4 August 2025

For the applicants for leave to appeal:

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