

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case number: 2025-171331

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

20/10/2025
DATE


SIGNATURE

In the matter between:

CORPORATE BUSINESS SOLUTIONS

Applicant

and

KENTON BRADLEY TRAVIS

First Respondent

FUSION GRID TECHNOLOGIES

Second Respondent

JUDGMENT

Mfenyana J

Introduction

- [1] This is an urgent application in which the applicant, Corporate Business Solutions (CBS), seeks to interdict and restrain the first and second respondents. Concerning the first respondent (Mr Kenton), CBS requests an order prohibiting him from directly or indirectly competing with CBS's business, or having any interest, whether as an employee, consultant, or director, in any entity that competes with CBS within the province of Gauteng.
- [2] With respect to the second respondent (Fusion), CBS seeks an order interdicting and restraining Fusion from facilitating Mr Kenton's continued employment and from unlawfully competing with CBS through the use of CBS's proprietary and confidential information.
- [3] CBS further seeks an order restraining the respondents from using or disclosing the applicant's confidential and proprietary information, directly or indirectly, including its customer and product base, pricing structure, marketing strategies, supplier details (including each supplier's hardware

and consumables pricing), and the intricate details and terms of customer contracts, contact persons, and trade secrets. CBS also seeks an order requiring the respondents to return, deliver to the applicant's attorney, or destroy all confidential and proprietary information and materials belonging to CBS within 48 hours.

[4] The applicant seeks costs on an attorney and client scale, only in the event of opposition.

[5] The dispute originates from an employment contract between CBS and Mr Kenton, which began on 2 May 2014 and ended on 7 August 2025. Mr Kenton was originally hired as a direct salesman and later promoted to Sales Manager in February 2023. In January 2024, he became Corporate Accounts Manager, responsible for CBS's sales base and managing corporate clients, including SMH.

[6] Upon termination of his employment, the first respondent commenced work with Page Automation, a competitor of CBS.

Applicant's case

[7] The applicant contends that, by taking up employment with Fusion, Mr Kenton acted in contravention of the confidentiality and restraint clause by taking up employment with Fusion and disclosing CBS's confidential

information, resulting in CBS losing two customers. The applicant further alleges that Fusion used this information to solicit CBS's existing customers with the intention of diverting their business to Fusion or facilitating such solicitation.

[8] CBS further states that, due to his position and responsibilities while employed there, Mr Kenton gained extensive knowledge of CBS's client base, product offerings, pricing structure for all products and services, confidential business contract information and terms, customer contact details, and trade secrets that provide CBS with a competitive advantage in their industry. Mr Bradley James (Mr James), the deponent to the founding affidavit, states that, because of his role in the company, Mr Kenton became deeply involved in all aspects of CBS's business, including access to confidential information not known to the public or third parties.

[9] When Mr Kenton joined Page Automation in September 2024, CBS chose not to enforce the restraint provisions at the time. Mr James asserts that this decision was due to Mr Kenton's lengthy service with CBS, and the company did not wish to impose a blanket ban on his employment. Furthermore, he states that there was no indication that Mr Kenton misused CBS's confidential information or solicited its customers upon joining Page Automation. He states that on the contrary, Mr Kenton respected his restraint obligations, referring all CBS customers who contacted him back

to CBS as stipulated in his letter of termination. Mr James adds that, in some instances, Mr Kenton directly informed CBS of such contacts. Accordingly, Mr James further avers, Mr Kenton's employment with Fusion did not impact CBS's business due to the professional manner in which he conducted himself. There was no harm to CBS's confidential information, he says.

[10] According to Mr James, it was on 28 August 2025 that CBS learnt from its Sales Manager, Ms Walker, that one of its clients, SMH, had been referred to Fusion, a newly established entity under the directorship of Mr Kenton and two other directors. He avers that this referral could have only been facilitated by Mr Kenton due to his intimate knowledge of CBS's customers, including the customer details of SMH. A CIPC search conducted by the applicant indicates that Fusion was registered on 6 May 2025.

