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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Not Reportable

Case no: 2025/123779

In the matter between:

NJR STEEL CAPE TOWN (PTY) LIMITED

Applicant

and

RUPERT FRANCOIS GORDON

First Respondent

**STEWARTS AND LLOYDS HOLDINGS
(PTY) LIMITED**

Second Respondent

Neutral citation: *NJR Steel Cape Town (Pty) Limited v Rupert Francois Gordon*
and another

(Case no 2025/123779) [2025] ZAWCHC (6 AUGUST 2025)

Coram: NJOKWENI AJ
Heard: 6 August 2025
Delivered *ex tempore*: 6 August 2025
Reasons delivered: 26 August 2025

Summary: Urgency - final interdict –restraint of trade – breach and enforceability – locus standi application to strike out averments in the replying affidavit – no formal application to strike out filed leave to file further affidavits – referral to oral evidence – requirements for final interdict met – not repugnant to public policy – restraint of trade found to be reasonable and enforceable.

ORDER

1. The rules relating to forms, service, notices, and time periods, to the extent necessary, are dispensed with in terms of uniform rule 6(12).
2. The matter is declared sufficiently urgent to be heard on urgent basis.
3. The first respondent's informal application to strike out is condoned.
4. Application to strike out impugned new averments from the replying affidavit is dismissed.
5. Application to strike out "hearsay" evidence from the replying affidavit is dismissed.
6. The first respondent, for a period of six months, from 1 August 2025, ("the restraint period") is hereby interdicted and prohibited from:
 - 6.1 rendering services as an employee of the second respondent (Stewarts and Lloyds Holdings (Pty) Ltd).
 - 6.2 being directly or indirectly involved with the second respondent within a 250-kilometer radius of the applicant's business premises situate at 1[...] B[...] Avenue, Epping Industria, Cape Town, Western Cape ("the restraint area").
 - 6.3 marketing, selling, or supplying goods or services similar to those of the applicant within the restraint area and during the restraint period.
7. The second respondent is hereby interdicted and prohibited from employing the first respondent within the restraint area during the restraint period.
8. The first and second respondents jointly and severally one paying the other be absolved to pay the costs of the application, including the costs

of counsel, on scale C.

WRITTEN REASONS/JUDGMENT

Njokweni AJ

Introduction

- [1] This application served before me in the urgent court on 6 August 2025. It concerns an urgent application brought by NJR Steel Cape Town (Pty) Ltd (the applicant) against Rupert Francois Gordon (the first respondent) and Stewarts and Lloyds Holdings (Pty) Ltd (the second respondent). The case revolves around enforcing a restraint of trade agreement signed by the first respondent during his employment with the applicant.
- [2] The applicant, NJR Steel Cape Town (Pty) Ltd, sought urgent interdictory relief to enforce a restraint of trade and confidentiality agreement signed by the first respondent, Rupert Francois Gordon, on 2 October 2023. The first respondent allegedly breached this agreement by joining the second respondent, Stewarts and Lloyds Holdings (Pty) Ltd, a direct competitor, on 1 August 2025. The applicant fears irreparable harm to its proprietary interests, including customer connections and confidential information, and seeks to prevent both respondents from engaging in unlawful competition. The applicant contended that the matter is urgent as the restraint is valid for only six months, expiring on 31 January 2026.
- [3] After I heard oral submissions from counsel of all the parties and having considered the matter, I found the matter to be sufficiently urgent and granted relief to the applicant by making an order *inter alia* interdicting: (1) the first respondent from working for the second respondent or engaging in activities that would compete with the applicant's business within a specified area

during the restraint period; and (2) the second respondent from employing the first respondent within the restraint area during the restraint period. I then delivered an *ex tempore* judgment in support of my order. The respondents have filed leave to appeal against the entirety of my *ex tempore* judgment and the order I made on 6 August 2025. They have also requested written reasons in terms of rule 49(1)(c) for the decision. The full reasons appear below.

Relevant Facts

- [4] The factual background relevant to the issues for determination is briefly set out below.
- [5] NJR Steel Cape Town (Pty) Ltd operates as a steel merchant, selling various steel and related products. The first respondent was employed by the applicant as an internal sales representative from **1 October 2023 to 31 July 2025**. Prior to this period, he worked for the second respondent for 15 years from 2008 to 2023. On 2 October 2023, the first respondent signed a restraint of trade and confidentiality agreement that was attached to his employment contract as an addendum. The material relevant terms thereof:
- [6] The first respondent agreed not to market, sell, or supply any competitive products within a 250-kilometer radius of the applicant's business during the restraint period (employment period plus six months after termination). The first respondent is prohibited from being involved in any competitive business within the restraint area in any capacity (e.g., as an employee, consultant, shareholder, etc.).
- [7] The first respondent undertook not to solicit, persuade, or induce NJR customers to cease or reduce business with the applicant during the restraint period. The respondent is prohibited from canvassing or soliciting orders from NJR customers for competitive products. The first respondent agreed to maintain the confidentiality of, and not disclose proprietary information, including customer and supplier lists, business relationships, pricing

structures, and trade secrets. The respondent is prohibited from using confidential information or business connections for personal benefit or for the benefit of any competitive business. These provisions aim to protect the applicant's proprietary interests, customer relationships, and confidential information from misuse by the first respondent during and after his employment.

- [8] During his time as the applicant's employee, the first respondent had access to, and came into possession of, **confidential and proprietary information** belonging to the applicant during his employment. This includes customer contact details, new personnel relationships, and confidential information regarding: steel, tube, and plate requirements, opportunities, and proposals discussed with the applicant's customers. The first respondent was the applicant's best-performing internal sales representative, contributing approximately **41.5% of sales by value** and **43.9% of sales by volume** over the last nine months of his employment.
- [9] On 2 July 2015 the first respondent tendered his resignation from the employ of the applicant to take up employment with the second respondent as an internal salesperson to revive dormant customers. Notwithstanding better offers by the applicant and the binding effect of the restraint and confidentiality agreement, on **1 August 2025**, the first respondent took up employment with the second respondent, a direct competitor of the applicant, at its Wetton branch, which is located less than **15 kilometers** from the applicant's premises and falls within the restraint area. The second respondent is a direct competitor of the applicant, selling similar products and targeting the same customer base. It is considered one of the applicant's main competitors.
- [10] The first respondent's defence to the applicant's claim is summarised below.
- [11] The applicant does not have a legitimate proprietary interest in the TOP 15 customer relationships. These relationships were cultivated by Gordon over 15 years with the second respondent, not during his brief tenure with the

applicant. The applicant profited from these pre-existing relationships without creating new goodwill, and thus cannot claim ownership over them.

