



**IN THE HIGH COURT OF SOUTH AFRICA
[WESTERN CAPE DIVISION, CAPE TOWN]
JUDGMENT**

Reportable/Not Reportable

Case No: 2026-107622

In the matter between:

OVEX (PTY) LTD

Applicant

And

YONG HUI HUING

1st Respondent

TATENDA SAMUEL NHEMACHENA

2nd Respondent

LUME TRADE (PTY) LTD

3rd Respondent

LUMEPAY (PTY) LTD

4th Respondent

Date heard: 04 June 2026

Date delivered: 26 June 2026 Electronically

JUDGMENT

ADAMS, AJ

Introduction

[1] This application concerns the enforcement of restraint of trade, confidentiality and non-solicitation undertakings contained in employment agreements concluded between the applicant and the first and second respondents. The applicant also seeks interdictory relief against the third and fourth respondents (“Lume Trade” and “Lumepay”) based on alleged unlawful competition arising from the conduct of the first and second respondents following the termination of their employment.

[2] The applicant (“OVEX”) conducts business as a cryptocurrency asset service provider licensed by the Financial Sector Conduct Authority (“FSCA”). Its operations include the provision of cryptocurrency exchange services, foreign exchange liquidity solutions, payment systems and related financial products to institutional and commercial clients. The applicant forms part of a broader corporate group operating within the crypto-asset sector.

[3] The first respondent (“Huang”) was employed by the applicant as its Chief Financial Officer. The second respondent (“Nchemachena”) occupied the position of Chief Legal and Compliance Officer. Both occupied senior executive positions and were involved in the strategic, operational and regulatory affairs of the applicant’s business. They resigned during August 2025 and left the applicant’s employ shortly thereafter.

[4] Following their departure, Huang and Nchemachena became involved in the establishment and operation of Lume Trade and Lumepay. Lume Trade was publicly launched during April 2026, while Lumepay was intended to commence operations shortly thereafter. OVEX contends that both entities compete directly with its business and have been established using confidential information and know-how acquired during the respondents’ employment.

[5] The applicant seeks final relief enforcing the restraint provisions, prohibiting the use of confidential information, restraining unlawful competition, preventing the solicitation of employees and directing the delivery up or destruction of proprietary information. The respondents oppose the application and contend that the applicant

seeks no more than to suppress lawful competition from former employees who have chosen to establish independent businesses.

[6] The matter initially served before the urgent court on 22 May 2026. By that stage, the respondents had delivered extensive answering affidavits shortly before the hearing. The applicant delivered replying papers on the day of the hearing. The volume of material placed before the court was already substantial and rendered it impractical to determine the issues on that date.

[7] After hearing argument on urgency, the urgent court directed that the matter be entertained as one of urgency and postponed it for hearing on the merits. The parties thereafter continued to supplement their respective cases. The respondents delivered additional affidavits directed at matters raised in reply, while the applicant responded with supplementary replying affidavits of its own.

[8] The result is a record exceeding one thousand pages. Although the sheer volume of the papers tends to obscure rather than illuminate the real issues, the dispute ultimately turns on a relatively narrow question: whether the applicant has demonstrated the existence of proprietary interests deserving protection and, if so, whether the respondents' conduct threatens those interests in a manner justifying final interdictory relief.

[9] Certain facts are common cause. The first and second respondents concluded employment agreements containing restraint of trade, confidentiality and non-solicitation provisions. The validity of those agreements is not challenged. It is likewise common cause that the respondents resigned during August 2025 and thereafter became involved in the third and fourth respondents.

[10] It is further common cause that the third respondent operates within the crypto-asset sector and that the first and second respondents are involved in its establishment and operation. The dispute concerns the legal significance of those facts and, in particular, whether the respondents have utilised or threaten to utilise information acquired whilst employed by the applicant.

The parties' cases as pleaded

[11] The applicant's case is founded upon the proposition that the first and second respondents occupied positions of exceptional trust and confidence within its business. It contends that they enjoyed unrestricted access to confidential information relating to customers, treasury operations, liquidity structures, regulatory systems, supplier relationships, pricing arrangements and strategic planning. According to the applicant, these constitute proprietary interests worthy of protection.