[11] On 2 September 2025, so the story goes, CBS further learnt from one of its technicians, Mr Bhola, that Fusion had contacted another CBS client, Efficient Engineering, and had installed a printer at SMH, with another installation scheduled for Efficient Engineering. CBS asserts that these installations were made possible by Mr Kenton's involvement with Fusion, as he knew that the contracts with these customers were about to expire and also knew who the relevant contacts at those companies were. In so doing, he enabled Fusion to contact the correct people in each of the companies. The applicant thus claims that this conduct constitutes a breach

of Mr Kenton's restraint obligations.

[12] On the same day, Mr Kenton, through his attorneys, assured the applicant that he had resigned from Fusion on 30 May 2025. However, this statement proved to be untrue, as a CIPC search conducted on 28 July 2025 revealed several changes to his details, listing him as Managing Director; the applicant further avers.

[13] CBS contends that the matter is urgent as it would be prevented from enforcing the restraint of trade against Mr Kenton if the matter were to be heard in the ordinary course, as the restraint period would have run its course. CBS further states that its customer connections with both SMH and Efficient Engineering may have been lost to Fusion by then, and the respondents would continue soliciting the remaining customers of CBS and carry on with the onslaught against CBS. Thus, it would be too late to prevent Fusion from using CBS's confidential information to the detriment of CBS.

Respondents' case

[14] In opposing the application, the respondents contend that the application is not urgent in that the applicant has failed to set out explicitly the circumstances which render the matter urgent and why it would not be

afforded substantial redress in due course. The respondents further contend that CBS waived its rights and condoned Mr Kenton's employment with Page Automation, by which he remains employed. The respondents, therefore, state that the relief sought would have the effect of terminating his employment with Page Automation.

[15] The respondents further aver that the application is a year late, as the alleged breach occurred when he took up employment with Page Automation in September 2024, which is also when the urgency arose. However, since CBS chose not to take any action, it cannot now claim a breach, the respondents further aver.

[16] The respondents further contend that CBS also does not explain the month's delay in bringing this application, and as such, urgency, if any, is self-created. In this regard, the respondents rely on the decision of this Division in *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo and Others*¹, that 'where an applicant has been dilatory in their approach to the urgent application, the court should assess factors extrinsic to the papers, and any delay by the applicant in asserting its rights can be deemed to be self-created urgency.' They say that CBS cannot approach the urgent court at any time it elects to, simply because the shoe pinches.

¹ (35248/14) [2014] ZAGPPHC 400; [2014] 4 All SA 67 (GP) (19 June 2014).

[17] The respondents dispute the applicant's assertion that it would suffer harm if the matter were not treated as urgent, and contend that if there was any harm, it is a little too late for CBS to bring that up at this stage.

[18] Finally, the respondents contend that CBS will attain substantial redress at a hearing in due course, as it is free to institute a damages claim, and the commercial interest CBS seeks to protect can be dealt with in the ordinary course.

[19] On the merits, Mr Kenton avers that the restraint is unenforceable because he was never compensated for the restraint of trade as stipulated in the employment contract, a contention denied by CBS. I understand the first respondent to be saying that the applicant did not fulfil its end of the bargain and cannot therefore rely on the same provision that it did not comply with. It is necessary to dispose of this issue forthwith. In disputing this contention, CBS stated that the restraint compensation had been paid to Mr Kenton as part of his salary package, in accordance with clauses 4.3 and 4.4 of the employment contract. In this regard, CBS provided a schedule of payments made to Mr Kenton from February 2014 to August 2024. In my view, this resolves the issue.

[20] The second point relied on by the respondents is that CBS has waived any

rights it may have had, as it allowed Mr Kenton to be in the employ of a competitor.

