

IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE DIVISION, CAPE TOWN

CASE NO: 24820/2024

DATE: 2024.11.28

In the matter between

CANDI AND COMPANY (PTY) LTD

Applicant

and

NURAAN RHODE

Respondents

AND 4 OTHERS

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JUDGMENT

VAN DEN BERG, AJ:

This is an urgent application that comes before the Court on
28 November 2024 after being launched on
20 19 November 2024.

In essence, the applicant applies for the enforcement of a
restraint of trade agreement against the first to fourth
respondents; the fifth respondent being the first respondent's
current and new employer.

I have heard Mr Fehr and Mr Smit and find the matter urgent.

The second to fourth respondents are qualified hairdressers, while the first respondent is a master hairdresser. All of them were employed by the applicant, who operates under the name 'Sorbet', a well-known hairdressing and beauty franchise. The respondents have now taken up employment with the fifth respondent, who also operates a hair salon.

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In the founding affidavit, the applicant asserts that there exists a protectable interest regarding clause 11.5 of the first and fourth respondents' employment contracts, warranting the granting of an order to protect the applicant from unlawful competition by the first to fourth respondents in violation of the restraint of trade agreement with the applicant.

Mr Smit, in argument, submits that there is no protectable interest and that the first to fourth respondents should be
20 allowed to apply their skills acquired in freely earning an income. In this regard, he relied upon the authority in *Experian South Africa (Pty) Limited v Haynes and Another*, as well as *Massmart Holdings Ltd and Others v Vieira and Others*, in which the following was stated:

"Restraint agreements are enforceable unless they are unreasonable. In general terms the restraint will be unreasonable if it does not protect some proprietary interest of a party seeking to enforce a restraint. In other words, a restraint cannot operate only to eliminate competition."

In *Basson v Chilwan and Others* it was held:

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"The protectable interest and the reasonableness thereof will be determined with reference to four factors.

1. Does the one party have an interest that deserve protection at the termination of the employment?

2. If so, is that interest threatened or prejudiced by the other party.

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3. Does such interest weigh qualitatively and qualitatively against the interest of the other party not to be economically inactive and unproductive?"

And lastly:

"4. Is there an aspect of public policy having nothing to do with the relationship between the parties and which requires that a restraint be maintained or rejected."

10 The applicant seeks final relief. The principles and application of the Plascon Evans test in determining factual disputes are well-established. The respondents' version cannot be rejected as inherently false or contrived.

In their answering affidavit, the first to fourth respondents contend that they have not solicited any of the applicant's clients and deny the allegations in the founding affidavit. The first respondent disputes that she took down the applicant's clients' names before leaving the applicant's employment.

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The respondents further contend that the restraint of trade is unreasonable in that it would not be reasonable to prohibit them from obtaining employment for 12 months within the 10-kilometre radius, which includes the Atlantic Seaboard and Cape Town CBD, as provided for in the restraint of trade

agreement.

Mr Fehr, appearing on behalf of the applicant, referred me to several authorities in his argument. Of most assistance to his case is a judgment in the Eastern Cape Local Division, Port Elizabeth, in the matter of *Beautiful Youth, Health and Beauty Clinic v Moolman*. At paragraph 15 the Court refers with approval to the submission by Mr Mullins in finding as follows:

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"The trade name and goodwill encompass customer list and trade connections. I agree. Both the trade name and goodwill relate to knowledge and esteem outsiders have of the applicant's business. They can be measured by how popular the business is to the public business connections, or the esteem it is held by its peers, trade connections. These interests are worthy of protection. It has been held that the employee who seeks to turn their employer's confidential information, trade or customer connects for their benefit acts in a reprehensible fashion."

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The applicant's founding affidavit does not make out a case, and there is no allegation that the first to fourth respondents are using the name 'Sorbet', that they will attract clients or customers in the future because Sorbet trained them, or that they will use the good name of Sorbet to solicit clients in a reprehensible manner. The respondents' skills as hairdressers are neither unique nor confidential, and the products they used as headdresses while in the applicant's employ are also not confidential or unique.

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In light of the aforesaid, I will grant an order in terms of the notice of motion, but not to the extent requested by the applicant.

I do not believe that a proper case has been established regarding a protectable interest; alternatively, I accept the respondents' evidence and argument presented by Mr Smit that a protectable interest has not been demonstrated to the extent necessary to justify an order in terms of paragraphs
20 2, 2.1, 2.1.1, and 2.1.2 of the notice of motion.

However, there cannot be any opposition, and Mr Smit correctly conceded this in his argument, to grant the relief as formulated in paragraphs 2.1.3 and 2.2 of the notice of motion. I will quote those paragraphs at the end of this

judgment. In essence, what the aforesaid paragraphs provide for is that the first to fourth respondents are not entitled to solicit the clients of the applicant, and there can be nothing wrong with this.

WITH REGARD TO THE ISSUE OF COSTS:

The applicant has been in part successful with obtaining relief, however, I am not convinced that in essence a case
10 has been made out for the majority of the relief applied for. The applicant came before the Court seeking to enforce a restraint of trade. the relief I am willing to grant is not the primary focus, nor is it essentially what the applicant sought. The applicant, in essence, sought that I enforce and prevent the first to fourth respondents from working for 12 months within a radius of ten kilometres of the applicant's premises. I am not willing to grant that relief as already set out.

In the premises the following order is granted:

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[1] THE FIRST TO FOURTH RESPONDENTS ARE INTERDICTED AND RESTRAINED FROM SOLICITING WORK FROM ANY OF THE APPLICANT'S CUSTOMERS TO PERFORM THE ACTIVITIES AND OR SERVICES CONTEMPLATED IN THE EMPLOYMENT

CONTRACTS, OR BY UTILISING THE APPLICANT'S
CLIENT LIST, OR IN PERFORMING ANY OF THE
ABOVE ACTIVITIES.

[2] THE APPLICANT IS ORDERED TO PAY THE COST OF
THE APPLICATION ON SCALE A.

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VAN DEN BERG, AJ
ACTING JUDGE OF THE HIGH COURT

APPLICANT **ADV C FEHR**

RESPONDENTS **ADV E SMIT**