REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	**NOT** REPORTABLE
(2)	**NOT** OF INTEREST TO OTHER JUDGES

CASE NO: 2026-036213

DATE: 23 March 2026

In the matter between:

CUT-N-WELD SUPPLIES (PTY) LIMITED Applicant

and

DANIEL SHAUNE BRITZ First Respondent

THUTHUKA WELDING PRODUCTS (PTY) LTD Second Respondent

Neutral Citation: *Cut-N-Weld Supplies v Britz and Another (2026-036213)* **[2026] ZAGPJHC ---** (23 March 20265)

Coram: Adams J

Heard: 12 March 2026

Delivered: 23 March 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:30 on 23 March 2026.

Summary: Civil procedure – urgent application – for final interdictory relief against erstwhile employee of company and his new employer – restraint of trade – unlawful competition and unlawful use of confidential information –

Application found to be urgent – the Court also held that restraint of trade agreement concluded between the parties even though it did not contain employee's full signature – on the evidence, employee found to have intended to be bound by the restraint of trade –

Held that restraint of trade is not binding – a restraint of trade will generally be considered unreasonable if it does not protect some legally recognisable interest of the party in whose favour it is granted but merely seeks to eliminate competition – applicant failed to demonstrate a proprietary interest worthy of protection by the restraint of trade –

Ditto unlawful competition – to constitute confidential information, such information should: (a) involve and be capable of application in trade or industry; (b) must be useful; (c) must not be public knowledge and public property, that is objectively determined, it must be known only to a restricted number of people or to a closed circle of persons; and (d) objectively determined must be of economic value to the person seeking to protect it – applicant failed to comply with these requirements – no protectable interested demonstrates – application should therefore fail –

Urgent application dismissed with costs.

ORDER

(1) The applicant's urgent application be and is hereby dismissed with costs.

(2) The applicant shall pay the first and the second respondents' costs of this urgent application, including Counsel's charges on scale 'C' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.

JUDGMENT

Adams J:

[1]. The applicant (Cut-N-Weld Supplies) is a company that specialises in the importing and distribution, throughout Sub-Saharan Africa, of cutting and welding machines, gouging carbons, ARC accessories, MIG (Metal Inert Gas) and accessories, TIG (Tungsten Inert Gas) and accessories, plasma and accessories, gas equipment, safety equipment and welding consumables. The first respondent (Mr Britz) was – from March 2024 to February 2026 – employed by the applicant as an 'Operations Assistant / Internal Sales Representative'. During February 2026, he took up employment with the second respondent (Thuthuka Welding Products) in the capacity as an 'Operational Assistant'.

[2]. The second respondent, which has been in business for over forty years, is also involved in the Welding Industry and describes itself as a manufacturer and a distributor mainly of welding electrodes. The applicant alleges that the second respondent is a direct trade competitor of it. The second respondent, so it is alleged by the applicant, is a company conducting business in competition with it. According to their website, the second respondent manufactures a complete range of welding electrodes, which includes mild steel, low alloy, stainless steel, cast iron, as well as numerous hard facings, and it is a wholesaler and supplier of various grades of MIG, TIG and Flux-cored wires,

gouging carbons and welding consumables (welding electrodes, welding wire, gouging electrodes and respiratory protection).

[3]. The applicant alleges that the first respondent, by taking up employment with the second respondent, is in breach of a Restraint of Trade agreement concluded between him and the applicant. The first and the second respondents, so the applicant avers, are also competing unlawfully with it in that they are in possession of and intend using the applicant's confidential information in order to gain an unfair advantage over it in competing for business opportunities.

[4]. In this opposed urgent application the applicant applies, on an urgent basis, for an order in the following terms: -

'(1) … ... …

(2) Interdicting and restraining the first respondent for a period of 12 months as from 4 February 2026 from being employed by the second respondent and any business concern or other entity operating in competition with the applicant.

(3) Interdicting and restraining the first respondent from disclosing and/or using, for personal benefit or the benefit of any third party, any proprietary and confidential information, including but not limited to contractual arrangements between the applicant, its clients and business associates, client lists, supplier lists, pricing structures, credit and discount terms, process, methods, menus, technology, computer programmes and software and all other issues that relate to the operations of the Applicant.

(4) Interdicting and restraining the second respondent from using, for personal benefit or the benefit of any third party, any proprietary and confidential information including but not limited to client lists, supplier lists, pricing structures, credit and discount terms, process, methods, menus, technology, computer programmes and software and all other issues that relate to the operations of the applicant.

