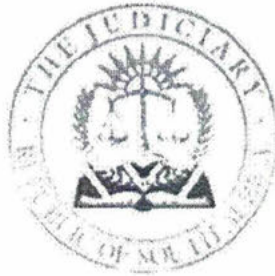


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-061274

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
17 June 2025	
DATE	SIGNATURE

In the matter between:

TABLETPOS ADMIN (PTY) LTD

Applicant

and

REECE JOLLIVET

First Respondent

YOCO TECHNOLOGIES (PTY) LTD

Second Respondent

JUDGMENT

CRUTCHFIELD J

- [1] The applicant, Tabletpos Admin (Pty) Ltd, brings urgent proceedings for the enforcement of a restraint of trade provision together with a confidentiality undertaking against the first respondent, Mr Reece Jollivet, and the second respondent, Yoco Technologies (Pty) Ltd.

- [2] The first respondent opposes the application on both the urgency and the merits of the application. The second respondent does not participate in the application.
- [3] The applicant and the first respondent concluded an employment agreement on 17 March 2022. The applicant employed the first respondent from April 2022.
- [4] The first respondent resigned from the applicant's employ during April 2025 and his notice period terminated on 30 April 2025. Thereafter, the first respondent commenced employment with the second respondent on 5 May 2025, allegedly in violation of the restraint of trade and confidentiality undertakings given by the first respondent in favour of the applicant.
- [5] The applicant learned of the first respondent's intention to take up employment with the second respondent on 4 April 2025, in terms of the first respondent's resignation letter. The applicant demanded that the first respondent refrain from becoming employed by the second respondent during the 12-month period immediately after the termination of the first respondent's employment with the applicant.
- [6] Furthermore, the applicant demanded that the first respondent refrain from conducting himself in any manner that amounted to a breach of the restraint of trade and the confidentiality undertaking in the first respondent's employment contract with the applicant.
- [7] The applicant's attorneys of record addressed correspondence to the second respondent informing them that the first respondent was subject to a restraint and confidentiality undertakings in favour of the applicant.
- [8] In short, the first respondent commenced employment with the second respondent on 5 May 2025, remains so employed and the applicant seeks interdictory relief in terms of the notice of motion.
- [9] As to the urgency of the application, the applicant not having delayed unduly in the launch of the application, the grounds of urgency upon which the applicant places reliance include that the term of the restraint provision is one year. The applicant contends that it will not receive substantial redress given that the time

that it will take for the matter to be heard and judgment handed down thereafter may well amount to a significant part, if not the entirety of the period during which the restraint would otherwise be enforced, assuming that the restraint is valid and enforceable.¹

- [10] In the light of the time that it would take for the founding, answering and replying affidavits together with the heads of argument to be delivered and a date to be made available for the hearing of the matter on the opposed motion roll, if the applicant's application was brought and heard in the ordinary course, the period of one year of the restraint may well be taken up, leaving the applicant without substantial redress at a hearing in the ordinary course. In the circumstances, it is unlikely that the applicant will receive substantial redress at a hearing in due course.
- [11] Furthermore, the confidentiality of confidential information is time constrained.² It would be eroded by proceeding in the ordinary course.
- [12] In the light of my finding that it is unlikely that the applicant will receive substantial redress at a hearing in due course, and the applicant not having delayed unduly in launching the application, the matter meets the requirements of Rule 6(12) and qualifies to be enrolled and heard as an urgent application.
- [13] Moreover, the first respondent has not been deprived of sufficient time in which to deliver an answering affidavit and prepare for the hearing of the matter.
- [14] The applicant claims relief in the form of a *rule nisi*, being interim relief coupled with a return date on which the relief is to be made final or otherwise by a court sitting in the future. The first respondent contends that in the light of the one year term of the restraint, any relief that I grant will remain in place pending finalisation of the return date, for the entirety or almost the entirety of the restraint period pending the return date. In those circumstances, the first respondent argues that

¹ *Epic Outdoor Media Sales (Pty) Ltd v Paterson* 2024 JDR 1132 (GJ) ("Epic").

