



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 184067/2025

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED.
	
24 November 2025	
.....	
SIGNATURE	DATE

In the matter between:

THE PLACEMENT INTERNATIONAL GROUP LIMITED

Applicant

and

MINETTE PRETORIUS

First Respondent

BIANCA LAUREN NEUMANN

Second Respondent

INTEGRICORE GLOBAL (PTY) LTD

Third Respondent

JUDGMENT

LABUSCHAGNE J

- [1] The applicant approached the urgent court for relief in terms of Part B of a composite notice of motion, Part A of which pertained to Anton Piller relief which had already been granted and executed by the time Part B came before this court. The applicant obtained its *ex parte* Anton Pillar order on 13 October 2025, and that order has a return date in February 2026.
- [2] In terms of Part B of the notice of motion the applicant seeks interim relief against the respondents restraining them from unlawfully competing in the field of placement of candidates sourced in South Africa with international host companies. The third respondent is IntegriCore Global, a company established by the first respondent at the end of July 2025.
- [3] The applicant has for the past 20 years been involved in placing candidates with host companies worldwide. The first and second respondents were contracted to the applicant to assist with facilitating the placement of South African candidates at host companies. The first respondent was working for the applicant for just short of 8 years and the second, just an excessive 6 years.
- [4] The directors of the applicant are based in Spain. The applicant is based in Hong Kong. The first and second respondents signed employment contracts with the applicant with a choice of law clause selecting Hong Kong law. The contracts contain post-termination covenants in restraint of trade. The applicant has expressly stated that it does not seek to enforce those contracts through this application and relies solely on South African common law.

- [5] The applicant has set out in detail how it operates and claims confidentiality in respect of its pool of candidates and host companies. One of the host companies is Brennan's, which hosts an annual Brennan's Job Fair in South Africa assisting the Ralph Brennan Restaurant Group with sourcing, screening and processing of top candidates for its team.
- [6] The applicant contends that the first and second respondents, as country development managers, gained access to the applicant's proprietary confidential information including its confidential databases, including candidate lists, applicant and placement packs, placement agreements, training materials, standard operating procedures, marketing materials and institutional relationships.
- [7] The respondents were good at what they did but relations with the directors soured in recent times when another employee entered the fray and appeared to have the directors' ear, at the expense of the first respondent. The Brennan's Job Fair were scheduled for August 2025 and was arranged by the first and second respondents.
- [8] On 11 July 2025 the first respondent confirmed the itinerary with Mr Pendleton of Brennan's and as at that date, the applicant was on track preparing to host the Brennan's Job Fair. The first respondent terminated her contract with the applicant on 16 July 2025 with a two-month notice period. The last day of the first respondent's employment was however brought forward by a director, Mr Riveyran after an acrimonious discussion on 28 July 2025. She was told to leave that day.

- [9] The second respondent terminated her agreement finally on 22 August 2025. The applicant contends that the respondents proceeded to appropriate the Brennan's Job Fair, thereby unlawfully competing with the applicant.

URGENCY

- [10] Matters of unlawful competition are inherently urgent. In **Boomerang Trade CC v Groenewald and Another** 2012 JDR 1713 ECG the following was stated:

“The harm complained of is continuing and consists in the ongoing operation of a competing enterprise alleged to trade on the applicant’s confidential information and relationships.”

- [11] At paragraph [36] the following was stated:

“I agree with Mr Paterson that proceedings for the enforcement of a restraint of trade agreement are usually, by their very nature, urgent. They invariably seek to interdict ongoing unlawful action in respect of which an applicant continues to suffer financial losses which are notoriously difficult to quantify, or to recover by way of action.”

- [12] It suffices to state that matters of this nature are aimed at protecting the applicant’s proprietary interest in confidential information, which by its very nature has a limited validity period or shelf life. I am satisfied that the matter is of sufficient urgency to be entertained in urgent court proceedings.