(5) Interdicting and restraining the first respondent from disclosing and/or using, for personal benefit or the benefit of any third party, technical data and application techniques relating to welding technology programs, literature, designs, patents, inventions, systems that are used, applied, or developed by the applicant.

(6) Interdicting and restraining the second respondent from using, for personal benefit or the benefit of any third party, technical data and application techniques relating to welding technology programs, literature, designs, patents, inventions, systems that are used, applied, or developed by the applicant.

(7) Interdicting and restraining the first respondent from disclosing and/or using, for personal benefit or the benefit of any third-party data, records, documentation, trade secrets, trade connection confidential to the applicant, programs and databases of the applicant and material relating to the affairs of the applicant.

(8) Interdicting and restraining the second respondent from using, for personal benefit or the benefit of any third party, data, records, documentation, trade secrets, trade connection confidential to the applicant, programs and databases of the applicant and material relating to the affairs of the applicant.

(9) Interdicting and restraining the first respondent and the second respondent ('respondents') from using, distributing, copying or publishing any confidential information of the applicant and/or personal information, as defined in the Protection of Personal Information Act 4 of 2013 ('the Act'), of the applicant's clients and suppliers in any manner, either directly or indirectly, for any purpose.

(10) Directing the respondents to delete, remove and/or destroy all of the applicant's clients' and suppliers' personal information, as defined in the Act, and data in their possession from the respondents' electronic devices, including laptops, cell phones, storage disks (including Hard Disk Drives, Sold State Drivers, USB Flash Drives, and/or micro disks) and/or tablets of any sort and any Cloud storage service, including Google Drive.

(11) Directing the respondents to delete, remove and/or destroy all soft copies of the applicant's confidential information documentation, contemplated in clauses 2 of the first respondent's agreement on Restraint of Trade from the first respondent's electronic devices, including laptops, cell phones, storage disks (including Hard Disk Drives, Sold State Drivers, USB Flash Drives, and/or micro disks) and/or tablets of any sort and any Cloud storage service, including Google Drive.

(12) Directing that the first respondent deliver to the applicant, within 24 (twenty four) hours of the granting of this order, all the applicant's documents, property, business credit cards, customer and client lists, costing sheets, databases, written material and software programs, whether produced by the first respondent or by others and in his possession or under his control, alternatively written

confirmation that he is not in possession of any such information, materials or data.

(13) Interdicting and restraining the first respondent from retaining copies of the documents and programs referred to in paragraph 12.

(14) Directing the first respondent to deliver all hard copies of documents and programmes referred to on paragraph 12 within 24 (twenty-four) hours from date of granting of the Court Order, alternatively written confirmation that he is not in possession of hard copies of documents and programmes contemplated in paragraph 12.

(15) The first respondent to pay the cost of the application on the scale between attorney and client.

(16) The second respondent to pay the costs of this application, jointly and severally with the first respondent, the one paying the other to be absolved, in the event that this application is opposed by the second respondent.

(17) Further and alternative relief.'

[5]. So, in sum, in this urgent application, the applicant seeks final interdictory relief against its former employee, the first respondent, and his new employer, the second respondent. The applicant primarily seeks to enforce a twelve-month restraint of trade agreement, which it contends is binding on Mr Britz, and to interdict him from being employed by the second respondent, whom it describes as a direct competitor. Furthermore, the applicant seeks a wide range of ancillary relief aimed – in a shotgun approach – at protecting its alleged confidential information and trade connections, including orders compelling the return and destruction of data and interdicting both respondents from using such information. The relief is also premised, in part, on alleged contraventions of the Protection of Personal Information Act 4 of 2013 (POPIA).

[6]. In issue in this opposed urgent application is whether the applicant has demonstrated a sustainable cause of action based on a breach of a restraint of trade agreement and unlawful competition and the misappropriation of confidential information. Crystalised further, the question to be considered by me is whether the applicant has proven a protectable interest worthy of

protection by a final interdict. Those issues are to be decided against the factual backdrop as set out briefly in the paragraphs which follow.

[7]. The applicant's case in relation to its protectable interest is that it lies in the applicant's accumulated commercial intelligence about how its products are priced, sold and applied in relation to its own customers and suppliers. This information, so the applicant contends, is not publicly available and can be used by a manufacturer or a distributor, such as the second respondent, to refine its pricing, product range and sales strategy to the applicant's detriment.