² *Valuenet Solutions Inc t/a Dinkum USA & Another v Etel Communications Solutions (Pty) Ltd* 2005 (3) SA 494 (W) para [17].

the relief that the applicant seeks is final in nature or final in effect, even though it is framed as interim relief.

- [15] I agree that notwithstanding the format of a *rule nisi* claimed by the applicant, the relief sought, and in the event that it is granted, will be final in effect. The time that will elapse between the launch of the application and the allocation of a hearing date in the ordinary course may well take up the majority or even the whole of the period during which the purported restraint endures.³
- [16] In the light of the disputed facts on the papers before me, and my finding that the relief sought is in fact final in effect, the principles referred to in *Stellenbosch Farmer's Winery Ltd v Stellenvale Winery (Pty) Ltd*⁴ should apply. This is that a final interdict only be granted in notice of motion proceedings if the facts as set out by the respondent together with the admitted facts of the applicant justify such order.
- [17] The applicant demonstrates a clear right in that the restraint of trade provision and the confidentiality undertaking are terms of the applicant's employment contract with the first respondent. Moreover, the first respondent is in breach thereof by virtue of his employment with the second respondent, a direct competitor of the applicant. Thus, the first respondent's employment with the second respondent amounts to a breach of the restraint provision.
- [18] The confidentiality undertaking upon which the applicant relies provides that the first respondent will not be entitled to use any confidential information of the applicant for the first respondent's personal benefit or that of any third party. Furthermore, that the applicant's confidential information shall not be disclosed to any third party without the prior written consent of the applicant.
- [19] The first respondent agreed that the applicant's confidential information includes *inter alia*; "client information, business affairs, marketing strategies, technical

³ *BHT Water Treatment (Pty) Ltd v Leslie & Another* 1993 (1) SA 47 (W) at [55]; *Cape Tex Engineering Works (Pty) Ltd v SAB Lines (Pty) Ltd* 1968 (2) SA 528 (C).

⁴ *Stellenbosch Farmer's Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C) at 235.

methods and processes, computer programmes and operating methods of the applicant”.

- [20] The restraint provision provides *inter alia* that absent the written consent of the applicant, the first respondent would for a period of 12 months following the termination of his employment with the applicant, and within a radius of 300 km of the applicant’s place of employment where the first respondent was based, not compete directly or indirectly with the applicant’s business, such business to include any of the services or products provided by the applicant in the marketplace for the 12-month period immediately prior to the termination of the applicant’s employment.
- [21] The applicant alleges that the 300 km radius relates to the area in which the applicant operates and provides services to its clients and customers.
- [22] The applicant conducts business specialising in the provision of point of sale (“POS”) solutions to retailers and restaurants. In addition to the sale thereof, the applicant provides on-going support training in respect of the point of sale systems to the applicant’s clients, technical support and customised system integrations to ensure the client’s optimal performance in respect of the point of sale systems.
- [23] The applicant employed the first respondent as a Technical Support Technician. According to the applicant, the first respondent’s primary responsibilities included troubleshooting hardware and software issues, performing installations and upgrades for clients and providing remote and on-site technical assistance to clients. The first respondent also trained the applicant’s client’s staff members in the use of the POS systems.
- [24] According to the applicant, the first respondent acquired knowledge of the applicant’s pricing systems although the first respondent denies this.
- [25] The first respondent does not deny that the second respondent competes directly with the applicant.

- [26] The basic principle in respect of trade secrets is that an employer who has armed itself with a restraint in order 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 ...”,⁵ the applicant does not have to run the risk of waiting for the respondent to do so.
- [27] Where the employee who is subject to a restraint has taken up employment with a competitor in violation of the restraint, all that the employer must do is 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.”⁶
- [28] Given that the first respondent does not dispute his employment with the second respondent, a competitor of the applicant, the latter does not need to show actual harm, only that the first respondent is “potentially able to exploit the applicant’s trade secrets or business connections in the first respondent’s new employment”.⁷
- [29] The applicant relies in respect of its protectable interest upon the applicant’s “offering” of proprietary technologies and specialised customer services. The applicant furnishes little detail of its alleged protectable interests. The applicant relies upon it having developed proprietary software code, pricing structures, client data and detailed business processes and that the first respondent had access to the applicant’s sensitive trade secrets including clients’ tailored pricing regimes, the latter being denied by the first respondent.
- [30] The first respondent admits that he carried out technical support and maintenance of various of the applicant’s clients. The first respondent’s support of these clients enabled the first respondent to become acquainted with the technical requirements of each system and the businesses themselves, including client specific data. Thus, the applicant contends that the first

⁵ *Experian South Africa (Pty) Ltd v Haynes & Another* 2013 (1) SA 135 (GSJ).