[12] The applicant alleges that following his resignation, the first respondent retained access to certain company systems, accessed custody infrastructure and trading platforms associated with the applicant, and generated exports containing customer and security information. It further alleges that the first respondent copied or downloaded a substantial volume of corporate records, including information relating to treasury management, reconciliation processes, customer data, and internal operations.

[13] The applicant's complaint is not confined to the possession of information. It contends that the first and second respondents have established competing businesses operating in the very fields prohibited by their restraint agreements and have done so by relying upon knowledge, systems and information acquired during their employment. It submits that the risk of misuse is both real and immediate.

[14] The respondents reject that characterisation. They contend that the applicant has failed to identify any confidential information with the degree of specificity required by law and has instead attempted to restrain them from making use of their own skills, qualifications, and experience. They argue that the applicant seeks to monopolise knowledge and expertise which properly belong to the respondents themselves.

[15] The respondents deny having removed, retained or utilised confidential information. They contend that the various downloads, exports and access events relied upon by the applicant occurred in the ordinary course of employment and are

susceptible to entirely innocent explanations. According to the respondents, there is no evidence of theft, exfiltration or misuse of information.

[16] The respondents further contend that the applicant's true concern is not the protection of confidential information but the emergence of a commercial competitor. They argue that the proceedings were instituted only after the launch of the third respondent and that the applicant seeks, through the guise of restraint enforcement, to suppress lawful competition within the crypto-asset market.

The issues for determination

[17] Against that backdrop, the issues requiring determination are relatively straightforward. The first is whether the applicant possesses proprietary interests in the form of confidential information, trade secrets or customer connections deserving of protection. If that question is answered in the affirmative, the court must then determine whether those interests are threatened by the conduct of the respondents.

[18] The court must further determine whether the restraint provisions are reasonable and enforceable having regard to the nature of the interests relied upon, the activities of the respondents, and the remaining duration of the restraint period. This enquiry necessarily involves a consideration of the competing interests of the parties and the broader dictates of public policy.

[19] In addition, the court must consider the applicant's claims founded upon unlawful competition, solicitation of employees and delivery-up relief. It is also necessary to determine whether any of the preliminary defences advanced by the respondents are dispositive of the application or otherwise undermine the applicant's entitlement to final relief.

The respondents' preliminary defences

Delay and urgency

[20] The respondents contend that the applicant delayed unreasonably in bringing these proceedings despite being aware of much of the conduct upon which it now relies. According to them, the true catalyst for the application was the public launch

of the third respondent during April 2026 rather than any genuine concern regarding confidential information or contractual rights.

[21] There is little merit in this defence. The issue of urgency was argued before the urgent court and determined in favour of the applicant. More importantly, delay is not, in itself, a complete answer to a claim founded upon an ongoing breach of restraint obligations or the threatened misuse of confidential information. The real question remains whether the applicant has established an entitlement to substantive relief.

Standing and licensing distinctions

[22] The respondents also contend that the applicant lacks standing to complain about certain aspects of the competing businesses because some of the activities relied upon fall within the scope of licences held by other entities within the broader corporate group. They argue that the applicant seeks impermissibly to enforce rights which do not belong to it.

[23] The applicant's answer is that its business is conducted through an integrated group structure and that the restraint provisions are framed by reference to categories of crypto-asset activities rather than particular regulatory licences. It contends that the first and second respondents were intimately familiar with that structure and cannot now rely upon corporate distinctions which they previously ignored.

[24] At least at a preliminary level, there is force in the applicant's submission. The restraint provisions are directed at participation in defined fields of activity and not merely at competition with a single licence holder. Whether the competing businesses fall within those fields is a matter better considered when evaluating the substantive merits of the application.

Constructive dismissal and shareholding disputes

[25] The respondents devote considerable attention to disputes concerning share participation, equity arrangements, and what they describe as a pattern of conduct by the applicant that ultimately rendered continued employment intolerable. They

contend that these matters provide important context for their resignation and bear upon the reasonableness of enforcing the restraint provisions.