[8]. The first issue for determination, that being urgency, I shall make short thrift of. This matter, which relates to the enforcement of a restraint of trade, is inherently urgent. The restraint period is limited to twelve months from 4 February 2026. If this matter were to follow the normal course, the restraint period would be substantially, if not entirely, completed before the application could be heard. The harm the applicant seeks to prevent is the disclosure and use of its alleged confidential information and the erosion of its trade connections during this finite period. Once such information is disclosed, or a competitor gains an unfair foothold, the harm is irreversible and cannot be adequately remedied by a subsequent award of damages. The short abridgement of time between the launching of the application and the hearing, necessitated by the parties' own filing timelines, does not detract from this inherent urgency. The applicant's explanation for the truncated timelines is reasonable in the circumstances.

[9]. Consequently, I find that the applicant has made out a proper case for the matter to be heard as one of urgency. The application for condonation for non-compliance with the forms and service is granted.

[10]. The next issue is that relating to the existence of the Restraint of Trade Agreement. In that regard, there is a dispute between the parties as to whether a valid restraint of trade agreement was ever concluded between the applicant and Mr Britz. It is common cause that the document titled 'Agreement on

Restraint of Trade' ('the RoT') does not bear Mr Britz's full signature on the signature page. It does, however, bear his initials on every page, including the last page. Mr Britz's employment contract, signed on the same day, was fully executed by him.

[11]. Mr Britz contends that he is not bound by the RoT because he did not sign it. He argues that the pack of documents he received included the RoT, and if he had intended to be bound by a restraint, he would have signed it. The applicant argues that the initials constitute a valid signature, demonstrating Mr Britz's *animus contrahendi* (intention to be bound). It points to an email chain showing the documents were sent to him for consideration days before they were signed.

[12]. I find myself in agreement with this contention on behalf of the applicant. The simple point is that the legal position is that no special form of signature is required for a restraint of trade agreement. In fact, there are no legally prescribed formalities in relation to the conclusion of restraint of trade agreements. In any event, in *Van Niekerk v Smit and Others*[1], albeit in a different context, it was held as follows: -

'Nor am I any more impressed by the contention that the letter of exercise is not "signed". Signature does not necessarily mean writing a person's Christian and surname but any mark which identifies it as the act "of the party" – *Morton v Copeland*, 16 C.B. 517 per MAULE, J., at p. 535. To sign, as distinguished from writing one's name in full is to make such a mark as will represent the name of the person signing. (In *re Trollip*, 12 S.C. 243 at p. 246, per Lord De Villiers.) See also *R v Matanda,* 1923 AD at p. 436. Pencil signatures, *signature by initials* or by means of a stamp, or by mark, or by a party's writing below a printed heading are all sufficient under the Statute of Frauds (vide Halsbury, Laws of England, Vol. 7, para. 179, Hailsham Ed.)' (Emphasis added).

[1] *Van Niekerk v Smit and Others* 1952 (3) SA 17 (T).

[13]. On the basis of this case authority, I conclude that the first respondent had every intention to be bound by the terms of the Restraint of Trade Agreement. The evidence before me supports this conclusion.

[14]. This matter can and should be distinguished on the evidence and the facts from *E-MD Technologies (Pty) Ltd v Soni*[2], to which I was referred to by Mr Swiegers, who appeared on behalf of the first and the second respondents. In the latter case, the employee had specifically denied that he entered into the restraint of trade agreement as, so his evidence went, he had been advised by his legal representatives against signing the restraint of trade agreement because there were a number of difficulties the legal representative identified in the restraint of trade agreement. The employee in that matter had therefore taken a conscious decision not to enter into a restraint of trade agreement and it is for this reason that he did not attach his full signature to the said document presented to him.

[15]. In this matter, there is no such specific denial supported by objective evidence. The first respondent simply states that he notes that the restraint of trade agreement was not signed by him and despite his initials appearing on the document it is clear that where the witness signed, he has not signed the said agreement. He then goes on to 'deny that the restraint agreement is valid on this point alone and that lack of agreement in this regard is fatal to the applicant's relief …'. In conclusion on this point, the first respondent says the following in his answering affidavit: -

'I submit that if I intended to be bound by restraint provisions, I would have signed the restraint agreement. My physical address and postal address were also omitted from the restraint agreement.'