- [12] The first respondent's current role selling Fluid Control Products is entirely distinct from the applicant's steel products. He handles dormant accounts and uses the second respondent's database, posing no competitive threat to the applicant. This distinction negates any claim of breach of the restraint of trade.
- [13] The restraint imposed by the applicant is unreasonably broad, spanning 12 months unpaid and a 250-kilometer radius. This scope disproportionately burdens Gordon, a junior salesman without strategic knowledge, and violates public policy by restricting his constitutional right to work and economic freedom.
- [14] The applicant has failed to demonstrate genuine urgency, as the harm it claims is speculative and self-induced due to its delay in filing the application. Courts require concrete evidence of harm and the absence of substantial redress through normal procedures, which the applicant has not provided.
- [15] The applicant's claims about protectable confidential information are vague and unsupported. The first respondent asserts that the data in question is transient, public, or originates with the second respondent, and the applicant's reliance on hearsay further undermines its case.
- [16] Material disputes regarding proprietary interest, competitive threat, and confidentiality require oral evidence for resolution. These disputes prevent the court from ruling in favour of the applicant based solely on the papers. A damages action would suffice as an alternative remedy, which the applicant has failed to address. This further weakens the applicant's case for urgent relief.
- [17] Ruling in favour of the first respondent upholds his constitutional right to work, dignity, and economic freedom. The restraint imposed by the applicant

is excessive and contrary to public policy, as it prevents the first respondent from pursuing non-competitive employment.

[18] In summary, the applicant has failed to establish a protectable interest, demonstrate urgency, or justify the restraint's scope. First respondent's arguments align with constitutional principles and public policy, compelling the court to rule in his favour. The applicant asserts that the first respondent possesses confidential information regarding customer requirements, opportunities, and proposals acquired during his employment – information that is protectable under the restraint agreement.

[19] The respondents have raised different points *in limine*. These points are procedural challenges raised before addressing the substantive merits of the case. However, I decided to hear the merits of the application before I ruled on those points so I could determine the merits of the application in the event that I should decide to dismiss the *in limine* points. I deal with these points below.

Urgency

[20] The issue of whether a matter should be enrolled and heard as an urgent application is governed by the provisions of Rule 6(12) of the Uniform Rules. The aforesaid sub-rule allows the court or a judge in urgent applications to dispense with the forms and service provided for in the rules and dispose of the matter at such time and place, in such manner, and in accordance with such procedure as it deems fit. It further provides that in the affidavit in support of an urgent application the applicant '... shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.'

[21] The applicant argues that the matter is urgent because the restraint is valid for only six months, expiring on **31 January 2026**. The respondents contend that the urgency is self-created, as the applicant delayed for weeks before

launching this application following the first respondent's resignation on 4 July 2025. In this regard, the court held in *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*¹:

'[8] In my view the delay in instituting proceedings is not, on its own a ground, for refusing to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given. The important issue is whether, *despite the delay, the applicant can or cannot be afforded substantial redress* at a hearing in due course. A delay might be an indication that the matter is not as urgent as the applicant would want the Court to believe. On the other hand, *a delay may have been caused by the fact that the Applicant was attempting to settle the matter* or collect more facts with regard thereto.²

[9] It means that if there is some delay in instituting the proceedings an Applicant has to explain the reasons for the delay and why despite the delay, he claims that he cannot be afforded substantial redress at a hearing in due course. I must also mention that the fact the Applicant wants to have the matter resolved urgently does not render the matter urgent. The correct and the crucial test is whether, if the matter were to follow its normal course as laid down by the rules, an Applicant will be afforded substantial redress. *If he cannot be afforded substantial redress at a hearing in due course, then the matter qualifies to be enrolled and heard as an urgent application.* If, however, despite the anxiety of an Applicant he can be afforded a substantial redress in an application in due course the application does not qualify to be enrolled and heard as an urgent application.'

[22] In *East Rock*³, it was held:

'[7] It is important to note that the rules require absence of substantial redress. *This is not equivalent to the irreparable harm* that is required before the granting of an interim relief. *It is something less.* He may still obtain redress in

¹ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011) at paragraphs [8] and [9]. ("East Rock").

² See: *Nelson Mandela Metropolitan Municipality v Greyvenouw* 2004 (2) SA 81 (SE) at 94C–D; *Stock v Minister of Housing* 2007 (2) SA 9 (C) 12I–13A.

³ *East Rock*, fn1 *supra* at paragraph [7].

an application in due course, but it may not be substantial. Whether an applicant will not be able obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his cases in that regard.'

- [23] In this application, there was an exchange of correspondence between the applicant's attorneys and first respondent, in which the latter was reminded of the undertakings he made to the applicant in respect of restraint of trade and confidentiality, especially the restraint area and period. Instead of the first respondent responding to such correspondence, on 12 July 2024, the second respondent's attorneys wrote to the applicant's attorneys and advised that the first respondent would only be involved in marketing and sales of the second respondent's fluid products.
- [24] On 21 July 2025, the applicant sought to conclude an "Exit Agreement" with the first respondent. This agreement was intended to record the position in which the first respondent would be employed by the second respondent and would contain further undertakings and assurances to protect the applicant's confidential and proprietary information and interests. The following day, 22 July 2025, the second respondent's attorneys informed the applicant that the first respondent will not be signing the Exit Agreement without proposing any counter terms and undertakings that would satisfy the applicant as sufficient protection.
- [25] In a letter dated 28 July 2025, the applicant's attorneys informed the respondents' attorneys that the refusal to sign the Exit Agreement or even to suggest counter undertakings or wording thereof was a clear indication of the respondents' intention to breach the restraint and confidentiality undertakings between the applicant and the first respondent. The applicant further asserted that the second respondent would unlawfully benefit from such a breach. The applicant, in the said letter, informed the respondents that the alleged employment of the first respondent in the second respondent's fluid division was fabricated. In the result, the applicant informed the respondents that the employment of the first respondent by the second respondent would

be a breach of the restraint and confidentiality agreement. The second respondent would unlawfully compete with the applicant and the refusal to sign the Exit Agreement was a clear indication that the respondents intend to breach the restraint and confidentiality agreement.