ARGUMENTS IN LIMINE

- [13] The respondents have raised a number of points *in limine*. The first point *in limine* attacks the *locus standi* of the applicant. It is contended that the applicant has not established that it is a juristic person. The applicant however produced a certificate of registration in Hong Kong which suffices as proof of its existence
- [14] It is contended that the applicant is not registered as a foreign company in terms of the South African Companies Act. This is not a bar, though. The Companies Act provides that the Applicant can be requested to register by the CIPC on pain of being prevented from doing business in South Africa. No such request has been made.
- [15] The respondents initially asserted that, because the applicant is not registered as a private employment service in terms of the Employment Services Act, 4 of 2014 it cannot lawfully render the services which it offers and therefore may not protect against unlawful competition in relation to those services. This latter point was not proceeded with by the respondents since section 13 of the Employment Services Act, which creates the prohibition, has not been put into operation. In any event, the placements in terms of the Employment Services Act relate to placements within South Africa, whilst the applicant makes its placements abroad.
- [16] A second point *in limine* was raised that the applicant is not seeking the protection of a legally recognisable interest. It is essentially seeking to prevent

and eliminate lawful competition. This is not a point *in limine* but is part of the merits of the case which are discussed below.

- [17] The third point *in limine* related to a contractual choice of Hong Kong law.
- [18] The fourth point *in limine* related to an alleged repudiation or breach of the employment agreements with the applicant.
- [19] The fifth point *in limine* related to urgency, with which I have already dealt.
- [20] The sixth point *in limine* relates to the unenforceability of agreements allegedly sought to be enforced.
- [21] The applicant's response to the last point *in limine* as to enforceability of agreements and to the choice of Hong Kong law point *in limine* is that it does not seek the enforcement of the employment contract relied upon. The third, fourth and sixth points *in limine* form part of the discussion on the merits below.
- [22] The applicant's disavowing of reliance on the contracts of employment is anomalous in that the fiduciary relationship which the applicant relies upon for purposes of its common law claim arises from the contracts of employment. As stated, that contract was subject to a choice of law clause electing Hong Kong law.

INTERIM RELIEF

- [23] The applicant has formulated the relief that it seeks to be interim, subject to clause 3 of the notice of motion. Clause 3 of the notice of motion provides for

final relief being sought on the same papers, duly supplemented. There is no indication of the timeline within which the final relief will be sought or what the nature of the supplementation would be.

[24] Since the interdictory relief that is sought has a limited shelf life, the impact of interim relief is that it is final in effect in many instances. In this instance the third respondent is a competitor of the applicant and the first and second respondents are the directing minds of the third respondent. The third respondent was set up in the latter part of July 2025 at a time when the first respondent's employment had terminated or was in the process of termination.

[25] The applicants assert an entitlement to elect whether to sue in contract or in delict. In general terms a South African employer may make such an election, as the fiduciary duty not to use confidential information as a springboard would be implied both in contract and in delict. The question arises what the position would be in terms of Hong Kong law.

FOREIGN LAW

[26] There is no proof in the proceedings before me of what Hong Kong law is on the topic of restraints of trade after termination of employment contracts. There is a presumption in South African law that foreign law is the same as the South African law. This is however not an immutable presumption. In cases where the status of foreign law is readily ascertainable through internet research, the court can take judicial notice of the status of foreign law on the topic in question.

[27] In **SS v HP** (2015/18402) [2019] ZAGPJHC 468: [2019] 3 All SA 645 (GJ) (23 May 2019), Snyckers AJ dealt with the issue of foreign law as follows:

“[53] At issue is the principle that foreign law is a question of fact, proved by experts, in the absence of evidence of which the foreign law is presumed to be the same as the South African law. But this is subject to the important exception that a court can take judicial notice of foreign law to the extent that it is readily ascertainable and certain. A good example of how far the Supreme Court of Appeal was willing to go to regard foreign law as readily ascertainable and certain occurred in Kwikspace Modular Buildings Ltd v Sabodala Mining Co SARL and Another 2010 (6) SA 477 (SCA). Here, a building contract had a choice of law clause designating the law of the state of Western Australia as the choice of law for the contract. The parties were content to apply the presumption that the law was the same as South African law. The Supreme Court of Appeal considered the Australian law to be sufficiently ascertainable to allow for judicial notice, despite the fact that this required interpretation of the import of a line of Australian precedent, which conflicted with certain English authorities, and a conclusion essentially on what the Australian courts would have made of this.”

[28] In Hong Kong post-termination restrictive covenants are generally void for being in restraint of trade and contrary to public policy, unless the employer can show that the restrictions are necessary to protect their legitimate

business interests, and are reasonable in all the circumstances to protect such interests.

[29] In the case of **Moxie Communications Limited v Lai Cheuk Lok** [2024] HKDC 1323 an employer sought to enforce two post-termination restrictive covenants against a former employee. The District Court found that the company failed to demonstrate any legitimate interests justifying the imposition of the two post-termination restraints on the employee and held that they were unenforceable at law.