[26] Even accepting the respondents' version for present purposes, those allegations do not constitute a defence to the claims presently before the court. The existence of contractual disputes, disagreements regarding shareholding arrangements or complaints concerning workplace relations does not, without more, extinguish restraint obligations freely undertaken by the parties.

[27] Nor do those allegations answer the applicant's central complaint concerning confidential information and customer connections. At their highest, they provide an explanation for why the respondents chose to leave the applicant's employ. They do not determine whether the respondents remain bound by the contractual obligations they assumed while employed.

New matter and disputes of fact

[28] The respondents finally contend that portions of the applicant's case were advanced for the first time in reply and that material disputes of fact arise throughout the papers. They submit that those disputes are incapable of resolution on affidavit and preclude the grant of final relief.

[29] It is undoubtedly so that the papers contain a multitude of factual disputes. Not all disputes, however, are material. The court is required to determine whether the disputes relate to facts necessary for the adjudication of the relief sought. Peripheral disagreements concerning motive, background events or collateral conduct do not necessarily prevent a court from deciding the real issues before it.

[30] In the present matter, many of the disputes relied upon by the respondents concern matters which are ultimately not decisive of the restraint claim. The existence of the restraint provisions, the senior positions occupied by the respondents, their involvement in the competing businesses and their access to the applicant's information are either common cause or substantially undisputed.

Whether the remaining disputes are material is best considered in the context of the substantive evaluation which follows.

Applicable legal principles

[31] The applicant's claim to enforce the restraint provisions is founded in contract. The principles governing the enforcement of restraints of trade are now well established following the decision in *Magna Alloys and Research (SA) (Pty) Ltd v Ellis*.¹ Restraint agreements are enforceable unless the party seeking to avoid them demonstrates that their enforcement would be unreasonable and contrary to public policy. The starting point is therefore that contractual undertakings freely assumed ought generally to be honoured.

[32] Public policy requires a balancing of competing considerations. On the one hand lies the principle of *pacta sunt servanda* and the public interest in enforcing contractual obligations. On the other, lies the principle that individuals should not unreasonably be prevented from earning a livelihood or participating productively in the economy.² The court's task is to strike an appropriate balance between those competing interests.

[33] In *Basson v Chilwan*, the court held that the enquiry ordinarily involves four questions.³ First, whether the party seeking enforcement possesses a proprietary interest deserving of protection. Secondly, whether that interest is threatened by the conduct of the other party. Thirdly, whether the interest sought to be protected weighs qualitatively and quantitatively against the interest of the employee in remaining economically active. Finally, whether any broader public-policy considerations require that the restraint should not be enforced.

¹ *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* [1984] ZASCA 116; 1984 (4) SA 874 (A).

² Section 22 of the Constitution guarantees every citizen the right to choose their trade, occupation or profession freely subject to such trade, occupation or profession being regulated by law.

³ The fourfold test by Nienaber JA is located in *Basson v Chilwan and Others* [1993] ZASCA 61; 1993 (3) SA 742 (A) at page 767 of the reported judgment (specifically spanning 767G–I or 767H–I)

[34] In *Reddy v Siemens Telecommunications (Pty) Ltd*⁴ the Supreme Court of Appeal recognised that the enquiry formulated in *Basson v Chilwan* is not exhaustive. At paragraph 17, the Court identified a further consideration, namely whether the restraint extends further than is reasonably necessary to protect the employer's legitimate proprietary interests. This additional enquiry, which is implicit in the third *Basson* question, aligns with section 36(1)(e) of the Constitution and requires the court to consider whether there are less restrictive means available to achieve the legitimate purpose served by the restraint. Accordingly, even where a protectable interest exists, the restraint must be no wider than is reasonably necessary to protect that interest.

[35] Proprietary interests deserving protection generally take the form of confidential information, trade secrets and customer connections. Confidential information is not limited to technical data or proprietary software. It may include pricing information, strategic planning, operational systems, supplier arrangements, customer information, financial information and other commercially valuable knowledge not generally available to competitors.⁵

[36] Customer connections constitute a recognised proprietary interest because of the relationship between a business and its customers. Where an employee occupies a position enabling him or her to establish close relationships with customers and acquire detailed knowledge of their requirements, preferences and commercial activities, the employer may legitimately seek protection against the use of those relationships for a competitor's benefit.

