THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

REPORTABLE

Case No: 2025 - 117803

In the matter between:

ATLAS 360 COMMERCIAL VEHICLE SERVICES (PTY) LTD	Applicant
and	
CHRISTA MAGDALENA DE WITT	First Respondent
RENEW-IT TRUCK REPAIR CENTRE (PTY) LTD	Second Respondent

Heard: 15 October 2025

Delivered: Served on the parties by email on 3 November 2025.

Summary: Urgent application re restraint of trade - requirements established - interdict of disclosure of confidential information and conduct in violation of restraint agreement.

JUDGMENT

DANIELS J

Introduction

[1] This is an application to interdict and restrain the first respondent from breaching her restraint of trade agreement that she concluded with the applicant. In essence, the applicant seeks an order as follows:

1.1 Dispensing with the rules regulating notices and proceedings in this Court and permitting the application to be heard on an urgent basis, as contemplated by Rule 39,

1.2 Permitting the applicant to deliver a confidential affidavit, to be treated as such by the court and the respondents, requesting that said affidavit not form part of the court record, and requiring further that the affidavit be returned to the applicant's attorneys upon conclusion of the proceedings,

1.3 Interdicting and restraining the first respondent, for a period of 12 months, throughout the Republic of South Africa, from being associated with the second respondent or any other restricted business in any capacity whatsoever,

1.4 Interdicting and restraining the first respondent, for a period of 12 months, throughout the Republic of South Africa, from acquiring any direct or indirect interest in the second respondent or any other restricted business,

1.5 Interdicting and restraining the first respondent, for a period of 12 months, throughout the Republic of South Africa, from undertaking any activities in competition with the applicant's business, 1.6 Interdicting and restraining the first respondent, for a period of 12 months, from soliciting the applicant's employees to leave it and become employed by the second respondent or any other restricted business,

1.7 Interdicting and restraining the first respondent, for a period of 12 months, throughout the Republic of South Africa, from soliciting any of the applicant's customers or suppliers to cease to be customers or suppliers of the applicant and become customers or suppliers of the second respondent or any other restricted business,

1.8 Interdicting and restraining the first respondent from using the applicant's confidential information for her own benefit, the benefit of the second respondent, or any other restricted business,

1.9 Interdicting and restraining the first respondent from divulging the applicant's confidential information to the second respondent, or any other restricted business.

<u>Procedural issues:</u>

Urgency

[2] The applicant approached the court on an urgent basis. Although applications seeking orders in restraint of trade have the "inherent quality of urgency", the applicant must nevertheless still satisfy the court that the application is urgent.[1] The applicant set out the grounds upon which it argues that the application is urgent, which I see no reason to repeat,

[1] *Vumatel (Pty) Ltd v Majra & others* (2018) 39 ILJ 2771 (LC) at paras [4] to [8]

and the reasons substantial redress cannot be achieved in the normal course. These reasons are reasonable and withstand scrutiny.

[3] It is apparent that the applicant launched proceedings without delay, as soon as it became clear that it would not receive the undertakings it sought from the respondents. Any delays in having the matter heard were the result of the time periods contemplated by the Rules, and the difficulties with securing an earlier hearing date.

[4] Having considered the relevant facts and the submissions, I am satisfied that the application is urgent and should be treated as such.

Confidential affidavit

[5] The applicant provided the court and the applicant with a hard copy of its 'confidential affidavit' and informed the court that it did not intend to upload the affidavit onto case lines. The applicant requested that the affidavit not form part of the court record and that it be returned after judgment was handed down.

[6] The applicant provided sound reasons why the information in the affidavit is confidential and should be excluded from the record. The respondents did not seriously oppose this request.

[7] Noting that the respondents suffered no prejudice, they had access to the affidavit, and filed an affidavit in response, I find it appropriate and expedient to approach the issue in the manner proposed.