[30] The implication of the aforesaid is that it would be incorrect to assume that Hong Kong law is the same as South African law. The contract of the applicant with the first and second respondents containing post-termination restrictive covenants is *prima facie* void and against public policy, unless specifically justified by the applicant. In the absence of an attempt by the applicant to do so, in these proceedings, I must accept that the applicant chose not to establish an entitlement in terms of contract to the restraints under Hong Kong law. This is relevant insofar as the applicant is seeking to establish by means of reliance on South African common law, relief which on the face of it was not willing to establish in terms of the contractual dispensation applicable between the parties.

[31] This raises a question as to whether the applicant has a *prima facie* right to the relief that it seeks in terms of contract. It relies upon the fiduciary duties that an employee owes its employer in terms of a contract of employment. The

prima facie right exists in South African common law, but there are considerations that may militate against its enforcement.

[32] There are two such considerations in this matter. The first was the failure to disclose the prima facie invalidity of post termination restraints of trade in Hong Kong in respect of contracts of employment and the failure to establishment of an entitlement to enforce them in South Africa. The second is the repudiation of that contract by the applicant.

[33] It is a far cry to approach the court for common law relief based on a fiduciary duty arising from the contract of employment when the same contract does not have the same consequence under Hong Kong law as a South African contract of employment. That creates doubt on the applicant's entitlement to common law interdictory relief by merely jettisoning a troublesome consequence of the choice of law in the contract of employment. Had the applicant sought to establish an entitlement to interdictory relief in contract under Hong Kong law, with an alternative in common law, the enquiry would have been different.

[34] A **concursus actionum** may result in an appropriate case result in a choice of remedy. In *Lillicrap, Wassenaar and Partners v Pilkington Brothers (Pty)Ltd* the following is stated by the Appellate Division:

"In the present case it is common cause that the damages which the respondent is claiming pursuant to the Aquilian action could, in so far as they arose before the assignment of the contract to Salanc, have been claimed on the basis of breach of contract. The respondent's contention is that in the

circumstances of the present case the facts gave rise to both causes of action. In principle there would be no objection in our law to such a situation. Roman law recognized the possibility of a concursus actionum, i.e. the possibility that different actions could arise from the same set of facts. More particularly, the facts giving rise to a claim for damages under the lex Aquilia could overlap with those founding an action under certain types of contract such as deposit, commodatum, lease, partnership, pledge, etc. In such a case a plaintiff was in general entitled to elect which actio to employ (although he could of course not receive compensation under both). See, e.g., D 9.2.7.8; 9.2.18; 9.2.27.11; 9.2.27.34; 9.2.42 and 44.7.34. The same principles were accepted and applied in Roman-Dutch law. See Voet Commentarius ad Pandectas 9.2.31 (Gane's trans vol 2 at 592 - 4). In modern South African law we are of course no longer bound by the formal actions of Roman law, but our law also acknowledges that the same facts may give rise to a claim for damages ex delicto as well as one ex contractu and allows the plaintiff to choose which he wishes to pursue. See Van Wyk v Lewis 1924 AD 438; Hosten (op cit at 262); R G McKerron Law of Delict 7th ed at 3; J C van der Walt in Joubert The Law of South Africa vol 8 para 5 at 7 - 11. The mere fact that the respondent might have framed his action in contract therefore does not per se debar him from claiming in delict. All that he need show is that the facts pleaded establish a cause of action in delict. That the relevant facts may have been pleaded in a different manner so as to raise a claim for contractual damages is, in principle, irrelevant."

- [35] Where both a valid contractual claim and a delictual claim can coexist, a free choice would not be objectionable. But where a contract defining the

relationship is prima facie invalid in respect of post termination covenants in restraint of trade, and this is not disclosed, it raises a concern relevant to the court's discretion to grant interdictory relief.

[36] The second matter affecting the prima right to relief is whether an applicant who has repudiated the very contract of employment alleged to give to the fiduciary relationship does not approach the court with unclean hands. The first respondent contends that the applicant repudiated the contract of employment. This was not disputed in the replying affidavit. The first respondent's contention was that she had resigned on 16 July 2025 and was working on two months' notice. Had the applicant allowed her to complete the two months' notice the applicant would have reaped the benefit of the Brennan's Job Fair in August 2025. On 28 July 2025, however, her discussion with Mr Riveyran of the applicant resulted in her being told that 28 July 2025 was her last day and that she had to depart immediately.