[37] Importantly, an employer is not required to establish actual misuse of confidential information before obtaining relief. The authorities recognise that confidential information, once disclosed or utilised, cannot easily be retrieved.⁶ The law therefore protects employers against the risk that confidential information may be

⁴ *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA) at para 17

⁵ See *Esquire System Technology (Pty) Ltd t/a Esquire Technologies v Cronje and Another* [2010] ZALC 198; (2011) 32 ILJ 601 (LC) para 28.

⁶ *Ibid* fn 4 para 33 where the decision in *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA) is referred to with approval.

used by former employees who possess such information and who have become involved in competing enterprises.

[38] The applicant's claim against the third and fourth respondents is founded principally upon unlawful competition. Our law recognises a trader's right to protection against competition conducted by unlawful means. Where a competitor knowingly or innocently benefits from confidential information belonging to another, interdictory relief may be granted to prevent the unfair commercial advantage that would otherwise arise.

[39] Insofar as disputes of fact arise, those disputes fall to be resolved in accordance with the principles articulated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*.⁷ A respondent's version will ordinarily prevail unless it is so far-fetched, untenable or clearly implausible that it can be rejected on the papers. Courts are nevertheless not required to accept bald denials unsupported by meaningful engagement with the facts.

Evaluation

The applicant's protectable interests

[40] The central dispute in this matter is not whether the first and second respondents enjoyed extensive access to the applicant's business. That fact is effectively common cause. As Chief Financial Officer and Chief Legal and Compliance Officer respectively, they occupied positions at the highest levels of the organisation and participated in its operational, strategic and regulatory affairs. Their responsibilities necessarily afforded them access to information unavailable to ordinary employees.

[41] The respondents sought to characterise much of the information relied upon by the applicant as nothing more than general industry knowledge acquired through experience in the crypto-asset sector. There is force in the proposition that employees do not surrender their skills, expertise and accumulated experience upon

⁷ *Plascon-Evans Paints Ltd v Van Riebeck Paints (Pty) Ltd* [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623 (A).

leaving employment. It is not permissible for an employer to appropriate an employee's knowledge or professional competence through the mechanism of a restraint agreement.

[42] The difficulty with the respondents' submission lies in the nature of the information identified by the applicant. The applicant's case is not confined to the respondents' understanding of the crypto-asset industry generally. It relies upon evidence that the respondents had access to customer information, treasury positions, pricing structures, liquidity arrangements, supplier relationships, compliance systems, operational architecture, and strategic planning information peculiar to the applicant's business.

[43] Information of that nature derives its value precisely from the fact that it is not publicly available. It reflects years of commercial activity, customer development, regulatory engagement, and operational experience. A competitor obtaining access to such information would gain a significant commercial advantage and would avoid much of the cost, time, and uncertainty ordinarily associated with entering the market.

[44] The applicant also relies upon customer connections. The evidence demonstrates that the first respondent in particular had access to detailed information concerning customers, account balances, transaction activity, treasury positions and related commercial information. Such information would plainly enable a competitor to identify significant customers, understand their trading patterns, and target them with competing offerings.

[45] Having regard to the totality of the evidence, I am satisfied that the applicant has established the existence of proprietary interests in the form of confidential information and customer connections. Those interests fall squarely within the categories recognised by our law as deserving protection through restraint provisions.

Access to confidential information

[46] Much of the argument before the court centred on the first respondent's alleged access to company systems following his departure from the applicant's employ. The applicant relies upon evidence concerning access to custody infrastructure, trading accounts, SQL exports, and downloaded corporate records. The respondents dispute the significance of those events and contend that they are susceptible to innocent explanations.