[8] The affidavit is thus admitted in accordance with Rule 71 but will not form part of the court record. The affidavit must be returned to the applicant's attorneys after judgment is handed down.

Context of the dispute

[9] The applicant operates in the repair and refurbishment industry in relation to medium and heavy commercial vehicles ("HCV") and has done so since 2009. It provides support services to original equipment manufacturers ("OEMs") and works with insurers, and parts suppliers. The applicant has a large pool of customers, including First Automotive Works ("FAW") and Volvo. It operates in South Africa but also has a presence in other countries throughout Southern Africa.

[10] The second respondent, a division of Bluespec Holdings, also operates an autobody repair business and has been servicing the insurance industry since 1981. It is common cause that the second respondent is a competitor of the applicant. Although the second respondent has long history in the industry, it is a relative newcomer to repairs of HCVs.

[11] Prior to her employment by the applicant, the first respondent, Ms Christa De Witt ("De Witt") had approximately two decades of experience in sales and administration across different industries.

[12] De Witt was engaged, by the applicant, during early 2022, in the position of a sales assistant. Her employment contract required her consent to a restraint agreement, which was attached to the contract as annexure B. The restraint agreement was signed approximately two months after De Witt commenced her employment. De Witt alleges that she was given the agreement by the finance manager, Mr Mark Wilkes ("Wilkes") who instructed her to sign but did not afford her an opportunity to read it. She alleges that she was not provided with a copy thereafter. Notably, De Witt does not allege that she was under any form of duress, such that the contract may be rendered unenforceable. Nor does she allege that requested an opportunity to read the agreement, nor that she requested a copy thereof. According to De Witt, at the time, Wilkes informed her

that the agreement meant that she would not be allowed to work for another panel beater.[2]

[13] In clause 4 of the restraint agreement,[3] De Witt provided the applicant with various undertakings to keep its confidential information secret, not to disclose such information to third parties, or to use such information for her own benefit. In clause 5, for a period of twenty-four months after termination of her employment, De Witt undertook to protect the goodwill and proprietary interests of the applicant, not to be associated with or acquire any interest in a 'restricted business'[4] and not to compete with the business of the applicant. In clause 6, De Witt undertook not to solicit or offer employment to any employee of the applicant.

[14] De Witt performed well in the applicant's employ, and, by 1 April 2025, she had been appointed as a sales executive.

[15] De Witt was assigned to expand the applicant's customer base in Gauteng, and to work with OEM dealerships (such as MAN, Mercedes, Volvo, and FAW) and approaching new fleet operators using leads from the OEMs, the internet, and tow truck companies. De Witt was the point of contact. She was required to, and did, attend golf days and other marketing events. She was required to, and did, call on existing customers, previous customers, and prospective new customers. De Witt admits that she onboarded customers but states that she was just one element in the relationship. Ultimately, she alleges, the customer is most influenced by price, turnaround time, and quality of the work.

[16] On 30 May 2025, De Witt informed the applicant of her resignation, with effect from the end of June 2025.

[2] Answering Affidavit para 120, page 001-163
[3] Annexure AZ10 to the Founding Affidavit, page 001-73
[4] The term is defined in the restraint agreement as "any business activity which directly or indirectly is similar to" the applicant's business or operates in competition with the applicant.

[17] It is common cause that, during her exit interview, on 13 June, De Witt informed the applicant that she would be joining her ex-boss in the scrap metal industry and assured the applicant that she would not be working in competition with it. The meeting was an amicable one during which De Witt informed the applicant that she was grateful for the experience working with it, and the applicant informed De Witt that she may access the scrap metal from its' business. The applicant agreed that De Witt may exit the business early, on 25 June.

[18] On 1 July, De Witt took up employment with the second respondent as a marketing officer. Despite her assurances, De Witt was now working for the applicant's competitor, a restricted business.

[19] At that approximate time, the applicant had two further resignations. The first from a receptionist, Ms Palesa Thabane, who became a receptionist for the second respondent. The second, an estimator, was persuaded to stay on. There is no direct evidence that the first respondent encouraged these individuals to leave the applicant.

