THE LABOUR COURT OF SOUTH AFRICA
AT CAPE TOWN

Of interest to other judges

Case no: 2025-022986

In the matter between:

SENTINEL INTERNATIONAL ADVISORY SERVICES PROPRIETARY LIMITED	**Applicant**
and	
ANITA MULDER	**First Respondent**
ANGELA LAWSON	**Second Respondent**
DALE IRVINE	**Third Respondent**
BEDROCK MULTI FAMILY OFFICE	**Fourth Respondent**

Heard: 17 and 25 April 2025

Delivered: 2 May 2025

Summary: (Restraint of trade – Merits – Breach common cause – Existence of protectible interest in preserving company information especially relating to client details – employment of first respondent by direct competitor prejudicing preservation of protectible interest - enforcement of geographically attenuated restraint reasonable - Costs – apportionment)

JUDGMENT

LAGRANGE, J

Nature of the application

[1] This is an opposed restraint of trade application. It was initially enrolled on 17 April 2025. At the first hearing, the urgency of the application was argued at length and a ruling was made striking the application off the roll in so far as the second and third respondents ('Lawson' and 'Irvine') were concerned. The relief sought against the first respondent ('Mulder') was found to have been launched with sufficient urgency.

[2] During the first hearing, parties also argued about the admission of the applicant's replying affidavit, to which the respondents had objected under Labour Court Rule 36(2) on the basis it was filed late, and whether a confidential affidavit tendered by the applicant should be admitted.

In limine issue – objection to late filing of replying affidavit

[3] The replying affidavit was admitted on a provisional basis and for the reasons which follow it should have been admitted in my view. In the notice of motion, Sentinel set out the timetable for filing further affidavits in keeping with the timetable set out in Labour Court Rule 39 for urgent restraint of trade applications. As things turned out, it could not meet its own deadline to file its own replying affidavit. It filed it six court days late, on 17 March 2025, prompting the objection by the respondents dated 20 March 2025. Notwithstanding the objection the respondents still filed their fourth set of affidavits within five days of receipt of Sentinel's replying affidavits. In the curiously truncated way in which restraint of trade applications are dealt with under the rules, the application was only enrolled for hearing on 17 April 2025. I agree that Sentinel should have

sought the respondents' indulgence to file its replying affidavit later than the timetable it had stipulated. However, the respondents suffered no demonstrable prejudice as result and there was still ample time for both parties to prepare heads of argument for the hearing. While disregard of the rules should not be indulged, I fail to see what the purpose of the objection was under these circumstances. For this reason, the provisional admission of the replying affidavit is confirmed.

[4] The confidential affidavit concerned details of Sentinel clients, which was information Lawson and Mulder were privy to before they resigned from Sentinel and went to work for the fourth respondent ('Bedrock'). As early as 17 March 2025, the applicant had sought undertakings from Lawson and Mulder that they would not disclose the content of the confidential affidavit to Irvine and Bedrock. All the respondents were represented by the same attorneys of record. Although the non-disclosure undertaking was only sought from Lawson and Mulder, their attorney objected on behalf of all the respondents to the compartmentalisation that a selective disclosure to only two of them would be prejudicial Irvine as the information clearly affected all the respondents. Nonetheless, when the court ruled that the application against Lawson and Irvine would not be heard on an urgent basis, Mulder gave the necessary undertaking and the affidavit was admitted. The determination of the restraint application against Mulder could not be heard without giving her a chance to file an answering affidavit, so the hearing could not be concluded and was postponed until 25 April.

<u>Factual background</u>

[5] Most of the material facts are common cause.

[6] The background to the application is that Sentinel and Bedrock provide advice on asset protection, estate planning and perform fiduciary services for so-called 'high-net-worth' clients. Irvine, who is still a 24.48 % shareholder in Sentinel, was an executive director of the Sentinel. Irvine was also the trust officer of approximately 120 of Sentinel client trusts which managed their assets.