[26] The applicant contends that these actions constitute a *prima facie* breach of the restraint addendum and confidentiality provisions. The applicant, in the said letter, informed the respondents that it had instructed its attorneys to make an urgent application to this Court for an interdict and costs. The applicant's attorneys even stated in their letter dated 28 July 2025 that they would have preferred to enrol the urgent application for 31 July 2025, but to do so would be too short a notice, and as such they will enrol the urgent application for 6 August 2025. Indeed the application was enrolled for hearing on 6 August 2025 and it served before me in the urgent court as an urgent application. In the result, I disagree with contention that urgency was self-created. The factual background relating to attempts by the applicant to secure from the respondents an Exit Agreement or similar undertaking as proposed in the Exit Agreement, *prima facie* suggests that there is reasonable apprehension of harm by the applicant, being unlawful use of confidential proprietary information and client lists. It is apposite to mention that the aforementioned top 15 customers are not the applicant's only customers. The first respondent's relations with other customers were enhanced by his employment with applicant.

[27] I am alive to the fact that the applicant may still obtain redress in an application in due course, but it may not be substantial. In *casu*, I am persuaded that the applicant cannot be afforded substantial redress in due course if the final interdict is not granted and in the circumstances, I find that the balance of convenience favoured the applicant that I should hear the matter, as I did, on an urgent basis.

Jurisdiction

[28] The second respondent claims that the court lacks jurisdiction over it

because its principal office is in **Bedfordview, Gauteng**. The applicant counters this by arguing that the unlawful acts constituting **unlawful competition** are being perpetrated within the jurisdiction of the court (Cape Town), and the proprietary interests being harmed are situated at the applicant's registered office in Epping Industria, Cape Town. The applicant also invokes the **continentia causae rule**, which allows the court to exercise jurisdiction over the entire cause of action for reasons of convenience, justice, and good sense. This point was abandoned (wisely so, in my view) by second respondent's counsel.

Striking out averments in replying affidavit as new matter

- [29] The first respondent seeks an order to strike out the following averments from the replying affidavit.

'Replying Affidavit (paragraph [14] p. 201-2) where the Applicant claims that Gordon *strengthened* the TOP 15 customer relationships during his 22 months with them. This claim wasn't made in the Founding Affidavit (paragraph [39], p. 12-13), which only argued that these relationships were their property.

Replying Affidavit, paragraph [18] (p. 203) where it is asserted that new customer *information (e.g., contact personnel details)* is protectable, despite this not having been raised in the Founding Affidavit.' [my emphasis]

- [30] In the answering affidavit, the applicant uses the word *developed* - as opposed to *strengthens* - as used in the replying affidavit - to describe the the first respondent's relationship with the applicant's clients or top 15 customers. I do not find the use of the term *strengthen* to mean anything different to *develop* in the context of describing the effect of the first respondent's employment with the applicant on improving, enhancing, developing and strengthening of customer relationships with the first respondent and the applicant's customers. In the *ex tempore* judgment I even stated '*one does not need to be a Harvard scholar in English to understand the contextual use of these said words*' in *casu*.

[31] The application to strike out or intent to move same was mentioned for the first time only in the first respondent's heads of argument, which were filed after applicant's heads of argument were filed. During the hearing, I asked whether there was a formal application before me to strike out those impugned provisions, and there was none. An application to strike out is an interlocutory application and as such an application to strike out is an application on notice to the other party⁴. I am very much aware that due to the urgency of the matter I have the discretion to permit a request to strike out certain averments to be made within the affidavit itself.⁵ Notwithstanding, to simply mention an application to strike out in heads of argument, to me it is bad practice to do so. This is because the applicant is ambushed..

[32] Further, the second respondent could and should have applied for leave to file a further affidavit after the replying affidavit was filed, so that the impugned averments in the replying affidavit could be addressed fairly. Notwithstanding the said shortcomings, I acknowledge that, due to the urgency, certain procedural defects could be overlooked and as such I condoned the defective application to strike out because of the pressured situation created by the urgency of the matter and the truncated timetable.⁶ An application to strike out is an application incidental to pending proceedings within the meaning of rule 6(11) and should therefore be initiated by way a simple application on notice.⁷

[33] I find no merit in the application to strike out, as the content in question did not introduce a new matter and was consistent with the applicant's original submissions.

Striking out hearsay evidence in replying affidavit

[34] First respondent seeks the striking out of the following:

⁴ Application to strike is an application on notice. See *Abromowitz v Jacquet and Another* 1950 (2) SA 247 (W) at 251-2.

⁵ See *Thurgood v Dirk Kruger Traders (Pty) Ltd* 1990 (2) SA 44 (E) at 48A-C.

⁶ See *Abramowitz v Jacquet* 1950 (2) SA 247 (W) at 251-2.

⁷ *Elher (Pty) Ltd v Silver* 1947 (4) SA 173 (W) at 178.

'Allegations about Gordon's dealings with TOP 15 customers, based on information from others (Replying Affidavit, paragraph [14] p. 201-2), without specifying sources or justifying admissibility. Claims about protectable new information, relying on unspecified third-party information (Replying Affidavit, paragraph1[8] p. 203). Lacking personal knowledge, these statements prejudice Gordon, as he cannot test their veracity (Answering Affidavit, paragraph [16] p. 108). This Court should strike them out with costs, per supra.'

- [35] For these reasons, it is contended that the impugned averments are contended to constitute hearsay evidence, which is inadmissible and therefore should be struck out. There is no merit to this point. The deponent, Mr Jacobs states that although he has not interacted directly with the first respondent in this particular matter, he has been kept informed and involved in decisions and actions taken against respondents, including the applicant's dealings with issues concerning the first respondent's employment with and his resignation from the applicant. There is no merit to this point, the application to strike out should fail.

Issues

- [36] From this background I have distilled the following issues for determination.
- [37] Whether there are any new averments in the replying affidavit that must be struck out.
- [38] Whether certain evidence contained in the founding affidavit is hearsay evidence and thus inadmissible and falls to be struck out.
- [39] Whether the restraint of trade and confidentiality provisions signed by the first respondent are reasonable and enforceable.
- [40] The requirements for granting of a final interdict against both respondents are

met.

Legal Framework

[41] The position in our law is, therefore, that a party seeking to enforce a contract in restraint of trade is required only to invoke the restraint agreement and prove a breach thereof.⁸ Thereupon, a party who seeks to avoid the restraint, bears the *onus* to demonstrate on a balance of probabilities, that the restraint agreement is unenforceable because it is unreasonable.