[21] In respect of Fusion, the argument is that as a new entrant in the market, it cannot, at this stage, be regarded as a competitor. In addition, the respondents contend that the relief sought against Fusion cannot be granted, as it flows from an interdict against Mr Kenton, who did not provide any confidential information to Fusion, and therefore no breach has been committed by either of the respondents. In this regard, Mr Warryn Mudde (Mr Mudde), a director of Fusion, avers that it was not he who facilitated the relationship between Fusion and SMH. To this end, Mr Mudde provides a letter from SMH to the effect that SMH was referred to Fusion by one Mr Wayne McLaren.

Urgency

[22] The key consideration in determining urgency is whether the applicant will be afforded substantial redress in due course.² The court in *Mogalakwena*, which has been relied on by the respondents, held that if an applicant cannot establish that it would not be afforded substantial redress in due

² *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011).

course, the application cannot be urgent. Even on the strength of that decision, once prejudice has been established, the other factors to be considered include whether the respondents can adequately present their case in the available time and any other prejudice to the administration of justice, the strength of the applicant's case and the delay by the applicant in asserting his rights.

[23] I must say that I could not find any reference in *Mogalakwena* to the effect that factors extrinsic to the issue at hand should be considered. The factors to be taken into account, as identified by the court in that judgment, are in no way extraneous to the papers. Neither is the observation by the court capable of the interpretation assigned by the respondents.

[24] The applicant's case is that Mr Kenton has breached the restraint provisions, and it is prejudiced by this conduct, which prejudice is ongoing. What is relevant at that stage of the enquiry is whether the applicant would suffer any prejudice if its case were found to have merit. In my view, none of the authorities relied on by the respondents in this regard assists the respondents. For the simple reason that the applicant states categorically that the conduct of the respondents it seeks to restrain is his latest conduct and not his employment by Page Automation. The applicant further states that the conduct complained of came to their attention on 2 September 2025 and is ongoing.

[25] Even if the sentiments expressed by the respondents were correct, there can be no suggestion that the applicant was dilatory in approaching the urgent court. Should CBS's assertions be later substantiated, there can be no doubt that it would suffer prejudice if the matter is heard in the ordinary course. On the contrary, no apparent prejudice would be suffered by Mr Kenton, moreso, in view of his assertion that he has not shared any information belonging to CBS. The applicant has thus satisfied the requirements for urgency.

Discussion

[26] In terms of clause 16 (the confidentiality and restraint clause) of the employment contract, Mr Kenton agreed that for 18 months following the termination of his employment with CBS, regardless of the reason therefor, he would not, either directly or indirectly, compete with CBS's business or hold any interest in a competing company. This restriction applies specifically to roles as an employee, consultant, or director in any entity competing with CBS in the province of Gauteng.

[27] The conduct of the respondent is inconsistent with this provision. The recent allegations by CBS that the respondents solicited their clients are separate from Mr Kenton's earlier conduct in joining Page Automation, which CBS

condoned. The allegation that in so doing, CBS waived its rights is baseless. Clause 19 of the employment contract stipulates that any latitude, extension of time or other indulgence, or failure by CBS to enforce its rights in terms of the agreement, shall not be deemed a waiver of those rights.

[28] It seems improbable that CBS's customers leaving and joining Mr Kenton's business when he founded his own was just a coincidence. His version seems to suggest that to be the case. It is not. It is also not correct that CBS prevented Mr Kenton from earning a living, having allowed him to take up employment with Page Automation and remain so employed to date, subject to the specific condition that he refrains from sharing CBS's confidential information with third parties.

[29] On the strength of *Plascon- Evans*³, the disputes of fact between the parties can be resolved on Mr Kenton's version, provided that his version is plausible and believable. The fact that Mr Kenton denies having shared CBS's confidential information is implausible and does not exonerate him. His version is 'far-fetched, clearly untenable and palpably implausible.'