[37] This was a repudiation of the contract and its notice provisions, and the first respondent raises such repudiation as a bar to the applicant obtaining relief.

[38] There are a number of cases in which the doctrine of unclean hands has been espoused in discretionary matters such as the granting of interdictory relief. In such matters the basis on which it is contended that the applicant approaches the court with unclean hands is merely a consideration amongst others in the exercise of a judicial discretion rather than a bar to the relief sought.

[39] The doctrine of unclean hands is a species of abuse of process. This is the implication of the Constitutional Court's approach to the topic. The doctrine of unclean hands was discussed in detail by the Constitutional Court in *Villa Crop Protection (Pty) Ltd v Bayer Intellectual Property GmbH* 2023 (4) BCLR 461 (CC). It is appropriate to quote the relevant passages from the Constitutional Court's judgment in full. The Constitutional Court held as follows in the relevant part (references omitted):

"[71] Whether there is a common-law doctrine of unclean hands that can deprive a plaintiff of its claim . . . was a matter much debated before us.

[72] Our courts have long recognised their power, in exceptional circumstances, to prevent an abuse of process. That power has more recently been affirmed, and an abuse of process may include a litigant who comes to court with unclean hands. The power is an incident of the court's inherent power to ensure that those who use the process of law do not do so for ulterior ends that undermine what the courts are established to secure. It is a power most sparingly used. That is so because the exercise of the power prevents a litigant from having their dispute resolved before the courts, the very essence of their right under section 34 of the Constitution. But the authorities do bear out the proposition that to dismiss a claim that a litigant would pursue before the courts on the grounds of abuse is not precluded because that claim exists in law. The claim is dismissed because the litigant who would bring it is disqualified from doing so by reason of their abuse.

[73] *Villa Crop* relied upon a number of cases that it contended recognised and applied the doctrine of unclean hands ... The essential proposition was that the courts will not assist a wrongdoer, irrespective of whether their rights derive from the common law or a statute.

...

[77] This binary position fails to appreciate the true juridical nature of the power enjoyed by the courts to prevent an abuse of process, of which the doctrine of unclean hands is a species. An abuse of process can occur in a variety of ways. The litigation may be frivolous or vexatious. A litigant may seek to use the legal process for an ulterior purpose or by recourse to conduct that subverts fundamental values of the rule of law. The behaviour of the litigant may be so tainted with turpitude that the court will not come to such a litigant's aid. The unclean hands doctrine references this latter type of abuse. It is the abusive conduct of the litigant that, in a proper case, may warrant the exercise of the court's power to non-suit such a litigant. The court does so, even though the litigant claims a right that they would vindicate in the court proceedings. For this reason, the power is to be exercised with great caution. Put simply, the court enjoys the power to safeguard the integrity of its process. The court will only exercise this power upon a careful consideration of the prejudice that this may cause to the abusive litigant, and, in particular, the harm that may be occasioned to a litigant whose claim of right will not be decided by the court. But the court's

power to prevent the abuse of its process is not determined by the right that the abusive litigant claims.”

- [40] The repudiation of the agreement is not a bar to the relief sought as suggested by the first respondent. It is a consideration relevant to the exercise of a judicial discretion in granting discretionary relief. The applicant's application cannot be characterised as an abuse of process, despite the presence of the concerns raised. It is not known how a Hong Kong court would treat a repudiation of the contract. There is more than just some doubt on whether the applicant could establish a right under Hong Kong contractual law for the enforcement of restrictive covenants against the first and second respondents. The protection of lawful competition is a valid consideration.
- [41] As the applicant bases its application on the common law, I cannot move from the premise that the applicant is in the same position at common law as a South African employer with a contract of employment with the first and second respondents. It bears acknowledging that the concerns that are addressed may very well relate to the discretion to grant discretionary relief rather than the prima facie right to relief.
- [42] Even assuming the establishment of a prima facie right to relief, the next element of the interdict is the establishment of a reasonable apprehension of irreparable harm. The applicant bemoaned the so-called capture of the Brennan's Job Fair in August 2025 by the respondents, blaming the first and second respondents for having solicited the custom of Brennan's for the benefit of the third respondent.