[42] These principles have been reaffirmed in other decisions of our courts. In *Basson v Chilwan and Others*, Botha JA stated, in a separate judgment, that:

‘The incidence of the onus in a case concerning the enforceability of a contractual provision in restraint of trade does not appear to me in principle to entail any greater or more significant consequences than in any other civil case in general. The effect of it in practical terms is this: the covenantee seeking to enforce the restraint need do no more than to invoke the provisions of the contract and prove the breach; the covenantor seeking to avert enforcement is required to prove on a preponderance of probability that in all the circumstances of the particular case it will be unreasonable to enforce the restraint; if the Court is unable to make up its mind on the point, the restraint will be enforced. The covenantor is burdened with the onus because public policy requires that people should be bound by their contractual undertakings. The covenantor is not so bound, however, if the restraint is unreasonable, because public policy discountenances unreasonable restrictions on people's freedom of trade. In regard to these two opposing considerations of public policy, it seems to me that the operation of the former is exhausted by the placing of the onus on the covenantor; it has no further role to play thereafter, when the reasonableness or otherwise of the restraint is being enquired into.’

⁸ *Experian South Africa (Pty) Ltd v Haynes and Another* 2013 (1) SA 135 (GSJ) at paragraph [14]. (“Experian”).

[43] Nicholas J, as he then was, stated in *Super Safes (Pty) Ltd and Others*⁹ v *Voulgarides and Others*:

‘A bare covenant not to compete cannot be upheld. A restraint against competition must, if it is to be valid, serve some interest of the person in whose favour it was inserted - the purchaser of a business, for example, who requires protection against the erosion of its goodwill by the competition of the seller; or the employer who requires that his trade secrets and his trade connections be protected against exploitation by the man whom he is taking into his employment.’

[44] The test set out in *Basson v Chilwan and Others*¹⁰, for determining the reasonableness or otherwise of the restraint of trade provision, is the following:

‘[15.1] Is there an interest of the one party, which is deserving of protection at the determination of the agreement?

[15.2] Is such interest being prejudiced by the other party?

[15.3] If so, does such interest so weigh up qualitatively and quantitatively against the interest of the latter party that the latter should not be economically inactive and unproductive?

[15.4] Is there another facet of public policy having nothing to do with the relationship between the parties, but which requires that the restraint should either be maintained or rejected?’

[16] In *Kwik Kopy (SA) (Pty) Ltd v Van Haarlem and Another* 1999 (1) SA 472 (W) at 484E, Wunsh J added a further enquiry, namely whether the restraint goes further than is necessary to protect the interest.

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

17.1 The first kind consists of the relationships with customers, potential customers, suppliers and others that go to make up what is compendiously

⁹ *Super Safes (Pty) Ltd and Others v Voulgarides and Others* 1975 (2) SA 783 (W) at 785E. (“*Super Safes*”).

¹⁰ *Basson v Chilwan and Others* (supra) at 767G-H.

referred to as the “trade connection” of the business, being an important aspect of its incorporeal property known as goodwill;

17.2 The second kind consists of all confidential matter which is useful for the carrying on of the business and which could therefore be used by a competitor, if disclosed to him, to gain a relative competitive advantage. Such confidential material is sometimes compendiously referred to as “trade secrets.’

- [45] 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 to show 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.¹¹

Analysis

Does the applicant lack protectable proprietary interest?

- [46] The first respondent’s defence on the merits is that the applicant’s claim of having a proprietary interest in respect of various customers is untrue and thus the applicant is not entitled to the relief it seeks. In fact, the first respondent’s contention in this regard is limited or focused only on TOP 15 customers of the applicant which the First Respondent claims were previous customers of the second respondent with whom the first respondent built a relationship over a period of fifteen years whilst previously in the employ of the second respondent. The first respondent explains that he commenced employment in 2008 with the second respondent, also in internal sales at the

¹¹ See *Den Braven SA (Pty) Limited v Pillay and Another* [2008] 3 All SA 518 (D) at paragraphs [17] to [18].

Epping branch. He spent fifteen years there before resigning and joining the applicant for an improved remuneration package in October 2023. During his fifteen years with the second respondent, he formed relationships with the representatives of the so-called Top 15 customers that he continued to service during his 22 months with the applicant. The first respondent contends that these relationships were not cultivated whilst he was in the applicant's employ, they were pre-existing. These customers buy steel, tube and plate products and were "brought" or "transitioned" by the first respondent from the second respondent to the applicant in October 2023.

[47] The first respondent has spent the last 22 months dealing with the TOP 15 customers. In so doing, he enhanced the relationship between the applicant and these customers. I agree with the applicant's counsel that it can never be the case, as the respondents would have it, that the customer relationships, once developed over time, remain static and unenhanced over a further period of almost two years whilst the first respondent was dealing, on a regular basis, with these customers on behalf of the applicant. As the applicant states in reply, the respondents conveniently lose sight of the fact that over the past 22 months key personnel of the Top 15 customers, with whom the first respondent previously dealt whilst in the second respondent's employ, have been replaced by new personnel. For example, Jerome Scritten, a buyer at Holman Engineering (one of the Top 15 customers) and Dylan Heyns, a buyer at Servo (also a Top 15 customer), left their respective employment with those customers and were replaced by someone else who commenced dealing with the first respondent. It is precisely these new relationships that the first respondent has developed during his employment with the applicant that it seeks to protect by means of this application. It must therefore follow that any new information acquired by the first respondent, such as new contact personnel details, is protectable as the first respondent was not possessed of this information when he joined the applicant from the second respondent in October 2023.

[48] As stated above, the first applicant contributed 45.5% of applicant's sales by value and 43.9% by volume. The first respondent not only had access to and

relationships with the applicant's Top 15 customers but also with other customers of the applicant. The first respondent freely and voluntarily signed the restraint addendum and undertook inter alia not to and is prohibited from:

- (a) *being involved in any competitive business within the restraint area in any capacity (e.g., as an employee, consultant, shareholder, etc.) within the restraint period.*
- (b) *soliciting, persuading, or inducing NJR customers to cease or reduce business with the applicant during the restraint period.*
- (c) *canvassing or soliciting orders from NJR customers for competitive products.*

[49] When informing the applicant of his employment offer from the second respondent and his intention to resign from the applicant, he never mentioned that he would be employed in the second respondent's fluid business or division. This was mentioned after the applicant informed the respondents of its intention to strictly enforce the restraint and confidentiality undertakings made by the first respondent. In fact, the first respondent concedes in the answering affidavit that:

'... there may be common clients (given the nature of the steel industry) and that a common client would be one that may require both a fluid control product, as well as a steel and tube product" (i.e. steel and tube products also sold by the applicant), but says such an event would not be a breach of the restraint.'