[16]. The way in which the first respondent addresses this issue and the formulation of his case on this aspect of the matter, are instructive. It is not a denial that he concluded a restraint of trade agreement with the applicant. Nor is it a disavowal of him committing himself to be bound by the provisions of all of

[2] *E-MD Technologies (Pty) Ltd v Soni* 2020 JDR 2437 (LAC).

the documents, including the restraint of trade agreement, presented to him by the applicant during January 2024. What he does say – almost as an afterthought – is that, seeing that his full signature is not attached to the restraint of trade agreement (which implies that he accepts that he intended concluding the said agreement), the said agreement is not valid. Nowhere in his papers does the first respondent clearly and unequivocally deny that he entered into a restraint of trade agreement, which should be contrasted with the applicant's version that '[o]n or about 22 January 2024 and at Sebenza, Edenvale, the first respondent entered into a written "Agreement on Restraint of Trade" ("ROT")'.

[17]. For these reasons, I am of the view that this matter is distinguishable from *E-Md Technologies*. The first defendant did, in my judgment, conclude with the applicant the written restraint of trade agreement on 22 January 2024, which provide in the important parts as follows: -

'2. **CONFIDENTIALITY:**

The Parties hereto therefore agree as follows:

2.1. The Employee acknowledges that, by virtue of the Employer engaging his services, he shall become possessed of and will continue to have access to the technical data, trade secrets and confidential information of the Employer, Including but not limited to the following matters, all of which are hereinafter referred to as confidential information relating to the Employer: -

2.1.1. Contractual arrangements between the Employer, its Clients and business associates;

2.1.2. Financial details (including pricing structures, credit and discount terms) relating to the Employer and its dealings with business associates and clients;

2.1.3. Details as to the remuneration paid by the Employer to any of its employees, consultants or other business associates.

2.1.4. Technical data and application techniques relating to welding technology programmes, literature, designs, patents, inventions, systems and any other issue or topic that relates to any of the aspects referred to above that are used, applied or developed by the Employer

2.1.5. Any and all other matters which relate to the business of the Employer and in respect of which information is not readily available in the ordinary course of business to a competitor of the Employer and/or are not within the knowledge of the public domain.

2.2 The Employee accordingly agrees and undertakes, in order to protect the proprietary interests of the Employer and its Clients in its confidential information, that:

2.2.1. The Employee will not, during the course of this agreement or at any time thereafter, either use, directly or indirectly divulge or disclose to any person whomsoever or entity whatsoever for any reason whatsoever any confidential information of the Employer or any of its Clients.

2.2.2. Any written Instructions, notes, drawings, memoranda, techniques, welding technology programmes, literature, designs, patents, inventions, systems and any other matter or topic related thereto or any client lists, pricing structures and / or records relating to the confidential information of the Employer or its Clients which are made by the Employee or which come into the possession of the Employee during the course of his rendering services to the Employer, shall be deemed to be the property of the Employer and shall be surrendered to the Employer on demand and in any event upon termination of his services for any reason whatsoever, and the Employee shall not retain copies and/or extracts of same.

2.3. Any breach of this provision, be it during or after termination of the employment relationship, shall entitle the Employer to obtain relief from a competent Court and the costs associated with such approach to a Court shall be recovered from the Employee, The Parties hereto agree that the Employer shall be entitled to claim monetary relief equivalent to 25% of the Employee's annual remuneration as would be applicable at the time of the breach of this clause.

… … …

RESTRAINT OF TRADE:

3.1. The Parties hereto recognise that the Company operates in a highly competitive market where trade secrets, pricing structure, technical data and -programmes, Inventions and Innovations, client lists and operational data are of extreme importance.

3.2 If such information is disclosed to competitors, it could have serious financial repercussions for the Company.

3.3 The Employee therefore agrees to the following terms:

3.3.1. The Employee undertakes not to:

3.3.1.1. disclose, divulge, use or in any other manner apply any of the Employer's confidential information to the detriment of the Employer;

3.3.1.2. or to become involved, either directly or indirectly and whether as employee, director, member of a closed corporation, shareholder, partner or financier in any other business concern or other entity operating in the welding technology sector and which is or may be in competition with the Employer for a period of twelve (12) months after termination of his services with the Employer for whatever reason.'

[18]. The next question which arises is whether the applicant has a protectable interest deserving of protection by the Restraint of Trade.