[20] On 3 July, the applicant became aware of an advertisement of the second respondent seeking customers for its new truck repair facility in Kempton Park. The advertisement stated that a tour of the facility could be booked through the second respondent's key account manager, De Witt. As key account manager, or marketing officer, De Witt is performing the same, or similar, functions to those she performed for the applicant.

[21] On 4 July, the applicant addressed a letter to De Witt advising her that it was aware she was working for a competitor, in breach of the restraint agreement. The applicant called on De Witt to honour her confidentiality undertakings and the restraint agreement.

[22] On 10 July, on behalf of De Witt, RHK Attorneys replied to the applicant requesting a copy of the restraint agreement.

[23] On 11 July, the applicant's attorneys addressed a lengthy letter to the second respondent, attaching a copy of the restraint agreement and setting out the reasons why it believed that De Witt had breached the restraint agreement. The applicant's attorneys demanded an undertaking by the second respondent by no later than 14h00 on 15 July that it would honour the restraint agreement.

[24] On the same day, the applicant's attorneys addressed a letter to De Witt's attorneys demanding an undertaking from by no later than 12h00 on 15 July that she would honour the restraint agreement.

[25] The applicant did not receive the requested undertakings from the first or second respondents. However, at 16h50, on 15 July, the applicant's attorneys received a letter from Werksman's Attorneys advising that they acted for the first and second respondents and were taking instructions.

[26] When the applicant investigated the work phone of De Witt, it discovered that her chat history had been deleted. This was viewed by the applicant as suspicious. De Witt admits that she had deleted the chat history on her phone but alleges this was because her chat history included personal information.

[27] On 17 July 2025, the applicant came across an advertisement in video format containing infographics and the same information as indicated in the advert it first saw on 3 July. The first respondent was again identified as the key account manager.

[28] This application was launched on 18 July and provisionally enrolled for 11 September. On that day, the court removed the matter from the roll because neither of the parties had filed heads of argument.

Restraint of trade: the legal principles and the facts

Protectable interests

[29] The purpose of agreements concluded in restraint of trade are to safeguard the employer's protectable interests. However, this is not without bounds. Employees may not relinquish their aptitudes, skill, dexterity, and manual or mental ability.[5] Accordingly, such abilities and aptitudes are not protectable.

[30] In addition, a restraint may not be used within the employment context solely to limit competition.[6] As Lord Parker famously stated:

> "The reason, and the only reason, for upholding such a restraint on the part of an employee is that the employer has some proprietary right, whether in the nature of trade connection or in the nature of trade secrets, for the protection of which such a restraint is – having regard to the duties of the employee – reasonably necessary. Such a restraint has, so far as I know, never been upheld, if directed only to the prevention of competition or against the use of the personal skill and knowledge acquired by the employee in his employer's business."
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> (own emphasis)

[5] *Hepworth Manufacturing Co. Ltd v Pyott* (1920) 1 Ch. D. at 9
[6] *Masstores (Pty) Ltd v Pick N Pay Retailers (Pty) Ltd* 2017 (1) SA 613 (CC) at para [35]

[31] Proprietary interests, which may be protected by restraint agreements, are of two sorts:[7]

31.1 Any confidential matter useful for the carrying on of the business and which, if disclosed to the competitor, may assist him to gain a relative advantage. Such confidential material is sometimes referred to as "trade secrets". Whether information constitutes a trade secret is a factual question, determined objectively by reference to whether the information is useful and capable of application in a trade or industry, it is not public knowledge[8] and known only to a restricted number of people; and it is of economic value. The employer is not required to prove an intention to divulge such information, merely that the former employee may share the trade secrets should he or she wish to do so.[9]