[50] This is precisely the applicant's concern that not only will the first respondent's employment with the second respondent place the first respondent in a position to deal with the applicant's customers and exploit its customer relationships, but that both respondents acknowledge that the first respondent would be able to offer and sell competitive products to those customers. This, precisely, is the risk the applicant sought to mitigate through the exit agreement which the first respondent refused to sign and which refusal the second respondent supports.

[51] The ex-employer seeking to enforce a protectable interest recorded in a restraint against his ex-employee does not have to show that the ex-employee has, in fact, utilized confidential information; it merely needs to show that the ex-employee could do so. The very purpose of the restraint agreement is to relieve the applicant from having to show *bona fides* or lack of retained knowledge on the part of the respondent concerning the confidential information. In these circumstances, it is reasonable for the applicant to enforce the bargain it has exacted to protect itself. Indeed, the very *ratio* underlying the bargain is that the applicant should not have to contend itself with crossing his fingers and hoping that the respondent would act honourably or abide by the undertakings that he has given. It does not lie in the ex-employee's *ipse dixit* [my own words], who has breached a restraint agreement by taking up employment with a competitor to say to the ex-employer '*Trust me: I will not breach the restraint further than I have already been proved to have done*'.¹²

First respondent has access to confidential proprietary information

[52] The 22-month period spent in the applicant's employ also means that the first respondent is possessed of confidential information belonging to the applicant (and not to him or the second respondent) regarding steel, tube and plate requirements, opportunities and proposals that he discussed with the Top 15 customers and information he received concerning other customers of the applicant, while representing and being employed by the applicant. In respect of such confidential information, the fact that the first respondent might previously and whilst representing the second respondent have dealt with a customer, does not detract from the protectable nature of the confidential nature that came into his possession whilst in the applicant's employ.

¹² Experian (*supra*) at paragraph [22].

[53] In *Rawlins and Another v Caravantruck (Pty) Ltd*¹³, the former employee stated that during his employment with his former employer, he largely dealt, not with its existing customers, but with his own pre-existing following or buyers whom he later found. This particular argument was convincingly dealt with by Nestadt JA as follows:

“...what Rawlins says is that during his employment with the respondent he largely dealt, not with its existing customers, but with his own pre-existing following or buyers whom he later found. Does this establish that the [former employer] did not have a proprietary interest of the kind under consideration? It is, of course, a factor in [the former employee’s] favour; but not conclusively so ... Even though the persons to whom an employee sells and whom he canvasses were previously known to him and in this sense ‘his customers’, he may nevertheless during his employment, and because of it, form an attachment to and acquire an influence over them which he never had before. When this occurs, what I call the customer goodwill which is created or enhanced is at least in part an asset of the employer. As such it becomes a trade connection of the employer which is capable of protection by means of a restraint of trade clause. The onus being on Rawlins to prove the unreasonableness of the restraint, it was for him to show that he never acquired any significant personal knowledge of or influence over the persons he dealt with as a salesman of the [former employer] over and above that which previously existed.”

[54] The first respondent provides no such evidence. As in *Rawlins*, the first respondent did not allege that he did not acquire such knowledge or influence, nor could this be inferred – on the contrary, it appears no less probable that the first respondent’s relationships with he dealt with whilst at the applicant were such as to make it reasonable for the applicant to protect itself by enforcing the restraint. Also as in *Rawlins*, it is a fair inference in the circumstances that the first respondent’s 22-month employment with the applicant gave him the opportunity to consolidate or even strengthen the prior

¹³ *Rawlins and Another v Caravantruck (Pty) Ltd* 1993 (1) SA 537 (A) at page 542G-I, (“*Rawlins*”).

rapport he had had with these customers.

[55] It follows that the first respondent has failed to discharge the onus of demonstrating that the restraint is unreasonable. The first respondent's bald denial that the restraint area (250 km from the applicant's premises) is reasonable does not discharge the onus. He has failed to provide any factual basis in support of this submission. The first respondent serviced approximately 60 customers on a monthly basis, the Top 15 of which were those with whom he had formed relationships whilst employed by the second respondent.

[56] The first respondent does not contend that the applicant does not have a proprietary interest in respect of those customers serviced by the first respondent that fall outside the Top 15 customers.

[57] It is these reasons that persuaded me that the applicant has a protectable proprietary interest in the present application.

First respondent employment by the second respondent poses a competitive threat to applicant

[58] In *Reddy v Siemens Telecommunications (Pty) Ltd*¹⁴, the court enforced restraint because Reddy joined a direct competitor (Ericsson) in a similar role servicing telecommunication operators risking disclosure of confidential information. First respondent's counsel sought to persuade me that the facts in Reddy are distinguishable from the present application because unlike Reddy, who joined a direct competitor (Ericsson) in a similar role servicing telecommunication operators, Gordon (the first respondent) sells Fluid Control Products, distinct from the applicant's steel products. The difficulty with this proposition lies in the admissions made by the respondents that in the course and scope of his employment with the second respondent, the first respondent might invariably cross sell steel and tube products to

¹⁴ Reddy v Siemens Telecommunications (Pty) Ltd 2007 (2) SA 486 (SCA) at paragraph [120] page 219, ("Reddy").

customers that came to the second respondent to purchase fluid control products. Such customers might include the applicant's Top 15 customers including those that fall outside the Top 15 customers. In that situation, it would be difficult if not impossible for the applicant to police strict compliance with the restraint and confidentiality undertakings by the respondents. If breach of those undertakings were to occur the second respondent would benefit unfairly from protected and confidential proprietary information of the applicant.

[59] In *Experian*¹⁵, the court held:

'[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.'

[60] The second respondent's counsel sought to persuade this court that in the past, the second respondent had employed the applicant's former employees and in those circumstances the applicant and the second respondent were able to negotiate and conclude acceptable arrangements whereby such former employees would sign a formal written undertaking to comply with

¹⁵ *Experian* at paragraph [21].

restraint of trade for a period of six months after their employment with the second respondent resulting in applicant not interdicting such former employees from being employed by the second respondent. I was directed to annexure “**RMG2**” of the second respondent’s answering affidavit being an example of such an undertaking.