[47] It is unnecessary, in my view, to determine every factual controversy surrounding those incidents. Even accepting that some of the activities occurred during the ordinary course of employment, the evidence nevertheless establishes that the first respondent had access to information of a highly confidential nature. The respondents do not seriously dispute the existence of such access. Their primary contention is that the information was neither misused nor retained.

[48] That contention does not answer the applicant's case. The authorities do not require proof of actual misuse. The question is whether the respondents possessed confidential information and whether their subsequent conduct gives rise to a legitimate apprehension that such information may be used in competition with the applicant. In circumstances where senior executives leave a business and establish a competing enterprise operating in the same market, that concern is neither speculative nor remote.

[49] Particular significance attaches to the evidence concerning customer information, treasury data, reconciliation records and operational reporting. Whatever explanation may exist for the creation or storage of those records, the information itself remains confidential and commercially valuable. The respondents' involvement in a competing enterprise inevitably heightens the risk associated with such information.

The competing businesses

[50] The respondents sought to draw distinctions between the applicant's business and the activities conducted by the third and fourth respondents. Particular reliance was placed upon differences in licensing arrangements, corporate structures and the

specific services offered by the various entities. According to the respondents, those distinctions demonstrate that the competing businesses do not fall within the scope of the restraint provisions.

[51] The evidence, however, paints a different picture. The respondents themselves acknowledge that the third respondent operates within the crypto-asset sector and conducts activities substantially similar to those performed by the applicant. Indeed, portions of the respondents' own evidence recognise that the businesses operate under materially similar licences and pursue substantially similar commercial opportunities.

[52] The restraint provisions are framed broadly and prohibit involvement in specified categories of crypto-asset activities. They are not confined to a particular corporate structure or licensing arrangement. Once regard is had to the substance of the competing activities rather than their form, it becomes apparent that the third respondent operates within the very field from which the respondents agreed to refrain for the duration of the restraint period.

[53] I do not suggest that every similarity relied upon by the applicant is indicative of wrongdoing. Certain features of the businesses may simply reflect the realities of operating in a regulated industry. Nevertheless, the overall picture reveals businesses competing for substantially the same opportunities within the same commercial environment. That is sufficient for present purposes.

The Holderness J judgment

[54] Following the hearing, the respondent drew my attention to the judgment of Holderness J in *OVEX (Pty) Ltd v Varejes and Another (Varejes)*,⁸ delivered on 18 June 2026. The applicants objected to this course of conduct on the basis that argument had already been concluded. As the judgment had nevertheless been brought to my attention, and in the interests of ensuring that both parties were afforded an equal opportunity to address its relevance, I invited the parties to file

⁸ *OVEX (Pty) Ltd v Varejes and Another*, unreported judgment of this court in case number 2026-124280.

brief supplementary notes dealing with the judgment. The respondent duly filed a supplementary note. The applicants in turn, informed the court that they did not intend to make substantive submissions on the judgment as they were in the process of seeking leave to appeal against the decision of Holderness J. Although the matter was not referred to during argument, it concerns the enforcement of a restraint of trade in the crypto-asset sector and is sufficiently analogous to warrant consideration.

[54] In *Varejes*, the former employee had been appointed as a Key Individual (“KI”) of a competing financial services provider approximately ten months after the termination of his employment. The court accepted that the position was primarily regulatory and compliance-based in nature, that the employee was not engaged in client-facing commercial activities, did not manage customer relationships, had not solicited customers, and was not employed in a managerial or operational capacity. The court further found that there was no evidence that he had removed, disclosed or utilised confidential information, and that any proprietary information to which he had previously been exposed had, in the rapidly evolving cryptocurrency industry, become stale or significantly attenuated through the passage of time. On those facts, the court concluded that enforcement of the restraint would extend further than was necessary to protect the former employer’s proprietary interests.

[55] The facts of the present matter are materially distinguishable. The first and second respondents are not alleged merely to have assumed regulatory oversight functions within an existing enterprise. On the applicant’s version, they have become directly involved in the establishment, operation and development of competing businesses active within the very market in which the applicant conducts business. Unlike *Varejes*, the applicant’s case is founded upon detailed allegations concerning the acquisition, downloading, retention and potential use of confidential information, including customer information, treasury structures, liquidity arrangements, operational systems, compliance architecture and strategic business information acquired whilst occupying senior executive positions within the applicant’s organisation.

