IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION – MAHIKENG

Case No: 1734 / 2020

In the matter between:

CHEICKHEART GENERAL SALES (PTY) LTD

t/a IMPALA PANELBEATERS **APPLICANT**

And

B & W AUTOBODY EXPERT CC

t/a AUTOBODY EXPERTS **RESPONDENT**

CORAM: MAODI AJ

Date judgment reserved: 11 September 2025

Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail. The date that the judgment is deemed to be handed down is ***24 March 2026*** *at* ***10h00****.*

ORDER

1. The application is granted.
2. The respondent to comply with the order within ten (10) days of this order.
3. The respondent to pay costs on scale B including costs of counsel.

JUDGMENT

MAODI AJ

Introduction

[1] This is an interlocutory application for discovery of further and better particulars. Also access to inspect the discovered documents once same is done. The applicant is plaintiff in the main action while the respondent is defendant. The applicant instituted action against the respondent in which it claims damages as a result of respondent's unlawful competition.

[2] The applicant's main action in line with its particulars of claim is that the applicant and respondent are the only major direct competitors in the industry concerned with panel beating of motor vehicles in the City of Matlosana. The applicant's principal place of business is situated across from the respondent's principal place of business. In order for an entity to be appointed onto the panel of preferred supplier of panel beating services by reputable insurance companies, it has to meet certain internal requirements which are stipulated. A methodology of rotational system is utilised to ensure equal distribution of work to panel beaters by insurance companies allocate.

[3] Since 2018 the respondent has been competing unlawfully against the applicant by misrepresenting to the insurance companies that it possesses certain certificates, whereas in fact it did not. Outside the said misrepresentation, the respondent would not have retained its appointment as preferred panel beater supplier to the insurance companies. During the

years 2018 and 2019 the respondent paid bribes in the form of referral fees to an employee of an insurance brokers to unlawfully manipulate the rotational system by manual override to ensure allocation to the respondent. As a result of the respondent's unlawful actions, the applicant suffered a reduction of instructions to perform work from insurance companies. This led to the damages claimed.

[4] The respondent's defence in line with its plea is that the applicant's allegations are denied. The rotation is based on a point allocation or award system to which panel beating suppliers are not party.

Discovery

[5] The parties exchanged discovery notices. There is also an Anton Pillar application between the parties under case UM156/2020 where certain documents have been preserved. On 14 September 2023 the applicant delivered a notice in terms of rule 35(3) in which it sought additional documents it believes are in the possession of the respondent. A list of the said documents is provided. On 27 October 2023 the respondent replied to the notice that some of the documents are not required or relevant while some of the documents have been provided under the Anton Pillar application under UM156/2020. Further that the applicant is entitled only to documents for the period 2018 and 2019 which were provided under the Anton Pillar application.

[6] On 12 January 2024 the applicant delivered another (second) notice in terms of rule 35(3) in which it sought additional documents it believes are in the possession of the respondent. A list of the said documents is provided. The list differs from the one under the first notice. On 19 February 2024 the respondent replied to the second notice that the

requested documents do not constitute documents relevant to any matter between the parties and are therefore refused. In addition, applicant's cause of action is limited to 2018 and 2019. The applicant is not entitled to documents ranging from 2016 to 2022.

[7] On 27 September 2024 applicant delivered a notice of motion for an order compelling the respondent to comply with the two notices in terms of rule 35(3) respectively dated 14 September 2023 and 12 January 2024.

Applicant's case (Interlocutory)

[8] The parties have discovered. However, once the respondent discovered, there remained documents not discovered. The documents sought in both notices are relevant and must be made available to insurance companies when contracting with them to ensure a panel beater's compliance to remain accredited and to continue to receive work from those insurance companies. The applicant has in the past caught respondent being untruthful and falsifying documents to maintain its status and accreditations. If the respondent does not have the documents sought or any of those documents are falsified, it would serve to prove that the respondent is competing unlawfully with the applicant.

[9] The applicant's cause of action is not limited to the time period as alleged or at all and it is incumbent upon the respondent to provide the documents to the applicant in order for it to be ascertained whether or not the respondent was lawfully and legally accredited and entitled to conduct work for the various manufacturers and brands to which the second notice relates. The applicant is confronted by a recalcitrant respondent who is doing its best to hide documents and evidence from the applicant, which is

completely and utterly relevant to the applicant's claim and dispute between the parties.