[7] At the end of August 2024, Irvine relinquished his directorship and resigned from Sentinel under a mutual separation agreement. He established Bedrock, which was incorporated on 7 October 2024. Since he established Bedrock it has engaged four former employees of Sentinel. Lawson would be the fifth former employee to join Bedrock if she is not held to the terms of her restraint agreement. In addition, 82 of Sentinel's former trust clients, amounting to about one-third of those clients, have moved their business to Bedrock. Unsurprisingly, It is common cause that Bedrock and Sentinel are direct competitors.

[8] Lawson and Mulder performed the administrative work of the trusts. According to Sentinel they both worked closely with Irvine in managing the trusts. It claims they did the majority of the complex administrative tasks entailed in managing trusts. Although Irvine emphasised his own overwhelming significance in the relationship with clients. He admits that Lawson and Mulder were "important" to him. However he stated, with their concurrence, that they were performing tasks which junior staff from other department sometimes performed on their behalf, and that they were "entirely dispensible" as far as the clients were concerned. While it was conceded that they had relationships with clients and had access to confidential information, it was claimed that their relationship with clients was not such that they could solicit them to transfer their business to Bedrock. It was stated that their role was limited to coordinating meetings, relaying information and ensuring the smooth flow of information. The respondents described the roles of Mulder and Lawson as trust administrators at Sentinel in these terms:

> *"A trust administrator is an internal designation of the applicant and acts as the interface between trustees and third parties such as banks, financial institutions, asset managers and the Master's Office. Trust administrators ensure that resolutions are signed, execute the advice provided by the trust officer, and implement decisions taken by the trustees. They naturally act as conduit of information between the client and Trust Officer."*

[9] It was also conceded that both Lawson and Mulder had had “regular contact with the clients and administrators of Wealth Managers”. Wealth managers are third parties responsible for investing client funds.

[10] Mulder worked for ten years before she handed in her resignation on 22 January 2025. Lawson had been employed for fourteen years before she left. They serviced client trusts managed by Irvine and another trust officer, Ms S De Wet (‘De Wet’).

[11] The provisions of the confidentiality and restraint provisions in Mulder’s contract of employment are extensive and it is not necessary to repeat them here. It need only be mentioned that for a period of one year from the termination of her employment with Sentinel, the restraint provision in clause 10 of the contract *inter alia*: (a) prohibits her from being engaged in any capacity in a business which competes with Sentinel; (b) prevents her from attempting to solicit any party connected with Sentinel to terminate or vary their relationship with it, and (c) prevents her from disclosing any confidential information of Sentinel. The confidentiality provision in clause 9 of the contract, which is not subject to a time limit, binds her not to disclose various forms of confidential company information, or make use of it for any purpose. The restraint provision is national in scope but Sentinel has confined the relief it seeks to the Western Cape province.

<u>Evaluation</u>

[12] The accepted method of evaluating the reasonableness of a restraint was set out *Basson v Chilwan and Others*[1] and has been repeatedly reaffirmed by the courts. A recent confirmation of the approach was set out by the Labour Appeal Court in *Venter and Others v Twenty Four Motors CC ta Ford Ermelo*[2]. The court also confirmed the respective evidentiary burdens which still rest on the parties, notwithstanding the absence of an onus in deciding on the reasonableness of a restraint.

---

[1] 1993 (3) SA 742 (A) at 767C-I.

[2] (JA34/2024) [2024] ZALAC 32 (28 June 2024)

"[8] Restraint of trade agreements are valid, binding, and enforceable unless their enforcement would be unreasonable. In determining the reasonableness of a restraint of trade agreement, a court must make a value judgment keeping in mind the principles expressed through the maxim pacta servanda sunt on the one hand, and a party's interest in engaging freely in their chosen trade, occupation or profession, on the other.