[56] Equally significant is the nature of the proprietary interests said to be at risk. In *Varejes*, the court found no factual basis to conclude that the employee's appointment threatened customer relationships or exposed the former employer to any realistic risk of misuse of confidential information. Here, by contrast, the applicant relies upon evidence which, if accepted, demonstrates both the existence of recognised proprietary interests and conduct giving rise to a real and continuing risk to those interests. The applicant's complaint is not simply that former employees have joined a competitor. It is that senior executives possessing intimate knowledge of its customers, treasury operations, pricing structures, regulatory systems and commercial strategy have established and are operating businesses in direct competition with it.

[57] The public-policy considerations identified in *Varejes* are likewise distinguishable. There the court considered, amongst other things, that enforcement would temporarily deprive a regulated entity of a statutorily required KI and that the employee had already been economically inactive in the crypto-asset sector for a considerable period. The present matter concerns respondents who are actively engaged in competing enterprises during the currency of the restraint period. The relief sought does not prevent them from practicing their professions generally but rather seeks to prevent participation in competing businesses and the use of confidential information for the limited duration of the restraint.

[58] Properly understood, *Varejes* does not detract from the principles relied upon by the applicant. Rather, it illustrates the fact-specific nature of the restraint enquiry and the necessity of balancing the employer's protectable proprietary interests against the employee's right to remain economically active. For the reasons that follow, I am satisfied that the present matter is distinguishable from *Varejes* and falls to be determined on materially different facts.

The restraint enquiry

[59] Having concluded that the applicant possesses protectable interests and that the respondents are engaged in competing activities, the remaining enquiry concerns the reasonableness of enforcement. The respondents contend that the

restraint is impermissibly wide and that its enforcement would prevent them from earning a livelihood in their chosen fields of expertise.

[60] That submission must be evaluated in the context of the relief actually sought. The applicant does not seek worldwide enforcement of the restraint notwithstanding the broader geographical scope contemplated by the agreements. The relief sought has been confined to South Africa. Furthermore, only a relatively limited portion of the restraint period remained unexpired at the time of the hearing.

[61] The respondents are highly qualified professionals. The first respondent is an experienced chartered accountant and financial executive. The second respondent is a specialist legal and regulatory practitioner. The restraint does not prohibit them from practicing their professions generally. Rather, it restricts participation in specific categories of business for a limited period in circumstances where they possess confidential information belonging to a former employer.

[62] In those circumstances, the prejudice likely to be suffered by the applicant if the restraint is not enforced substantially outweighs the prejudice to the respondents if it is enforced. I am unable to conclude that enforcement would render them economically inactive or that it would operate unreasonably upon them. Nor has any broader public-policy consideration been identified which would justify refusing enforcement.

Unlawful competition

[63] The applicant's claim against the third and fourth respondents is founded upon the contention that they are making use of, alternatively are likely to make use of, confidential information acquired by the first and second respondents during their employment. The applicant submits that the competing businesses have been developed with unusual speed and display significant similarities to its own operations, systems and commercial structures. It contends that such similarities are indicative of the use of confidential information and institutional knowledge.

[64] The respondents reject that proposition and maintain that the similarities relied upon by the applicant are no more than the inevitable consequence of operating within the same highly regulated industry. They point out that many of the service providers, compliance solutions, and technological tools used by the parties are commercially available and widely utilised within the crypto-asset sector. According to the respondents, the applicant seeks to convert industry practice into proprietary information.

[65] There is merit in the observation that an employer cannot claim exclusivity over information that is genuinely public or over systems and products available to all market participants. The applicant's case cannot succeed merely because the competing businesses employ similar third-party providers or comply with similar regulatory requirements. Those features are often dictated by the nature of the industry rather than by any misuse of confidential information.

[66] The applicant's case, however, extends beyond such similarities. It relies upon the respondents' access to customer information, treasury structures, pricing information, supplier relationships, compliance architecture, and operational processes developed within its business. When those factors are considered together with the respondents' admitted involvement in competing enterprises, the applicant's concern that confidential information may be used to accelerate the development and growth of those enterprises cannot be dismissed as speculative.