[19]. In *Basson v Chilwan and Others*[3], the Appellate Division held that in determining the reasonableness or otherwise of the restraint of trade provisions the Court must ask the following questions: (a) is there an interest of the one party, which is deserving of protection at the termination of the agreement? (b) Is such interest being prejudiced by the other party? (c) 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? (d) 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?

[20]. A restraint of trade will generally be considered unreasonable if it does not protect some legally recognisable interest of the party in whose favour it is granted but merely seeks to eliminate competition. In that regard, it is well established that the proprietary interests that can be protected by a restraint agreement are essentially of two kinds, namely: (a) the relationships 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

[3] *Basson v Chilwan and Others* 1993 (3) 742 (A);

important aspect of its incorporeal property known as goodwill; and (b) 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'.

[21]. The applicant alleges in this regard that it has a protectable interest in that it seeks to protect both its trade connections and its confidential information. Neither of these interests are worthy of protection and I say so for the reasons set out in the paragraphs which follow.

[22]. The issue of competition between the applicant and the second respondent is an important consideration as far as reasonableness is concerned. Whilst there is competition to a limited extent between the applicant and the second respondent, it has to be accepted as a fact that the second respondent mainly is a manufacturer and a distributor of welding electrodes and that this constitutes 80% of its business. On the other hand, the applicant is a distributor of a broad range of welding equipment and related accessories. The applicant acquires from its suppliers premanufactured products and then on sell those products to its clients, who are, in the main, distributors / retailers themselves.

[23]. This means that the overlap between the business conducted by the applicant and that of the second respondent is minimal. That, in my view, translates into a conclusion that as against the second respondent the applicant cannot be said to have a proprietary interest worthy of protection.

[24]. Moreover, and, as a general proposition, I do not think, all things considered, that the applicant has demonstrated that it has a proprietary interest worthy of protection under a restraint of trade agreement or on the basis of unlawful competition.

[25]. The applicant's contention is that it has protectable proprietary interests in confidential information and trade connections. It states that its pricing and discounting is confidential and would be useful to the second respondent. The difficulty with this contention is that, on the applicant’s own version, its pricing and by implication the related discounting are changed on a monthly basis. Moreover, the pricing of the applicant is communicated regularly to its customers, which include the second respondent. The simple point is that the applicant’s pricing and discounting structure cannot possibly be a proprietary interest because it is in the public domain.

[26]. The same can also be said of the claim by the applicant that the type of work done by its internal sales representatives, as the first respondent was during his employment with it, requires special skills and entailed knowledge peculiarly acquired by them in their capacities as internal sale representatives at the applicant. These representatives, so the applicant alleges, handle calls from customers and recommend products best suited for a particular project. They ascertain which products are better suited for particular applications for the specific requirements of clients and then make appropriate recommendations to customers.

[27]. The respondents contend that the applicant overstates the position in that regard. It may be so that end users purchase products which could use input on various products and consumables to be used, so the respondent argues, but it is not conceivable that same would apply where the applicant supplies distributors.

[28]. I agree with this contention. Common sense dictates that no input into premanufactured products would be required by the applicant, who on sell these products to distributors. These products, in any event, come with manuals from the Original Equipment Manufacturers (OEM’s) and any sales representative can familiarise himself or herself with the qualities and special features of a product simply by reading the manual. The applicant has not, in my view, demonstrated that, as regards the information it has in relation to the

products it imports and distributes, it is in possession of confidential matter which is useful for the carrying on of the business and which could be used by a competitor, if disclosed to him, to gain a relative competitive advantage (to quote from *Basson v Chilwan and Others*). I cannot possibly be suggested that this information can and should be regarded and treated as 'trade secrets'. This alleged confidential information regarding the premanufactured products come from the OEM's and not from the applicant.

[29]. Importantly, and this point deserves particular emphasis, the alleged 'training' received by the first respondent whilst in the employ of the applicant, which, according to the applicant equates to trade secrets, was nothing more than a rehash of product information obtained by the applicant from the OEM's as the manufacturers of the products on-sold by the applicant. Moreover, the applicant publishes this information on its website in the form of technical and operator manuals, with specifications in relation to the products distributed by it. How then, I ask rhetorically, can it be said that the skills acquired by the applicant's sales representatives is a proprietary interest if the information received during this training is publicly available?