[9] As stated in Basson v Chilwan and Others, the test for determining the reasonableness of a restraint of trade agreement turns on the following: (a) whether one party has an interest that deserves protection after termination of the agreement; (b) whether that interest is threatened or being prejudiced by the other party; (c) if so, whether that interest weighs qualitatively and quantitatively against the interest of the other party not to be economically inactive and unproductive; and (d) whether there is an aspect of public policy having nothing to do with the relationship between the parties that requires that the restraint be maintained or rejected. A fifth consideration, identified in Reddy v Siemens Telecommunications (Pty) Ltd, is whether the restraint goes further than necessary to protect that interest. This consideration has been found to correspond with s 36(1)(e) of the Constitution. It requires that it be considered whether less restrictive measures exist which can achieve the purpose of the limitation by determining whether the restraint or limitation is "reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom".

[10] It is trite that the party seeking to enforce a restraint of trade agreement must prove a breach of the contract, with the party seeking to avoid enforcement of the contract bearing the onus to demonstrate that the restraint is unenforceable because it is unreasonable.

[11] The party seeking to enforce a restraint of trade must establish an interest worthy of protection and that the other party is threatening that interest. The party resisting enforcement must prove that it would be unreasonable to do so.

[12] In Ball v Bambalela Bolts (Pty) Ltd and another , this Court stated, in relation to the reasonableness of restraint, that:

> *'[13] … Prior to the decision in Magna Alloys and Research SA (Pty) Ltd v Ellis,10 restraints of trade were only enforceable if they were proved to be reasonable. Since then they have been regarded as enforceable, unless they are proved to be unreasonable. The effect of the Magna Alloys' decision was to place an onus on the party, sought to be restrained, to prove, on a balance of probabilities, that the restraint was unreasonable. However, because the right of a citizen freely to choose a trade, occupation, or profession, is protected in terms of s 22 of the Constitution and a restraint of trade constitutes a limitation of that right, the onus may well be on the party who seeks to enforce the restraint to prove that it is a reasonable or justifiable limitation of that right of the party sought to be restrained.*
>
> *[14] In Reddy v Siemens Telecommunications (Pty) Ltd,11 it was held that the reasonableness of a restraint could be determined without becoming embroiled in the issue of onus. This could be done if the facts regarding reasonableness have been adequately explored in the evidence and if any disputes of fact are resolved in favour of the party sought to be restrained. If the facts, assessed as aforementioned, disclose that the restraint is reasonable then the party, seeking the restraint order, must succeed, but if those facts show that the restraint is unreasonable, then the party, sought to be restrained, must succeed. Resolving the disputes of fact in favour of the party sought to be restrained involves an application of the Plascon-Evans rule.' "*

(references omitted

Breach of the restraint

[13] It is self evident that by going to work for Bedrock, an acknowledged direct competitor, the commercial foundation of which is a substantial portion of Sentinel's former trust clients, that Mulder will be in breach of her

obligation not to be involved in a competitive business (clause 10.1(a) of the contract). Moreover, both Mulder and Lawson admit that "on the face of it" their employment by Bedrock would be a breach of the restraint.

[14] On the question of her access to confidential information, Mulder denies that she retains any knowledge of all the details of client contacts that are contained in the Outlook address book of Sentinel's clients, which she and Lawson used in the course of their work. It is an extract of these details which comprises the confidential information divulged by the confidential affidavit. The address book contains: the name of the trust and details of the current trustees including their identity numbers, email addresses, contact numbers, physical addresses; the Master of the High Court's registration number for the trust; the details of the wealth advisor and, or alternatively, their assistant's; trust bank details; trust tax reference numbers and login details of trust bank accounts and details of various accounts linked to the trust. Mulder denies having copied or being able to remember any of these details.

[15] On the question whether Mulder has breached her obligation not to disclose any of the business information, particularly relating to Sentinel's clients, to Bedrock, Mulder initially denied she made user of Sentinel's confidential information. As this information would include the information set out in the confidential affidavit, which would have part of the information she would have needed to liaise with the client's, banks , wealth managers and SARS, this denial is inherently implausible. Neverless, she denies having retained any of the information, which was accessible to her, but does not dispute she had access to the information on Sentinel's Outlook program. It was alleged that they only contacted clients who were part of Irvine's portfolio when instructed to do so. On the other hand the respondents acknowledged that Lawson and Mulder acted as the "interface" between trustees and third parties such as banks, financial institutions, asset managers and the Master's Office. It is hardly credible to suggest that in this role they would only have relied on Irvine or De Wet to provide them with contact details every time they performed that roll and that they would not have become familiar to such third parties