[67] The law does not require an applicant in these circumstances to wait until the confidential information has demonstrably been used to its detriment. By then the harm may already have occurred and may be impossible adequately to quantify. In my view the applicant has established a sufficient basis for relief aimed at preventing the use of its confidential information by the third and fourth respondents.

Solicitation of employees

[68] The applicant further seeks relief enforcing the non-solicitation provisions contained in the employment agreements. It relies principally upon evidence that Justin Sher, one of its senior employees, was approached by a recruiter allegedly acting on behalf of the third respondent. According to the applicant, that approach

demonstrates an attempt to recruit employees from within its organisation in breach of the contractual undertakings given by the first and second respondents.

[69] The respondents deny that any deliberate solicitation occurred. Their explanation is that the recruiter acted independently and contrary to instructions allegedly given not to approach employees of the applicant. They contend that a single approach by a third-party recruiter cannot properly be attributed to them and does not establish a breach of the restraint provisions.

[70] The evidence concerning this issue is not as compelling as that relating to confidential information. Nevertheless, it is common cause that an approach was made to an employee of the applicant by a recruiter acting in connection with the third respondent. The respondents' explanation may ultimately be correct, but it does not alter the fact that the approach occurred within the context of a developing competitive relationship between the parties.

[71] The purpose of a non-solicitation provision is preventative rather than punitive. In circumstances where there is evidence that an employee has already been approached and where the respondents are actively building competing businesses, there is a sufficient basis for limited interdictory relief preventing further solicitation during the balance of the restraint period.

Passing off

[72] The applicant also seeks relief founded upon passing off. The essence of such a claim is a misrepresentation by one trader that its business, goods or services are those of, or are associated with, another, thereby creating a likelihood of deception or confusion amongst members of the public. The applicant relies upon similarities in website content, business presentation, regulatory structures and aspects of the respondents' public-facing marketing.

[73] Whilst those similarities are relevant to the applicant's broader concerns regarding competition and the use of confidential information, they do not, in my view, establish the distinct requirements of a passing-off claim. The evidence

demonstrates that the parties operate within the same industry and necessarily make use of similar terminology, descriptions and commercial concepts. Those similarities do not, without more, constitute a misrepresentation.

[74] Significantly, the applicant has not demonstrated that the respondents appropriated its trade name, branding, distinctive get-up or any other identifying features by which its business is recognised in the marketplace. Nor has it established that customers, counterparties or members of the public have been deceived, or are likely to be deceived, into believing that the respondents' businesses are associated with or form part of the applicant's enterprise.

[75] The similarities identified by the applicant may support its claims relating to unlawful competition and the protection of confidential information, but they do not establish the likelihood of deception required for passing-off relief. The applicant has accordingly failed to discharge the onus resting upon it in respect of this aspect of the case and the relief sought under this head cannot be granted.

Delivery-up relief

[76] The applicant seeks an order directing the respondents to deliver up, alternatively destroy, all confidential information, records, extracts, screenshots, notes and related material belonging to the applicant which remain in their possession or under their control. It contends that the evidence establishes that substantial volumes of information were accessed, downloaded or copied and that it cannot know with certainty whether copies remain in existence.

[77] The respondents deny that they retain any confidential information belonging to the applicant. They contend that no evidence has been produced demonstrating that information was retained following the termination of employment or that any copies presently exist. According to them, the relief sought is speculative and unsupported by the evidence.

[78] The difficulty with the respondents' position is that the evidence establishes access to, and possession of, confidential information during the relevant period. In

circumstances where information existed in electronic form and where extensive records were downloaded or exported, it is impossible for the applicant to identify with precision every copy, extract or annotation that may have been created. To require such proof would effectively deprive the applicant of meaningful protection.

[79] The relief sought is directed not at punishing the respondents but at ensuring that confidential information belonging to the applicant is not retained or utilised following the termination of employment. Given the nature of the information involved and the respondents' participation in competing businesses, I am satisfied that delivery-up and deletion relief is both reasonable and necessary.