⁶ *Id.*

⁷ *Fidelity Guards Holdings ibid.*

respondent had access to valuable information that, if used, will damage the competitive position of the applicant.

- [31] The first respondent admits that he installed the applicant's systems in the applicant's clients' businesses. As a result, it follows that the first respondent was exposed to the internal workings of the applicant's systems and those of its customers and that he gained knowledge of the specific needs of the applicant's clients
- [32] The applicant's "protocols" are not publicly available and are known only to a few of the applicant's employees, one of which is the first respondent. The applicant refers to "software architecture, system configurations, troubleshooting protocols and the specific customisation and integration of POS systems for each client, as well as the needs of each client in respect of POS systems". Such information is confidential and is protected by the law.
- [33] I accept the first respondent's averments that he did not have knowledge of "pricing structures, customer contracts and sales trends" of the applicant. It is irrelevant.
- [34] The first respondent admits that he serviced a number of the applicant's major clients, trained the applicant's clients' staff on the applicant's systems and rendered technical support in respect of the systems. Thus, it is probable that the first respondent developed personal relationships with the applicant's customers' staff, given that the first respondent trained the customers' staff and would have interacted with the staff subsequently in respect of issues experienced by the staff with the applicant's systems.
- [35] Accordingly, the first respondent certainly developed relationships with various of the applicant's customers.
- [36] The first respondent, having been directly involved with the clients, gained knowledge of their technical requirements of each system and together with access to client specific data. The first respondent's knowledge of each of the applicant's clients' system setups and customisations, are of a confidential nature and part of the applicant's trade secrets. Such information is not available

in the public domain and the first respondent became aware of such information pursuant to his employment at the applicant.

- [37] Despite the first respondent's attempts to downplay the applicant's protectable information to which he had access by virtue of his employment with the applicant, the fact that he became acquainted with the technical requirements of each system of the applicant and the business systems of the clients' themselves, including client specific data and the clients' staff members, is sufficient to qualify as confidential information worthy of protection.
- [38] Whether or not the first respondent was exposed to the applicant's clients' tailored pricing regimes is irrelevant. It is evident from that aforementioned that the first respondent had access to the applicant's trade secrets and confidential information and that the applicant stands to suffer damage if the first respondent utilises such information.
- [39] The applicant does not have to wait for the first respondent to use the protectable information. It is sufficient that the first respondent is potentially able to do so. The first respondent is so able to do in his employment with the second respondent as a "Junior Installation and Support Engineer."
- [40] Similarly to his employment with the applicant, the first respondent is employed to conduct installations of the second respondent's systems in clients of the second respondent. The first respondent is also required to attend to the technical support of the second respondent's customers and clients, a position similar if not identical to the technical support employment position held by the first respondent with the applicant.
- [41] Accordingly, the applicant has demonstrated that the first respondent has breached the restraint of trade. The sole remaining issue is whether the restraint is unreasonable.⁸

⁸ *Basson ibid* at 767.