31.2 Relationships with customers, potential customers, and suppliers can referred to collectively as the "trade connection" of the business. This is an important aspect of its incorporeal property known as goodwill.[10] An applicant is entitled to protect its interest in customers and suppliers where its former employee had access to customers and suppliers, such that they could influence them to the detriment of the applicant. In such circumstances, where the new employer is a competitor of the applicant, there is a reasonable apprehension of harm to the applicant.[11]

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[7] *Tension Envelope Corp. (SA) Ltd v Zeller & another* 1970 WLD 333 at 347G-H

[8] Note that such information may still be protectable if it came into existence in the context of a contractual relationship. See *Experian SA v Haynes* (2013) 34 ILJ 529 (GSJ) at para 44

[9] *IIR South Africa BV (Incorporated in the Netherlands) t/a Institute for International Research v Tarita and others* 2004 (4) SA 156 (W) at 166 – 167

[10] *Sibex Engineering Services (Pty) Ltd v Van Wyk and another* 1991 (2) SA 482 (T) at 502D

[11] *New Justfun Group (Pty) Ltd v Turner & others* (2018) 39 ILJ 2721 (LC) at par [13];
Experian SA (Pty) Ltd v Haynes (2013) 34 ILJ 529 (GSJ) at 536, and
Den Braven SA (Pty)Ltd v Pillay 2008 (6) SA 229 (D); [2008] 3 All SA 518 (D) at paras 1718

[32] On 21 February 2025, the sales executives (including De Witt) together with management, attended an annual strategic conference to discuss the applicant's strengths, weaknesses, opportunities, and threats. Bluespec, the holding company of the second respondent, was identified as a threat given its recent focus on the HCV sector. At the conference, the applicant states, De Witt gained critical insights into its business, customer strategies, expansion strategies, and weaknesses in certain markets. De Witt denies that the information shared there is useful to the second respondent or unknown within the industry. In my considered view, it is extremely unlikely that the applicant's strategies, strengths and weaknesses would be widely known throughout the industry.

[33] De Witt denies that she had access to the applicant's pricing models, invoices, banking facilities, or its creditors and debtors. While De Witt accepts that she saw the quotes provided to customers, she states that she had no input into the contents of the quotes.

[34] The applicant's sales strategies were also discussed at a further meeting, held in Heidelberg on 23 April, attended by the first respondent and other sales executives. The executives presented their sales strategies to management and to each other, and the strategies were discussed by the participants. As a result, the first respondent is aware of the sales strategies of all the executives. Similarly, this information could not possibly be known throughout the industry.

[35] The first respondent contends that the meetings in March and April 2025 were in fact team building exercises and nothing more. This version is untenable, and I do not accept it.

[36] The applicant holds monthly sales management meetings ("MANCO") at which the performance of all the sales executives' is discussed. The first respondent attended these meetings, the last being held on 26 March 2025. No doubt through these MANCO meetings, the first respondent

would have gained knowledge of 'insider information' relating to many of the applicant's customers. Furthermore, the first respondent was part of a WhatsApp group titled "Team Focus" through which all the sales executives communicate.

[37] In its confidential affidavit, the applicant states that it hosted marketing events targeting specific customers such as Scania and Volvo, where key contacts of those customers were invited. The first respondent was an active participant at such events.

[38] Upon investigation, the applicant discovered that the first respondent had, on 17 April 2025, sent an email from her work email to her private email. The email contained several attachments including customer lists, contacts at specific customers, the identity of customers to be targeted together with potential "ins", the identity and contacts for seven OEMs, notes from first respondent titled "terms", "payment" and "risks", the fleet sizes for certain customers, and the applicable periods for certain service level agreements. The first respondent admitted sending herself this information but denied that it is proprietary information of the applicant.