[30]. As for the applicant's claim on the basis of its confidential information, the nature of protectable interests has indeed been described as confidential information and trade secrets, trade connections, or both. The confidential information, whether information, know-how, technology or a method, must be objectively worthy of protection and have value in the sense that it concerns matter such as business opportunities, customer information, proposals, marketing, price or pricing arrangements, product specifications, know-how, technology or manufacturing details which are unique to the business and not generally available to third parties. It must have actual economic value to the party seeking to protect it, in circumstances in which the employee is obliged contractually to keep it confidential. The information must not be public knowledge, public property or be available in the public domain. To be confidential and therefore worthy of protection, it must be shown to be specific or unique to the respondent, with economic value, and known only to a

restricted number of people or a closed circle within its business while being capable of use or application within the same trade or industry.

[31]. Does the applicant's application for relief based on the misappropriation of its confidential information (prayers 3 to 14 of the notice of motion) meet the requirements set out in the aforegoing paragraph? In my view, the answer to this question is no. And I say so for the reasons which follow.

[32]. In *Experian South Africa (Pty) Ltd v Haynes and Another*[4], it was held that proprietary interests that may be protected by a restraint of trade agreement between an employer and an employee include trade connections and confidential information. An employer seeking to enforce a restraint agreement is required only to invoke it and show breach, whereupon the employee seeking to avoid it must show unreasonableness by establishing, for example, that he had no access to confidential information or never acquired any significant personal knowledge of, or influence over, the employer's customers. For the employer it suffices to show that there was confidential information or trade connections to which the employee had access and which could, in theory, be exploited by the new employer.

[33]. It is trite that the law enjoins confidential information with protection. Whether information constitutes a trade secret is a factual question. For information to be confidential it must be capable of application in the trade or industry, that is, it must be useful and not be public knowledge and property; known only to a restricted number of people or a close circle; and be of economic value to the person seeking to protect it.

[34]. The first thing that has to be said about the applicant's claim based on its confidential information is that it has to be accepted as a fact that the first respondent is not in possession of the applicant's confidential information in the form suggested in the paras 1 to 14 of the notice of motion. It cannot possibly

[4] *Experian South Africa (Pty) Ltd v Haynes and Another* 2013 (1) SA 135 (GSJ); (2013) 34 ILJ 529 (GSJ).

be suggested, on the evidence presented in this matter, that the first respondent is in physical possession of contractual arrangements between the applicant, its clients and business associates, client lists, supplier lists, pricing structures, credit and discount terms, process, methods, menus, technology, computer programmes and software and all other issues that relate to the operations of the applicant.

[35]. In his answering affidavit, the first respondent clearly and unequivocally denies that he has in his possession any of the applicant's confidential information. This is how the first respondent puts it in his answering affidavit:

> '64. I deny that I have possession of the applicant's confidential information and further that the applicant has not shown in what manner any of its information, it in general terms declares to be confidential, is indeed of such a nature. *I have not made any copies of any of the applicant's information and the applicant has collected all the applicant's devices and equipment from me when I was no longer required to serve out my notice period*.' (Emphasis added.

[36]. These allegations are not seriously challenged by the applicant. And, as I said, it has to be accepted as a fact that the first respondent is not in physical possession of any of the applicant's alleged confidential information.

[37]. The first respondent explains that he never dealt with the applicant's suppliers and cannot disclose anything to the second respondent that could enable the second respondent to 'bypass' the applicant. He says that he does not know the costing of the applicant and is in no position to give any such information to the second respondent.

[38]. I have no reason not to accept the first respondent's word in that regard. I am therefore of the view that the applicant has failed to demonstrate that the first respondent was possessed of such information.

[39]. The respondents also contend that the applicant's allegations regarding Mr Britz's customer relationships are vague. His consistent version, so the

respondents contend, which must be accepted on the papers where a genuine dispute exists, is that he was an internal sales representative who dealt with customers on an *ad hoc* basis. He did not have a fixed client list, did not perform external sales functions, and did not build the kind of personal relationships that would enable him to sway customers to follow him to a competitor. The fact that he may have been the primary contact for the second respondent's orders is a function of his daily duties and does not, on its own, establish a protectable trade connection.

[40]. I agree with this submission. All things considered the applicant has not, in my view, proven otherwise. His interaction with clients as an internal sales representative did not mean that the first respondent acquired the type of information which can firstly be described as confidential information, nor can it be said to have the qualities making it a proprietary interest.