during their employment with Sentinel. Mulder had been with Sentinel for ten years. It is relevant to note that, in terms of the their job descriptions, both Mulder and Lawson were required *inter alia* to attend and take minutes of trustee meetings, keep the trust database and client contact details up to date. It is difficult to see that such work would not have entailed developing a working familiarity with the clients, some basic knowledge of the different trusts, and interaction with the personnel performing the roles of third parties.

[16] In any event, it is well established law that a proven breach of the confidentiality provisions of a restraint is not a pre-requisite for obtaining relief if the employee had the opportunity to access the confidential business information in question[3]. It is sufficient that there is a risk that confidential information could be conveyed to a competitor and could be of use to it. Even if an undertaking to abide by the non-disclosure provisions f a restraint agreement is given by the former employee, that is generally not considered to be a sufficiently reliable way of preventing breach of the confidentiality requirement[4].

Reasonableness of enforcing the restraint.

[17] The information Mulder was exposed to in the course of her work and the familiarity she obtained with the various trusts she administered, while not the kind of information that would put her in a position to personally persuade former Sentinel clients to move to Bedrock, would obviously be of value to the latter. Her involvement with Sentinel's client portfolio would plainly be far more useful to Bedrock than someone who was appointed in her new position there with no direct personal exposure to such a large number of potential clients whose interests were managed by either Irvine or De Wet. This knowledge of Sentinel's clients and their trusts is plainly of commercial value to a business, which has been launched using a sizable

---

[3] E.g., see *Den Braven SA (Pty) Ltd v Pillay and Another* [2008] ZAKZHC 22; 2008 (6) SA 229 (D) at 240H

[4] See e.g., *Automation & Control Components Gauteng (Pty) Ltd t/a MCA v Searle and Another* (J 426/2024) [2024] ZALCJHB 305 (7 August 2024) at paragraph 62 and the authorities cited there.

portion of Sentinel's former clients as a foundation. It was argued that because Irvine already had knowledge of the clients, it made little difference if Mulder joined Bedrock. I am not persuaded that the bolted horse argument is persuasive in these circumstances. Whether there is some overlap in knowledge between Irvine and Mulder, Mulder would undoubtedly be more valuable to Bedrock than someone performing her work without that prior knowledge.

[18] In light of Mulder's value to Bedrock and, correspondingly, the loss to Sentinel of someone with her knowledge, her move to Bedrock is prejudicial to Sentinel. In weighing up the respective interest of Mulder to exercise her right to freedom to trade in terms of s 22 of the Constitution and Sentinel's interest in not having knowledge of its business being utilised to compete with it, the balance favours Sentinel in my view. Mulder decided to hitch her wagon to a direct competitor when she was not facing any threat to her existing employment. She has previously worked in other capacities in the financial sector and if she wanted to join Bedrock, there is nothing to indicate she could not have taken up other employment for a temporary period until the restraint had run its course. No public policy considerations have been advanced which would upset this balance of interests.

[19] In the circumstances, I believe Sentinel is entitled to the relief it seeks.

<u>Costs</u>

[20] This is a contractual matter and there is no reason why costs should not be awarded. Determining an appropriate apportionment of costs is somewhat complicated by the fact that the application could not be heard on one day, primarily because of the belated undertaking from Mulder to agree to non-disclosure of the confidential affidavit. The reason advanced previously for not providing the undertaking was that Lawson and Mulder could not agree to give the undertaking because it was argued that the confidential information might be relevant to Irvine's case as well Irvine. The relief, which had been, sought against Irvine was to prevent him from using any of the information he had acquired about Sentinel for his own