Disputes of fact

[39] In applications for final relief, when faced with factual disputes, our courts have consistently applied the principles set out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*[12] which holds that the undisputed averments of the applicant, together with the averments of the respondent, constitute the factual matrix upon which the dispute must be resolved. However, where the averments of the respondent are, in the opinion of the court, far fetched or untenable, they may be rejected on the papers.[13]

[12] 1984 (3) SA 623 (A) at 634E - 635C (the "*Plascon-Evans* rule")

[13] *Skog NO and Others v Agullus and others* 2024 (1) SA 72 (SCA) at para 18

[40] The *Plascon-Evans* rule was further clarified in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*[14] where Heher JA held:

> "[12] Recognising that the truth almost always lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion must, in the event of conflict, accept the version set up by his opponent unless the latter's allegations are, in the opinion of the court, not such as to raise a real, genuine or bona fide dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers: *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E - 635C. See also the analysis by Davis J in *Ripoll-Dausa v Middleton NO and Others* 2005 (3) SA 141 (C) at 151A - 153C* with which I respectfully agree. (I do not overlook that a reference to evidence in circumstances discussed in the authorities may be appropriate)
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> [13] A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter."
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> (own emphasis)

[41] In my view, many of the denials by the first respondent, including her allegation that the information she emailed to herself on 17 April is freely

[14] 2008 (3) SA 371 (SCA)

available to the public, ring hollow, amount to bare denials, and do not raise bona fide disputes of fact. I do not believe the first respondent adequately explained why it was necessary to email such information to herself, and why she required access to the information outside of the office. If such information were embedded in the memory of the first respondent, as of the end of April 2025, there would have been no need for the first respondent to email it to herself.[15] The information in the attachments to the email is not widely known and is useful in the industry. It is improbable that customers would reveal information such as the size of their fleet, or details of their service level agreements, on public platforms. In the circumstances, such information was proprietary information of the applicant.

[42] I also took into consideration that the first respondent had little or no knowledge of the HCV sector before her engagement by the applicant.[16] Her knowledge of the applicant's customers was developed, or greatly enhanced, through her employment by the applicant.

[43] In her answering affidavit, the first respondent explains that her relationship with another executive, Mr Izak Nel, soured during March 2025 and this was a catalyst for her departure. It can hardly be a coincidence that the email was sent soon after her relationship with Mr Nel soured. The probabilities are that the information was sent by the first respondent, to herself, to enhance her marketability to the second respondent, and to assist in building the business of second respondent.

[15] Note that the mere fact that the confidential information is not embodied in a document but is carried away by the employee in his head is not a reason against the granting of an injunction to prevent its use or disclosure by him. See *Printers and Finishers Ltd v Halloway* cited in *Strike Productions (Pty) Ltd* v *Bon View Trading (Pty) Ltd & others* [2011] JOL 26664 (GSJ) at para [18]

[16] Founding Affidavit, para 95.3 and 95.4, page 001 - 36

Onus in restraint disputes

[44] In *Magna Alloys and Research (Pty) Ltd v Ellis*[17] the Appellate Division pronounced that the onus of proving that the restraint is unreasonable, and thus unenforceable, lies with the respondent.[18] In *Reddy v Siemens Telecommunications (Pty) Ltd* ("*Reddy*")[19] the SCA stated that a value judgment was called for, and the onus need not necessarily be used. *Reddy* did not state that there was no onus, or that *Magna Alloys* wrongly decided where the onus lay.

[45] In *Ball v Bambalela Bolts (Pty) Ltd & another*[20] Coppin JA suggested that, considering the constitutional right of citizens freely to choose their trade, occupation, or profession, the onus may need to be reassessed. However, thereafter, in *Beedle v SloJo Innovations Hub (Pty) Ltd*[21] the LAC accepted that an employee who seeks to escape the reach of the restraint bears the onus of showing that the restraint is unreasonable.

[46] Of importance, the SCA[22] and the Constitutional Court[23] both accept that where a party seeks to avoid compliance with a contract, based on public policy, the onus lies with that party to prove that the contract should not be enforceable.