[41]. As for the technical specifications of products, which the first respondent is alleged to have been trained on and which translated into a protectable interest, I have already dealt with that aspect *supra*. That information is in the public domain, available on the applicant's website or from the OEMs. Pricing was therefore not a secret. Moreover, the first respondent had no independent authority to set prices or grant discounts without management approval, and he did not have access to underlying cost prices or supplier procurement terms. Importantly, the applicant itself admits that it sends a full price list, including distributor pricing, to its customers, including the second respondent, on a monthly basis.

[42]. In sum, it is so, as contended on behalf of the respondents, that the applicant has made broad and vague allegations of protectable interests, but when tested against the respondents' detailed denials and the applicant's own admissions in reply, these allegations fall away. The true nature of the applicant's case appears to be an attempt to use the restraint of trade and the case based on unlawful competition as a sword to eliminate lawful competition from the second respondent, rather than as a shield to protect a legitimate

proprietary interest. This is not permissible. As was held in *Sibex Engineering Services v Van Wyk and Another*[5], a restraint cannot be used merely to eliminate competition.

[43]. Consequently, the applicant has failed to establish the first and most crucial requirement for a final interdict: a clear right. It has not demonstrated that it possesses a protectable proprietary interest, whether in the form of trade connections or confidential information, that is worthy of protection and that is threatened by Mr Britz's employment with the second respondent.

[44]. In my view, the applicant fails to prove the requirements for a cause of action based on restraint of trade, confidential information and springboarding. As submitted on behalf the respondents, information about the products sold by the applicant is not confidential. The details relating to the applicant's suppliers are not known to the first respondent, nor is the details of the applicant's clients.

[45]. Moreover, the applicant's business processes are not confidential. Its pricing structure is widely publicised to all of their existing clients and on their website. That information is easily accessible, not unique to the applicant and 'not confidential at all'.[6] Also, as was held by this court in *Combustion Technology (Pty) Ltd v Peck*[7], where there is 'nothing unique about the way an applicant is doing business or nothing unique about its sales methods, and its methods are those generally adopted in a particular trade or industry, such methods cannot be considered confidential and therefore protectable'. This, in my view, is apt *in casu*.

[46]. By the same token, the customers of the applicant are not confidential. They are the major names in the welding industry. Moreover, none of this information or documents containing same, is in possession of the first respondent.

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[5] *Sibex Engineering Services v Van Wyk and Another* 1991 (2) SA 482 (T).

[6] *Waste Products Utilisation (Pty) Ltd v Wilkes and Another* 2003 (2) SA 515 (W).

[7] *Combustion Technology (Pty) Ltd v Peck* 2020 JDR 1935 (GJ) at para 55.

[47]. As was held in *Alum-Phos (Pty) Ltd v Spatz and Another*[8], to constitute confidential information, such information should: (a) involve and be capable of application in trade or industry; (b) must be useful; (c) must not be public knowledge and public property, that is objectively determined, it must be known only to a restricted number of people or to a closed circle of persons; and (d) objectively determined must be of economic value to the person seeking to protect it.

[48]. As I have already indicated, none of these requirements have been proven by the applicant. Importantly, it has not been proven that the first respondent is in possession of the alleged confidential information.

[49]. In my view, the applicant has not demonstrated that it has protectable proprietary interest that are being or will be infringed by the respondents. The applicant has not presented any evidence of unlawful competition, and there is no evidence in the papers of any injury having been actually committed or reasonably apprehended.

[50]. For all of these reasons, the applicant's application should fail. The application therefore falls to be dismissed, with the costs to follow the suit.

Order

[51]. In the result, I make the following order:

(1) The applicant's urgent application be and is hereby dismissed with costs.

(2) The applicant shall pay the first and the second respondents' costs of this urgent application, including Counsel's charges on scale 'C' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.

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[8] *Alum-Phos (Pty) Ltd v Spatz and Another* [1997] 1 All SA 616 (W) at 623A–624A;

L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	12 March 2026
JUDGMENT DATE:	23 March 2026 – Judgment handed down electronically
FOR THE APPLICANT:	S Schulenburg
INSTRUCTED BY:	Hutcheon Attorneys, Bedfordview, Germiston
FOR THE FIRST AND THE SECOND RESPONDENTS:	S Swiegers
INSTRUCTED BY:	Alet C Moorcroft Attorneys, Edenglen, Edenvale, Germiston