[61] I must pause to mention that prior to being referred to annexure “**RMG2**” I understood the respondents’ defence to be that they intended to issue undertakings not to breach the restraint and confidentiality undertakings made by the first respondent to the applicant but were unable to do so because the applicant failed to furnish them with acceptable arrangements (i.e. draft undertaking acceptable to the respondents). However, on perusal of annexure “**RMG2**” and after debating the submissions made with regard to annexure “**RMG2**” counsel for the second respondent, I understood the submission to be that I should find that it is the applicant who failed to provide acceptable information or proposals that resulted in failure to execute a fresh undertaking acceptable to the respondents.

[62] Contrary to that submission, annexure “**RMG2**” in fact proves that the respondents were aware and in possession of the kind of an undertaking that was acceptable to the applicant and which was worded in a manner acceptable to the applicant. Notwithstanding, the respondents did not offer the applicant such an undertaking. In fact, they sought the applicant to agree to arrangements or an undertaking suitable to the respondents but not protecting the applicant’s interest. In the result, the applicant presented the respondents with a draft exit agreement. The agreement was worded in a manner that would allow the first respondent to be employed at the second respondent but with safeguards on policing non-compliance with undertaking in terms thereof. In fact, the respondents flatly refused to sign the exit agreement on the basis that the first respondent would be employed in the second respondent’s fluid control products section.

[63] It is against this backdrop that the applicant’s attorneys wrote to the respondents’ attorneys informing them that:

‘... that refusal to sign the Exit Agreement or even to suggest counter undertakings or wording thereof was a clear indication of the respondents’ intention to breach the restraint and confidentiality undertakings between applicant and first respondent and the second respondent would unlawfully benefit thereby. The applicant, in the said letter, informed the respondents that the alleged employment of the first respondent in the second respondent’s fluid division was a construct.’

- [64] For reasons stated above, I was persuaded that the respondents posed a competitive threat to the applicant’s business even though the respondents claim that the first respondent is employed in the fluid control section of the second respondent’s business, which does not compete with the applicant’s steel and tube business.

Prima facie breach

- [65] The following common cause facts are relevant to establish whether the applicant has established a *prima facie* breach.
- [66] The applicant conducts business as a steel merchant which markets and sells a variety of steel and related products, including steel flat sheets and plates, tubing, grating and mesh, roof sheets, perimeter and palisade fencing, hardware and steel paint products. The applicant’s business overlaps substantially with the second respondent’s, with the exception of the fluid control division, which products the applicant and the NJR Steel group do not offer for sale.
- [67] The first respondent was employed by the applicant as an internal sales representative at the applicant’s business premises from 1 October 2023 to 31 July 2025, a period of 22 months. The terms and conditions of the first respondent’s employment with the applicant are recorded in the written letter of employment, dated 2 October 2023. As part of the first respondent’s duties and responsibilities as an internal sales representative for the applicant, the

first respondent had access to and has become possessed of information that is confidential and proprietary to the applicant.

- [68] In the performance of his duties and responsibilities as an internal sales representative for the applicant, the first respondent was responsible for servicing and developing the business relationships with the applicant's key customers, i.e. the applicant's key accounts were considered as the applicant's best performing internal sales representative.
- [69] The lifeblood of the applicant's business is the relationship it has with its customers, in that on average over the last nine months of October 2024 through to June 2025, has been responsible for approximately 41.5% of the applicant's sales, by value; and 43.9% of the applicant's sales, by volume.
- [70] The first respondent's letter of employment incorporates a written restraint addendum in terms of which the first respondent essentially undertook for a period of six months from the date of the termination of his employment not to, either alone or together with any other person, market, sell or supply any competitive product (as defined) within a radius of 250 kilometers of any place at which the applicant carries on business or do any business with any of the applicant's customers (as defined) within the aforesaid radius.
- [71] The second respondent is a direct competitor of the applicant, selling essentially the same products as the applicant, targeting customers (and potential customers) in the same general area, apart from its fluid control division.
- [72] The second respondent, which also has branches throughout South Africa, is considered by the NJR Steel group as one of its main competitors. From 1 August 2025, the first respondent has taken up employment with the second respondent at its Wetton branch, which is less than 15 kilometers from the applicant's business premises and falls within the 250-kilometer restraint area. The applicant's attempts to reach an amicable solution in the form of the execution of an exit agreement were rejected by the respondents.

[73] It is for the reasons stated above that I find that there is a *prima facie* breach of the restraint addendum.

Public policy and reasonableness of restraint

[74] The *locus classicus* on this subject is *Magna Alloys and Research (SA) (Pty) Ltd v Ellis*¹⁶, where Rabie CJ summarised the legal position inter alia, as follows:

‘12.1 There is nothing in our common law which states that a restraint of trade agreement is invalid or unenforceable;

12.2 It is a principle of our law that agreements which are contrary to the public interest are unenforceable. Accordingly, an agreement in restraint of trade is unenforceable if the circumstances of the particular case are such, in the court’s view, as to render enforcement of the restraint prejudicial to the public interest;

12.3 It is in the public interest that agreements entered into freely should be honoured and that everyone should, as far as possible, be able to operate freely in the commercial and professional world;

12.4 In our law the enforceability of a restraint should be determined by asking whether enforcement will prejudice the public interest;

12.5 When someone alleges that he is not bound by a restraint to which he had assented in a contract, he bears the onus of proving that enforcement of the restraint is contrary to the public interest.’

[75] The first respondent signed an employment contract that contains restraint of trade and confidentiality provisions. He has chosen to take up employment with a competitor of the applicant and to work in the restraint area, with full knowledge of those provisions and knowingly in breach of them.

[76] The respondents have failed to allege that the restraint is unreasonable, let

¹⁶ *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* [1984] ZASCA 116; 1984 (4) SA 874 (A), at 897F-898E (“Magna Alloys”).

alone discharge the *onus* on them to establish that the restraint is unreasonable.