[47] In *Sadan and another v Workforce Staffing (Pty) Ltd*[24] the LAC per Smith AJA confirmed that the onus lies with the party, seeking to escape the confines of the restraint agreement, to show that its enforcement would be contrary to public policy. This judgment, the most recent iteration of the position, is binding on this court.

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[17] 1984 (4) SA 874 (A)
[18] Cited with approval in *New Justfun Group (Pty) Ltd v Turner & others* (2018) 39 ILJ 2721 (LC) at para [10]
[19] 2007 (2) SA 486 (SCA)
[20] (2013) 34 ILJ 2821 (LAC) at para [13]
[21] (2023) 44 ILJ 2493 (LAC)
[22] *AB and another v Pridwin Preparatory School and others* 2019 (1) SA 327 (SCA)
[23] *Beadica 231 CC and other v Trustees, Oregon Trust and others* 2020 (5) SA 247 (CC) at para 95
[24] (2023) 44 ILJ 2506 (LAC) at para [19]

[48] The respondent submitted that the decision of this court in *Select PPE (Pty) Ltd v Holmes and Another*[25] shifted the position. However, in that matter, the learned acting judge confirmed that the onus rests on the respondent to show that enforcement would be unreasonable. The court held that the applicant must make out a “complete and substantiated case” in its founding affidavit as to why the enforcement of the restraint is reasonable. In my view, this statement does not align with the authorities, and I do not intend to follow it. Rule 39(3) permits the filing of two affidavits by the respondent, no doubt to allow it a fair opportunity to discharge the onus of proving that the restraint is contrary to public policy. This suggests, to my mind, that the alleged unreasonableness of the restraint and its enforcement would only arise in the first answering affidavit of the respondent, if it arises at all.

[49] The existence of the restraint and confidentiality agreements is undisputed. It is also undisputed that the first respondent left the services of the applicant and joined the second respondent, a competitor, acting in breach of the restraint. In addition, the first respondent sent herself confidential information shortly before her leaving the employ of the applicant. If the first respondent did not approach any other employees of the applicant to leave the applicant for the second respondent, the events described in para 19 above are highly coincidental.

[50] In all the circumstances, there can be no doubt that the first respondent has breached the restraint and the confidentiality agreements, and there is a reasonable apprehension of harm to the applicant.

[25] (2024/115703) [2024] ZALCJHB 484 (3 December 2024)

Reasonableness of the restraint

[51] Our courts are more likely to take a more favourable view of the restraint agreement where the parties engaged on an equal footing when the restraint was agreed.[26] Although this is a question of fact, there is a general acceptance that, in the employment context, parties rarely contract as equals. Exceptions include instances where the employee is in senior management, highly skilled and in demand.

[52] The central question is whether the restraint is unreasonable in the context in which it is to be enforced. Factors include *inter alia* the subject matter, area, and duration of the restraint. Contracts which unreasonably restrict the employee's freedom to trade, or work, are unreasonable and therefore unenforceable.[27]

[53] In disputes concerning restraints of trade, there arises a tension between the right of individuals to be economically active, to pursue his or her trade or profession, and the need for those individuals to respect the agreements they have entered. Public policy dictates that agreements entered voluntarily are binding and enforceable.

[54] The court must therefore seek a balance between the need to respect agreements,[28] the freedom of the individual employee to practice his trade, professional or occupation,[29] the nature and extent of the restraint, and the competing interests of the parties.[30] It is necessary to make a value judgment[31] taking into account all the relevant considerations.