Conclusion

[80] Having considered the evidence as a whole, I am satisfied that the applicant has established proprietary interests in the form of confidential information and customer connections deserving of protection. Those interests are not abstract or speculative. They arise from information acquired and developed through the applicant's business and from relationships cultivated with customers over time.

[81] The evidence further establishes that the first and second respondents occupied positions which afforded them extensive access to those interests and that they subsequently became involved in businesses operating within the same commercial sphere. Although the respondents deny any misuse of information, the applicant is not required to establish actual misuse before obtaining relief. The risk against which the restraint provisions were directed is sufficiently established on the papers.

[82] The respondents have failed to demonstrate that the restraint provisions are unreasonable or contrary to public policy. The relief sought has been confined geographically and temporally, and enforcement will not prevent the respondents from pursuing productive professional careers outside the prohibited activities. In the

circumstances, the balance of interests favours enforcement of the contractual undertakings.

[83] The applicant has also established an entitlement to relief aimed at preventing unlawful competition, enforcing the non-solicitation provisions and securing the return or destruction of confidential information. It has not, however, established the elements necessary for a passing-off claim. That aspect of the application must therefore fail.

Costs

[84] There is no reason why costs should not follow the result. The applicant has succeeded in obtaining substantial relief and has been successful on the central issues in dispute. Although it has not succeeded in relation to the passing-off claim, that aspect of the matter occupied only a limited portion of the proceedings and does not justify any departure from the ordinary rule.

[85] The matter involved extensive papers, complex issues relating to restraint of trade and confidential information, and the participation of multiple parties. The employment of two counsel was both reasonable and justified in the circumstances.

Order

[86] In the result, the following order is made:

1. The applicant's non-compliance with the forms and time periods prescribed by the Uniform Rules of Court is condoned, and the application is enrolled and heard as one of urgency in terms of Rule 6(12).
2. The first and second respondents are interdicted and restrained from:
 - 2.1 being directly or indirectly engaged, whether as employee, director, shareholder, consultant, contractor, member, partner or otherwise, with the third and/or fourth respondents, or any business competing with the applicant within the Republic of South Africa, in breach of their restraint of trade undertakings, for the remainder of their respective restraint periods, namely until 31 October 2026

in respect of the first respondent and until 30 September 2026 in respect of the second respondent;

2.2 disclosing, using, disseminating or making available to the third and/or fourth respondents, or to any other person or entity, any of the applicant's confidential information, trade secrets or proprietary information; and

2.3 persuading, inducing, encouraging or procuring any employee of the applicant to terminate his or her employment with the applicant and become employed by, associated with, or engaged by the third and/or fourth respondents, for the remainder of their respective restraint periods referred to in paragraph 2.1 above.

3. The third and fourth respondents are interdicted and restrained from using, directly or indirectly, any confidential information, trade secrets or proprietary information belonging to the applicant in the conduct of their business operations.

4. The first and second respondents are directed, within five (5) days of this order, to deliver up to the applicant all information belonging to the applicant, whether in physical or electronic form, which was removed, copied, retained or reproduced by them, including but not limited to:

4.1 client and counterparty data;

4.2 trading and liquidity infrastructure information;

4.3 technology and systems information;

4.4 commercial and strategic intelligence; and

4.5 website and brand content,

5. The first and second respondents shall, simultaneously with compliance with paragraph 4 above, provide affidavits confirming that they have not retained any copies of such information and that all copies in their possession, custody or control have been returned to the applicant or permanently deleted.

6. The relief sought by the applicant based on passing off is dismissed.

7. The first, second, third and fourth respondents shall jointly and severally, the one paying the others to be absolved, pay the costs of the application, including the costs consequent upon the employment of two counsel, on Scale C.

ACTING JUDGE OF THE HIGH COURT

M F ADAMS

Appearances

For the applicant: Adv. A Smallberger

Instructed by Werksmans Attorneys

For the Respondents: Adv. R. Stelzner

Instructed by Webber Wentzel Attorneys