- [42] The first respondent alleges that enforcing the restraint of trade would render him unemployable in the single industry in which he has ever held employment. The first respondent has no post-school qualifications.
- [43] The first respondent is 27 years of age and holds a Grade 12 school qualification, obtained in 2017, this being his highest academic achievement. He resides in Johannesburg and has done so his entire life. He was unemployed until January 2019 when he secured employment with In Touch Point Of Sale based in Randburg. His employment with the applicant was his second employment.
- [44] The first respondent, whilst employed by the applicant, was permanently based at the applicant's Johannesburg branch, situated in Edenvale. The first respondent was one of four or five technical support staff located at the Johannesburg office.
- [45] Insofar as the first respondent alleges that he was not on an equal bargaining footing with the applicant when he commenced employment with the applicant, this was not the first respondent's first employment but his second in a similar industry. The first respondent was approximately 24 years of age when he commenced employment with the applicant. The first respondent had employment prior to commencing with the first respondent and thus, was not compelled to accept the applicant's employment if the terms of the agreement were not amenable to him. The first respondent must be required to abide by the agreement concluded by him with the applicant.
- [46] That being said, the first respondent should not be rendered unemployable. The first respondent does not allege reasons why the restraint of trade, its scope, duration and extent is unreasonable.
- [47] The 300km radius from Johannesburg extends to cities and towns outside of the province of Gauteng, reaching to cities and towns in Mpumalanga, Limpopo, KwaZulu-Natal and the Free State. The applicant does not substantiate the need for a restraint of trade that extends outside of the province of Gauteng, more especially given that the applicant has branches in Gqeberha, Durban and Bloemfontein. In the circumstances, the restraint of trade of 300km is

unreasonable and stands to be reduced in its extent to the province of Gauteng. The first respondent does not demonstrate that the restraint, for a period of one year, is unreasonable.

[48] Subject to the reduction in the geographical extent of the restraint to 100km radius from Johannesburg, the applicant is entitled to the relief sought by it and I intend to grant such an order.

[49] As regards the costs, there is no reason why the costs should not follow the order on the merits.

[50] In the circumstances, I grant the following order:

1. The first respondent is ordered to comply with the following obligations undertaken by him in terms of the employment agreement concluded between the applicant and the first respondent:
 - 1.1. In perpetuity, not to use, disclose or divulge the applicant's confidential information (including but not limited to the client information, business affairs, marketing strategies, technical methods and processes, computer programs and other operating methods of the applicant), whether directly or indirectly, for the first respondent's own benefit or for the benefit of any person other than the first respondent (including but not limited to the second respondent);
 - 1.2. To treat and safeguard the confidential information as confidential and to take all such steps as may be reasonably necessary to prevent confidential information from falling into the hands of unauthorised third parties;
2. The first respondent is interdicted and restrained for a period of 12 months subsequent to the termination of his employment agreement, within 100 kilometres of Johannesburg, either for his own account or as representative or agent for any third party (such as the second

respondent), partner, shareholder, director, employee, consultant, officer or member or in any other capacity whatsoever:

- 2.1. From encouraging and enticing or inciting or persuading or inducing any employee of the applicant to terminate his/her employment with the applicant; and/or
- 2.2. From contacting or approaching or furnishing any information or advice (whether oral or written) to any prescribed client/customer, employee, consultant, contractor, financier, agent, representative or otherwise), directly or indirectly, for the purpose of or with the intention of persuading, soliciting or inducing such clients/customers to terminate their mandate with the applicant or to offer such client/customers the rendering of any prescribed services.
3. For a period of 12 months subsequent to the termination of the employment contract and within the 100 kilometre area radius from Johannesburg interdicting and restraining the first respondent:
 - 3.1. Not to be engaged in any business in competition with the applicant's business, be it direct or indirect, whether as an employee, shareholder, partner, member, director or in any other capacity of such business; and
 - 3.2. The aforesaid restraint applying to any business that offers the same or similar services as those supplied by the applicant.
4. Ordering and directing the second respondent:
 - 4.1. To cease and desist from aiding and abetting or assisting the first respondent to breach the contractual obligations envisaged in the employment contract concluded between the parties including but not limited to those enumerated immediately above; and

- 4.2. To immediately desist from utilising any of the applicant's confidential information, if any such is in the possession of the second respondent.
5. Directing the first respondent to pay the costs of the application on the scale as between attorney and client.



CRUTCHFIELD J
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant:	Adv I L Posthumus instructed by O'Reilly Law INC
For the First Respondent:	Adv H B Marais SC instructed by Kevin Cross and Affiliates
Date of the hearing:	21 May 2025.
Date of the judgment:	17 June 2025.