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[26] *Dickinson Holding Group v Du Plessis* 2008 4 SA 218 (N)
[27] *J Louw & Co. (Pty) Ltd v Richer* 1987 (2) SA 237 (N) at 243 D - E
[28] *Brisley v Drotsky* 2002 (4) SA 1 (SCA) at para [94]
[29] Section 22 of the Constitution
[30] *Torrente & another v Grant Monaghan & Associates Incorporated (*2024) 45 ILJ 798 (LAC) at para [21]
[31] See *Reddy v Siemens* cited in fn. 19

[55] In *Basson v Chilwan and others*[32] ("*Basson*") Nienaber JA identified four questions that should be asked when considering the reasonableness of a restraint: (a) does one party have an interest that deserves protection after termination of the agreement? (b) if so, is that interest threatened? (c) in that case, does such interest weigh qualitatively and quantitively against the interest of the other party to be economically active and productive? (d) is there an aspect of public policy having nothing to do with the relationship between the parties that requires the restraint to be maintained or rejected? Besides these questions, *Reddy* suggested that a fifth question – whether the restraint goes further than is necessary to protect the interest. Where the interest of the party sought to be restrained weighs more than the interest to be protected, the restraint is unreasonable.

[56] In my view, in this matter, the applicant has an interest worthy of protection. The applicant has operated with sufficient caution to ensure that its confidential information is protected and restricted such information to a closed circle. The applicant entered into a confidentiality agreement (and restraint agreement) early in the employment relationship. The information is useful, it is not public knowledge, and it is capable of application in the industry. It clearly has economic value. The applicant clearly has an interest in its trade connections that is worthy of protection. These interests are threatened by the first respondent. The first respondent is employed by a direct competitor of the applicant, and she is therefore in breach of the restraint. Having already breached the restraint, there is no reason to apprehend that the first respondent will now respect the other terms of the restraint or the confidentiality agreements. There is therefore a reasonable apprehension that, absent an interdict, the first respondent will cause harm to the business of the applicant.

[32] 1993 (3) SA 742 (A) at 767

[57] The next question is how the commercial interest of the applicant weighs qualitatively and quantitively against the interest of the first respondent to be economically active and productive. Notably, the applicant does not seek to interdict and restrain the first respondent for the entire duration of the restraint period, namely twenty-four months. It seeks an interdict for a limited period of twelve months. This is fitting.

[58] The first respondent points out that she earns a salary of R30 674, 00 per month. She supports both her mother and her son. The first respondent admits that she has extensive experience in sales and administration outside of the autobody and HCV repair industry. She previously worked in the mining and the steel industries. Although the first respondent has no tertiary education, she is experienced and capable. It is probable that she will be able to obtain employment other than with the second respondent. Furthermore, as the first respondent herself suggested, she is likely to be welcomed back into the scrap metal industry.

[59] On the other hand, if the first respondent is not interdicted, she has the potential to seriously harm the business of the applicant. The court must guard against the temptation to consider the first respondent to be merely a salesperson. In any business dependent on sales to customers, the salesperson is critical to the success of that business. Public policy dictates that the first respondent be compelled to comply with the restraint agreement she consented to. Had the first respondent refused to sign the agreement, the applicant would likely not have engaged her and exposed itself to risk. In my view, there are good and sound reasons to enforce the restraint to the extent sought by the applicant.

[60] When one takes all the relevant facts and the equities into consideration, the applicant's interest in the enforcement of the restraint outweighs the first respondent's interests in being economically active in the autobody and HCV repair industry. The first respondent is not being prohibited from being economically active in another industry. The first respondent

has not discharged the onus of proving that the restraint is unreasonable, and contrary to public policy.

Costs

[61] Both parties sought costs against the other. This being a contractual dispute, falling outside the scope of the Labour Relations Act No. 66 of 1995, the criterion of fairness in section 162 is inapplicable. Accordingly, the normal rule should apply, and costs should follow the result.

Conclusion

[62] For the above reasons, the applicant is entitled to the relief sought. For the reasons set out above, I grant an order in terms of prayers 1, 2, 3, 4, and 5 of the notice of motion. In addition, the first and second respondents are ordered to pay the costs of the application, jointly and severally, the one paying the other to be absolved.

RN Daniels

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Adv C Whitcutt SC

Instructed by: Thomson Wilkes Inc

For the Respondents:

Adv Werner Luderitz SC

Instructed by: Werksmans Attorneys