- [77] The next question, in terms of *Chilwans*, is whether the applicant's interest so weighs up qualitatively and quantitatively against the interest of the first respondent that the latter should not be economically inactive and unproductive.
- [78] Bearing the onus in this regard, the first respondent adduced no evidence to show that enforcement of the restraint is disproportionate, having regard to any of his countervailing interests. He resigned from the applicant of his own accord. In the circumstances, he remains free to earn a living by using his skills and expertise in the industry. There was no imbalance of power. In fact, in this matter, despite the applicant's counteroffer to earnings and benefits the first respondent was offered by the second respondent, he flatly refused any counteroffer. This is so in circumstances where he knows that almost 42% of the applicant's business was generated from customer relationships which the first respondent managed, maintained, and developed for the applicant.
- [79] The restraint itself will not last forever. It is in place for six months, a period which does not appear excessive given the steps the applicant needs to take to protect its legitimate interests: that is, permit a replacement salesperson to establish the same relationships with the customers. The first respondent could easily be placed in a different branch of the second respondent that is outside the restraint area. The first respondent, for convenience and proximity to his family, does not wish to be employed in any other branch of the second respondent. The restraint is not against public policy. The first respondent's conduct of flagrantly breaching a restraint and confidentiality agreement that he signed voluntarily is against public policy. Worse, he wants to legitimise unlawful use of the applicant's proprietary information for his and the second respondent's business because, according to him, he used the second respondent's trade secrets and customer information for the benefit of the applicant and the second respondent never restrained the applicant.

Two wrongs do not make a right. That being said, there are no other public policy issues that militate against enforcing the restraint. On the contrary, there are public interests to enforce the restraint.

Dispute of facts in motion proceedings

[80] In casu, the applicant seeks a final interdict without resorting to oral evidence, and the respondents contend that there are material disputes of fact that cannot be resolved on affidavits. They submit in their heads of argument that the matter should be referred to oral evidence. In such a case, the general rule was stated by Van Wyk J (with whom De Villiers JP and Rosenow J concurred) in *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd*¹⁷ to be:

‘... where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order... Where it is clear that facts, though not formally admitted, cannot be denied, they must be regarded as admitted.’

[81] In *Plascon-Evans Paints v Van Riebeeck Paints (Pty) Ltd*¹⁸ Corbett JA held:

‘It seems to me, however, that this formulation of the general rule, and particularly the second sentence thereof, requires some clarification and, perhaps, qualification. *It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order.*

¹⁷ *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C) at 235E – G. (“SFW”).

¹⁸ in *Plascon-Evans Paints v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at page 364H-I (“Plascon-Evans”).

[82] The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances, *the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact*¹⁹. *If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under Rule 6 (5) (g) of the Uniform Rules of Court and the Court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks.*²⁰ Moreover, there may be exceptions to this general rule, as, for example, *where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers.*²¹ [my emphasis].

[83] The respondent contends that since the applicant seeks final interdict and there is a material dispute of facts, the matter should be decided based on the principle in *Plascon-Evans*²² that where there is a genuine dispute of fact, the respondent's version must be accepted. The applicant, on the other hand, argues that the alleged dispute of fact is so far-fetched or so clearly untenable because it is not genuine, and therefore, the court would be justified in rejecting it on the papers.²³ This exception to the usual position is allowed because motion proceedings are quicker and cheaper, and it is in the interests of justice that dishonest respondents should not be permitted to shelter behind patently implausible versions on affidavit or bald denials. The practice in this regard has rightly become more robust²⁴.

[84] However, the test is not simply whether the respondent's version is improbable: in order to reject the respondent's version on the papers, the test

¹⁹ see *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1163 - 5; *Da Mata v Otto* NO 1972 (3) SA 858 1984 (3) SA p635 Corbett JA (A) at 882D – H.

²⁰ *Rikhoto v East Rand Administration Board and Another* 1983 (4) SA 278 (W) at 283E - H.

²¹ see the remarks of Botha AJA in the *Associated South African Bakeries* case, *supra* at 924A.

²² fn 18 *supra*.

²³ *Plascon-Evans* at 634E-635C; *Wrightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) at para 12

²⁴ *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) paras 55-56

is the more stringent one, namely, whether the respondent's version is so far-fetched or so clearly untenable that the court may safely reject it on the papers²⁵.

[85] The applicant pleaded the existence of a validly executed restraint and confidentiality agreement between it and the first respondent, including its terms and the breach thereof. The first respondent admits the existence and conclusion of the restraint addendum, the terms and that the second respondent is a direct competitor to the applicant.

[86] The dispute lies in the contention by the respondents that the Top 15 customers are not the applicant's proprietary interest worthy of protection by way of an interdict because these relationships were cultivated by him and the second respondent over 15 years whilst in the employ of the second respondent, not the applicant. The applicant's case is that even if the Top 15 customers were previously cultivated through the first respondent whilst in the former employ of the second respondent, when the first respondent became employed by the applicant, the former enhanced and/or developed his relationship with the Top 15 customers over a period of 22 months because his employment with applicant enabled him to do so. As a result, a protectable proprietary interest was created in favour of the applicant. It is precisely because of that protectable interest that the applicant committed the first respondent to the restraint and confidentiality undertakings. Our Courts have recognised that information of the type that the applicants seek to protect in casu, is considered trade secrets worthy of protection. In that regard, see, for example, *Sibex Construction (SA) (Pty) Ltd and Another v Injectaseal CC and Others*.²⁶

[87] I find that the so-called disputed facts are not genuine and, as such so far-fetched to safely reject it, as I hereby do, from the papers. In any event, there was no application by the respondents to refer the disputed facts to oral

²⁵ National Scrap Metal v Murray and Roberts 2012 (5) SA 300 (SCA) paras 21-22 and cases cited therein

²⁶ Sibex Construction (SA) (Pty) Ltd and Another v Injectaseal CC and Others 1988 (2) SA 54 (T)

evidence to cross-examine the deponents to the applicant's founding affidavit as envisaged in sub-rule 6(5)(g).²⁷

Requirements for final interdict

[88] The requirements for a final interdict are trite.²⁸ Accordingly, in order to succeed, the applicant must establish such requirements. These are (a) a clear right, (b) injury actually committed or reasonably apprehended, and (c) the absence of similar protection by any other ordinary remedy.

Clear right

[89] The clear right to be proved is a right to which, if not protected by an interdict, irreparable harm would ensue. Quite apart from the right to an interdict, the applicant should demonstrate a right that is threatened by an impending or imminent irreparable harm. It is a right to which, if not protected by an interdict, irreparable harm would ensue.²⁹ An interdict is meant to prevent future conduct and not the past.