[10] The information is relevant to the applicant's claim, inter alia, for reasons that it would allow the applicant to demonstrate the impact of the unlawful competition the applicant suffered and will substantiate the applicant's claim, inter alia, by means of comparing the turnovers of the applicant and the respondent for the relevant periods. The financial statements of the respondent will also show from where the respondent derived its income, for those relevant periods and will further assist the applicant in determining the actual extent of the benefit the respondent accrued through the unlawful competitive behaviour the respondent employed.

Respondent's case

[11] All respondent's financial records and documents have been lost due to lightning damage and damage to their computer system. On 8 April 2023 Klerksdorp experienced heavy weather with extensive lightning activity. The respondent's business was struck by lightning and damaged all information technology hardware and software. There are two damage reports confirming same.

[12] The applicant's claim is limited to the period 2018 to 2020 but the applicant seeks documents outside this period which are not relevant. On 13 August 2020 applicant obtained an Anton Pillar which was intended to attach and safeguard respondent's financial records. The documents requested by applicant are either irrelevant, were never in respondent's possession, alternatively are no longer in respondent's possession.

Applicant's reply

[13] The answering affidavit was filed late and there is no condonation application in respect of same. The applicant objects to the late filing of the answering affidavit. The respondent should be able to obtain the documents and information requested if it approaches third parties. The respondent is hiding the information from the applicant in order to frustrate the applicant in its claim.

The authorities and reasons for judgment

Condonation (Answering affidavit)

[14] The applicant has raised an objection to the answering affidavit that it was filed out of time. Perusal of the documents show that the notice of motion was served on 30 September 2024 while the notice to oppose was delivered on 25 March 2025 and the answering affidavit was delivered on 27 March 2025. This is two days after the notice to oppose was delivered. Although the notice to oppose might have been out of time, the answering affidavit was not out of time as it was supposed to be delivered within fifteen (15) days of the notice to oppose. Although no condonation was sought, I see no reason why the respondent's affidavit should be disallowed. I find that there was no need for condonation in filing of the answering affidavit and it is therefore proper before me.

Main application

[15] Discovery is a process meant to assist parties provide each other with information, documents or tape recordings which are relevant to any issue in the proceedings and can assist to prove or disprove either party's case. This, together with the procedure under rule 37, helps in the narrowing of issues and elimination of trial by ambush.

[16] The authorities are clear that "Relevancy is determined from the pleadings and not extraneously therefrom. A party may only obtain inspection of documents and tape recordings relevant to the issues on the pleadings." *See Erasmus, Superior Court Practice, Second Edition, Van Loggerenburg, Volume 2, Juta at D1 Rule 35-20*.

[17] The applicant's claim is clear that in order to proof same, it needs to see what the growth in respondent's claim was for a few years prior to and after the period in issue. This will give credence to the allegations that there was manipulation of allocation of work from insurance companies which led to applicant receiving less or nothing at all as compared to respondent whose growth suddenly went up. The information is sought for litigation and nothing beyond that. I find that it is relevant for the applicant's case and also to assist respondent in disproving applicant's claims. Without this information I do not see how the parties are going to be able to canvass issues pleaded. If the respondent knows that it has not done anything wrong as alleged by applicant, then it has nothing to hide.

[18] With regard to allegations by the respondent that the documents and information sought by applicant were destroyed and no longer in its possession, I find this untenable. The respondent can approach the organisations that issued such statements as some of these institutions are statutory regulatory bodies like SARS and MIBCO. SARS documents can be obtained from SARS, MIBCO documents from the relevant institution and financial accounting records can be obtained from the bookkeepers or auditors who compiled respondent's financials during the relevant period. Where the respondent is justifiably incapable of securing same, they can properly motivate why same cannot be provided. A blanket refusal or denial

or statement that the said documents are no longer in the possession of the respondent is unacceptable.

Costs

[19] The applicant's claim is clearly and concisely set out in its particulars of claim. The respondent's plea on the other hand does not sufficiently set out grounds for its denial. The applicant has motivated why it seeks the documents and information while the respondent has adopted an attitude that most of the sought information has either not been in its possession or is no longer in its possession. The respondent has not provided information on what steps it has taken to reconstruct the information lost. On these basis I see no reason why costs should not follow the suit.

Order

[20] I therefore make an order as follows:

1. The application is granted.
2. The respondent to comply with the order within ten (10) days of this order.
3. The respondent to pay costs on scale B including costs of counsel.

[redacted]

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J. T. MAODI

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

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Date judgment reserved:	4 September 2025
Date of Judgment:	24 March 2026