benefit or that of Bedrock. While confidential disclosure to only Lawson and Mulder but withholding the information from Irvine and Bedrock might have presented some practical difficulties for the respondents' attorneys who represented all four of respondents, I do not understand why, as a matter of principle, confidential disclosure to Lawson and Mulder could not have been made, subject to the undertakings being given by them. However, it was also argued that there was no need for the confidential affidavit to have been filed in the first place because the type of client information contained in the Outlook program, could simply have been described in the founding affidavit, as the same type information had been entered for all Sentinel clients on the Outlook database. I agree. It would only have been necessary to file the confidential affidavit, if the respondents had disputed that such information was obtainable from the Outlook database. Had it not been necessary for Mulder to consider the confidential affidavit and file an answering affidavit, the argument on the merits could have been concluded at the initial hearing.

[21] The further factor that requires consideration is that the application was only completely successful in relation to Mulder. The respondents were also represented by one firm of attorneys and had consolidated their pleadings.

[22] To achieve some kind of equitable distribution of the costs and taking account of the law, I have tried to take account the consolidated nature of the pleadings and the mixed success of the parties as well as the fact that the matter would not have run over two days if was not for the difficulty caused by admission of the confidential affidavit, which was not really necessary.

<u>Order</u>

1. The admission of the applicants' replying affidavit, provisionally admitted on 17 April 2025, is confirmed.

2. In so far as the relief sought against the First Respondent is concerned, the application is dealt with as one of urgency and any non-compliance with the Rules of Court relating to time limits governing the filing of pleadings and submissions is condoned.

3. The First Respondent is interdicted and restrained, until 1 March 2026 and within the Western Cape Province, from directly or indirectly:

   3.1 carrying on or being interested or engaged in or concerned with the Fourth Respondent or with any other company, firm, partnership, close corporation, trust, undertaking or concern which carries on any business which competes, directly or indirectly, with the Applicant;

   3.2 persuading, inducing, inciting, soliciting, encouraging or procuring any employee, consultant, agent, representative, supplier, principal, client, dealer, financier, trade connection or contractor to vary or terminate its agreements or arrangements with the applicant, leave the employ of the Applicant, sever, curtail, restrict or alter its employment, arrangements or business dealings with the Applicant in any way or refrain from or discontinue doing business or continuing its ongoing arrangements on the same basis as previously with the Applicant;

   3.3 soliciting or conducting negotiations or concluding transactions arrangements with any party in relation to whose products and services the Applicant possesses distribution rights or which has entered into any agency, franchise, registered user or license agreement with the Applicant relating to such products and services;

   3.4 furnishing or disclosing any information, whether confidential or otherwise, of or relating to the Applicant, its management, operations, business activities, directors, management, staff, agents, representatives, suppliers, principles, customers and trade connections and any of its trade secrets or know-how or give any advice in regards thereto;

3.5 commenting upon, discussing, debating, issue comments or statements, whether in writing or orally, of or in regard to the operations or business of the Applicant, its directors, management, employees, consultants, agents, representatives, suppliers, trade connections or customers.

4. Interdicting and restraining the First Respondent from either directly or indirectly from divulging to any person:

4.1 any information relating to the trade secrets or trade connections of the Applicant;

4.2 any confidential information concerning the Applicant's business or affairs and in particular any information pertaining to the salaries and wages and personnel records and details of any employees currently in the employ, previously employed or prospective employment of the Applicant, including but not limited to any details pertaining to any trade connections (including but not limited to any contractors, suppliers, clients or agents) employed by or for and on behalf of the Applicant;

4.3 using or disclosing to others or availing to others or deriving profit or benefiting from, information concerning the business or affairs of the Applicant or its clients, suppliers or trade connections, which the First Respondent has acquired by reason of her position or association with the business and affairs of the Applicant or its clients.

5. The Applicant must pay two-thirds of the Respondents' costs, and the Respondents must pay one-third of the Applicant's costs.

[redacted] ____________________

R Lagrange

Judge of the Labour Court of South Africa.

For the Applicant:	Adv S Swarts
Instructed by:	Haffegee Roskam Savage Attorneys Inc.
For the Respondents:	Adv H Nieuwoudt
Instructed by:	C&A Friedlander Inc.