[90] I am also of the view that the applicants do indeed have protectable interests in the form of customer connections and confidential information. As was held by this Court in *Experian and Sibex*, there are two kinds of proprietary interests that can be protected by a restraint of trade undertaking. The first is 'the relationship with customers, potential customers, suppliers and others that go to make up what is compendiously referred to as the "trade connections" of the business, being an important aspect of its incorporeal property known as goodwill'. And the second is 'all confidential matter which

²⁷ Sub-rule 6(5)(g) in provides:

'Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the foregoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.'

²⁸ *Setlogelo v Setlogelo* 1914 AD 221: at 227.

²⁹ *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) para 50 ("OUTA").

is useful for the carrying on of the business and which could therefore be used by a competitor, if disclosed to him, to gain a competitive advantage’.

[91] By all accounts, the first respondent, through his position at the applicant’s business in Epping and his previous history with the clients, developed relationships with at least the Top 15 customers of the applicant including others that fall outside the Top 15. A business’s customer connections are a proprietary interest that can be protected by a restraint of trade undertaking.

[92] Accordingly, I find that the applicant has established a clear right worthy of protection.

Irreparable harm or reasonable apprehension

[93] Where a restraint is enforceable and the applicant has interests worth protecting, it suffers irreparable harm if the restraint is not enforced.³⁰

[94] The first respondent has relationships with customers of a nature that he could induce them to follow him to his new employment with the second respondent, a direct competitor of the applicant. The applicants set out in some detail the strength of these relationships with the customers of the applicants, developed in the exercise of his duties. All of this serves to show an employee with the knowledge of the identity and requirements of the applicants’ customers and who had regular and repeated contact with the customers so as to build up a connection in the course of trade with them.

[95] The fact that the second respondent never protected itself from siphoning of its former customers by the first respondent does not negate or nullify the validity and enforcement of the restraint and confidentiality undertakings. Further, the fact that the first respondent is alleged to be employed in the second respondent’s fluid control business is not bulletproof evidence that the restraint and confidentiality undertakings would not be breached.

³⁰ Esquire System Technology v Cronje (2011) 32 ILJ 601 (LC) at paragraph [38].

- [96] This is so because, the respondents admit that it is possible for a fluid control customer to purchase steel and tube products from the second through the first respondent. The risk of breach of the restraint and confidentiality agreement by the respondents is real.
- [97] In addition, the respondents refused to sign the proposed exit agreement which would have put in place safety measures to the satisfaction of the applicant that they will not breach the undertakings. I agree with the applicant that the so-called employment of the first respondent by the second respondent in its fluid business section is a construct aimed at undermining the restraint and confidentiality agreement. Moreover, it is not only the Top 15 customer information and contact details that the applicant is concerned about, but also other applicant's customer information to which the first respondent had access by virtue of his employment with the applicant.
- [98] The first respondent, when he first informed the applicant of his employment offer from the second respondent and subsequent discussion in which he was offered a better offer, had never disclosed that he would be employed in the fluid control products section. Further, the second respondent has other branches outside the restraint area. The first respondent could have been employed in such other branches to avoid breaching the restraint addendum, but insists on being employed within the restraint area. He agrees that it is an available option, but he does not want to be far from his family.
- [99] The first respondent is employed by a direct competitor within the restraint area. I find that the so-called non-competing role in which the first respondent is employed (i.e., fluid control products) is aimed at diverting this court's attention from the real and genuine issues in this application. This attempt to divert the court's attention failed.
- [100] Accordingly, I find the apprehension of harm is reasonable in the circumstances. That being the case, if an interdict is not granted, the harm that might be inflicted on the applicant's business would be irreparable

considering that the Top 15 customers and other customers serviced by the first respondent at the applicant's business in Epping accounted for more than 40% of the applicant's sales in revenue and value.

Alternative remedy

[101] The applicant has no alternative remedy other than to enforce the restraint. An alternative remedy of damages *"is cold comfort to an applicant that seeks to enforce a legitimate restraint of trade covenant. By the time a damages claim is heard, the horse ha[s] bolted and harm is done. That harm is very difficult to repair. I am satisfied that, where a restraint of trade is enforceable, the alternative remedy of a damages claim in due course is more apparent than real"*.³¹

Conclusion

[102] I am satisfied that the urgent application was properly set down before me. The requirements for urgency were met. The respondents have failed to discharge the onus resting on them to prove that the restraint is unreasonable and thus unenforceable. As stated above, the restraint does not offend public policy and does not unfairly restrict the first respondent's constitutional rights to practise his trade freely and or to earn a living.

[103] For all of these reasons, I conclude that there can be no doubt that customer contact exists and that the respondents could exploit these connections if employed by a competitor such as the second respondent (which actually happened here). This is the interest that the applicant is entitled to protect by enforcing the restraint of trade. Accordingly, the restraint should be enforced. In the circumstances, I am satisfied that the order I made below is just and equitable.

In the result, I made the following order.

³¹ Esquire System Technology, *supra*, at paragraph [39].

1. The rules relating to forms, service, notices, and time periods, to the extent necessary, are dispensed with in terms of uniform rule 6(12).
2. The matter is declared sufficiently urgent to be heard on an urgent basis.
3. The first respondent's informal application to strike is condoned.
4. Application to strike out averments in the replying affidavit is dismissed.
5. Application to strike out "hearsay" evidence from the replying affidavit is dismissed.
6. The first respondent, for a period of six months, from 1 August 2025 ("the restraint period"), is hereby interdicted and prohibited from:
 - 6.1 rendering services as an employee of the second respondent (Stewarts and Lloyds Holdings (Pty) Ltd).
 - 6.2 being directly or indirectly involved with the second respondent within a 250-kilometer radius of the applicant's business premises situate at 1[...] B[...] Avenue, Epping Industria, Cape Town, Western Cape ("the restraint area").
 - 6.3 marketing, selling, or supplying goods or services similar to those of the applicant within the restraint area and during the restraint period.
7. The second respondent is hereby interdicted and prohibited from employing the first respondent within the restraint area during the restraint period.
8. The first and second respondents jointly and severally, one paying the other, be absolved to pay the costs of the application, including the costs of counsel, on scale C.

P NJOKWENI
ACTING JUDGE OF THE HIGH COURT

Appearances

Applicant : G Elliot SC
First Respondent : P Tredoux

Second Respondents : G Samkange