[43] In an email of 29 September 2025 Mr Christian Pendleton, General Manager of Brennan's wrote to the two directing minds of the applicant. In his email he *inter alia* states the following:

"Brennan's and our group has been fortunate to work with your company over the past 8 years; we have built a strong partnership and we would like to continue that partnership. At the same time, we have also built a very strong relationship with Minette. She has been vital in building and maintaining our relationships with schools, teachers and the students in South Africa and throughout the African continent.

Going forward, Brennan's and our group will be supporting IntegriCore Global for our recruiting needs on the African continent. I have spoken with the sponsor companies that will be working with her company and they have already begun processing candidates from this past job fair. I have also sent out an email to all the schools that we worked with, informing them of our decision to solely support IntegriCore Global in Africa. Her knowledge of this market is unparalleled; her relationships across the continent are deep and personal. We are confident that this is the best partnership for us in Africa at this time.

We are looking forward to working with your teams in other markets. As you know, we have hired interns/trainees from around the world with Placement and we would like to continue to do so. I am confident that your company will continue to find us excellent candidates in other locations."

[44] From the aforesaid it is apparent that Brennan's has made its own choice to support IntegriCore Global for recruitments in Africa. The applicant has retained it as a customer in other parts of the world but the decision to support the first respondent and her company, the third respondent, has been taken by the company for its own reasons. In light hereof, the harm that the applicant seeks to prevent has already occurred by virtue of the client's choice. The purpose of interdictory relief is not to reverse the past, but to prevent future harm. In this instance the allegiance that Brennan's has expressed in favour of IntegriCore Global, is not an allegiance that this court should prevent. The fact that Brennan's is not a party to these proceedings underscores that it would not be bound by any interdictory relief this court is asked to grant.

[45] The result of the aforesaid is that the principal initiating cause for the current proceedings, namely the appropriation of the results of the Brennan's Job Fair by the first, second and third respondents, is something which has been caused by the switch of allegiance on the part of Brennan's. The first respondent was the face of the applicant in respect of the job fair. Had the applicant not terminated the first respondent's employment on 28 July it would have had no cause for complaint. August was part of the first respondent's notice period and the applicant would reap the benefits of the fair because of the endeavours of the first and second respondents. As soon as the first respondent's employment with the applicant was terminated on 28 July, Brennan's acted to protect its interests by switching its allegiance. To Brennan's the first respondent's knowledge of the African market and personal relationships were vital to its interests. In the premises an interdict would

merely serve to prevent the choices that Brennan's may exercise with whom it wishes to do business.

[46] The client's aforesaid choice was communicated by it to participating host companies. They are on board to support the third respondent. The proverbial horse has bolted for the Brennan's group in Africa. There is insufficient evidence of harm elsewhere. To force Brennan's by an interdict against the respondents to deal with the applicant in Africa, in the face of its reasons for supporting the third respondent, would not be appropriate.

[47] A further consideration that informs this approach is that the first respondent's knowledge of the African market is part of her general set of skills and is not confidential information to which the applicant can claim any proprietary interest.

[48] In a recorded discussion between the directors of the applicant, the second respondent and a Ms Szeb the issue of the loss of Brennan's was discussed. The director of the applicant indicated that they have faced setbacks like that many times and that it was nothing. This is an indication that it is not catastrophic for the applicant to have lost the African market serviced by Brennan's to the third respondent. By contrast, the granting of interim relief against the first and second respondents would preclude them from earning a living in the only field in which they know how to operate. I find that the balance of convenience does not favour the applicant in circumstances such as these.

[49] In the premises the applicant has not established a right to interdictory relief against the first, second and third respondents.

[50] Even if I have erred in assessing the aforesaid, and even if all the elements of the interdict were established, I would decline granting interdictory relief in the exercise of my judicial discretion. In essence, the applicant is asserting a position in South African common law which is doubtful as far as the applicant is concerned due to the effect of its contract of employment being governed by Hong Kong law. The applicant has repudiated the agreement with the first respondent and Brennan's has made an autonomous choice to support the third respondent.

[51] In the premises the following order is made:

1. The application is dismissed with costs, such costs to be on Scale C.



LABUSCHAGNE J

JUDGE OF THE HIGH COURT

APPEARANCES:

COUNSEL FOR APPLICANT	: WHITCUTT SC
INSTRUCTED BY	: WEBBER WENTZEL ATTORNEYS

COUNSEL FOR RESPONDENT	: BISSCHOFF SC
INSTRUCTED BY	: GREYLING ORCHARD ATTORNEYS