[30] I consider it necessary to deal with the relief sought by CBS against Fusion. Fusion states that the relief sought is incompetent, presumably because there is no contractual relationship between CBS and Fusion. This

³ *Plascon- Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] (3) SA 623 (A).

contention overlooks that while a restraint of trade is primarily an agreement between an employer and an employee, in this case, CBS and Mr Kenton, the employer can enforce its rights to protect its confidential information from being used to its detriment by a competitor or a third party. In *Rawlins and Another v Caravantruck (Pty) Ltd*⁴, the Supreme Court of Appeal (SCA) held that that an employer's right to protect his trade connections arises where an employee who "has access to customers and is in a position to build up a particular relationship with the customers so that when he leaves the employers service, he could easily induce the customers to follow him to a new business." This is precisely what Mr Kenton has done, in alliance with Fusion, a company he formed just for the purpose of soliciting customers from CBS. The conduct of both Mr Kenton and Fusion is unlawful and amounts to a breach of the restraint provisions in the case of Mr Kenton, and unlawful use of confidential information in the case of Fusion.

[31] There was also the contention that because CBS dismissed Mr Kenton, the restraint provisions cannot be enforced. This argument overlooks that the employment agreement specified that the restraint of trade provisions would apply regardless of the reason for termination.

[32] *Laser Junction (Pty) Ltd v Fick*⁵ relied on by the respondents, is not authority

⁴ 1993 (1) SA 537 (A).

⁵ (6970/2017) [2017] ZAKZDHC 36; (2017) 38 ILJ 2675 (KZD) (28 September 2017).

for the proposition that a restraint of trade cannot be enforced where an employee has been promoted. In that judgment, which was concerned with a transfer of employment in terms of section 197 of the Labour Relations Act and whether a restraint of trade had been transferred with the business, the court noted that the restraint of trade agreement was specific to the respondent's functions as a salesman. As such, the restraint fell away when the respondent was promoted. This is not the only distinguishing feature of that judgment. The second is that the court accepted the respondent's version that he concluded a new agreement with the applicant, the terms of which included a confidentiality clause and no restraint of trade. In addition, the court stated that in section 197, transfer of employment, contracts of employment taken over by a new employer may not include terms which are unfavourable to the employee. In the present application, there is no misunderstanding about the restraint of trade concluded between Mr Kenton and CBS. If anything, Mr Kenton's promotion to a senior position within CBS exposed him to even more intricate and confidential information. The only prejudice in those circumstances would be against CBS.

[33] There can be no doubt that the applicant has a clear right and a legitimate interest, worthy of protection. In the circumstances, the applicant has made out a proper case for the relief sought.

[34] Consequently, I make the following order:

- a. The applicant's non-compliance with the rules and directives of the above Honourable Court is condoned, and this application is heard as one of urgency in terms of Rule 6(12).
- b. The first respondent is interdicted and restrained until 8 February 2026, being 18 months from the date of the termination of the first respondent's employment with the applicant, from:-
 - i. directly or indirectly competing with the business of the applicant; or
 - ii. having any interest whatsoever, as an employee, a consultant, a director of any concern, save for Page Automation, which competes with the business of CBS, in the province of Gauteng.
- c. The second respondent is interdicted and restrained until 8 February 2026, being 18 months from the date of the termination of the first respondent's employment with the applicant, from assisting, aiding or abetting the first respondent in any manner whatsoever, in breaching the terms of the restraint of trade agreement, in conflict with the order in paragraph b. above.
- d. The first and second respondents are interdicted and restrained from directly or indirectly making use of, or disclosing, the applicant's confidential and proprietary information, including:
 - i. the applicant's customer base;
 - ii. the applicant's product base;
 - iii. the intricate and confidential details in relation to the customer contracts/contact persons, as well as the terms of such contracts and the trade secrets of the applicant.

- e. The second respondent is interdicted and restrained from unlawfully competing with the applicant using the information and details referred to in paragraph d. above.
- f. The first and second respondents are ordered to return, deliver up or destroy all of the information and materials referred to in paragraph 4 above and provide confirmation thereof within 48 (forty-eight) hours to the applicant's attorney.
- g. The respondents are ordered to pay the costs of this application on an attorney and client scale, jointly and severally, the one paying the other to be absolved.



S Mfenyana
Judge of the High Court
Johannesburg

Appearances

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Date of hearing:

07 October 2025

Date of judgment:

20 October 2025