IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: **2026-100111**

In the matter between:

CITADEL HOLDINGS (RF) (PTY) LIMITED	1st Applicant
CITADEL INVESTMENT SERVICES (PTY) LIMITED	2nd Applicant
PRECEPT WEALTH SOLUTIONS (PTY) LIMITED	3rd Applicant
PRECEPT INVESTMENTS (PTY) LTD	4th Applicant

And

AMANDA STRATFOLD	Respondent

Coram: Adams AJ

Heard on: 8 June 2026

Delivered on: 30 June 2026 Electronically

Summary: Restraint of trade — Sale of business and employment agreements — Confidentiality and non-solicitation undertakings — Enforcement — Protectable interests — Client connections and goodwill — Fourth affidavit admitted in interests of justice — Whether agreements indivisible — Whether failure to comply with contractual mora clause barred relief — Whether unpaid contingent purchase price rendered restraint unenforceable — Exceptio non adimpleti contractus — Alleged disputes of fact — Referral to oral evidence — Respondent failing to discharge onus of proving unreasonableness — Restraint and confidentiality undertakings enforced.

ORDER

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1. The respondent is interdicted and restrained, until 14 May 2028 and within the Republic of South Africa, from:

    1.1 in any capacity whatsoever, dealing with, rendering advice to or consulting with any Relevant Client in relation to Relevant Services;

    1.2 in any capacity whatsoever, soliciting, encouraging or enticing away any Relevant Client from the second, third or fourth applicants; and/or

    1.3 in any capacity whatsoever, otherwise performing or providing any Relevant Services to any Relevant Client.

2. The respondent is interdicted and restrained from using, divulging, disclosing or disseminating to any third party any confidential information of any Group entity, including but not limited to:

    2.1 the identity, names, addresses and other contact details of the Relevant Clients;

    2.2 the contractual arrangements in place between any Group entity and any Relevant Client; and

    2.3 any other information relating to the business of any Group entity which is not readily available in the ordinary course of business to a competitor of any Group entity or attempting to do so.

3. It is recorded that the relief sought in prayers 2 and 4 of the notice of motion was settled between the parties.

4. It is further recorded that the applicants abandoned the relief sought in prayers 6.1 and 6.2 of the notice of motion and no order is made in respect thereof.

5. The respondent shall pay the costs of the application on Scale C, including the costs consequent upon the employment of two counsel where so employed.

JUDGMENT

ADAMS, AJ

INTRODUCTION

[1] Commercial certainty depends upon the principle that agreements freely and voluntarily concluded should ordinarily be honoured. This case is not merely about the enforcement of a restraint of trade. It concerns whether a party who has received the benefits of a carefully structured commercial transaction may thereafter avoid the contractual safeguards that formed an integral part of the bargain from which those benefits flowed.

[2] The central question is whether the respondent, having agreed to restraint, confidentiality and non-solicitation undertakings as part of a substantial commercial transaction, has established a proper basis in law or on the facts for avoiding their enforcement.

[3] This is an opposed urgent application for the enforcement of restraint of trade, confidentiality and non-solicitation undertakings arising from a commercial transaction in terms of which the respondent sold her shareholding in Precept Wealth to the first applicant and thereafter continued to render services within the applicants' group.

Background to the application

[4] The matter was initially enrolled for hearing on 19 May 2026. The applicants had delivered heads of argument addressing both urgency and the merits. The respondent's heads dealt only with urgency. On 20 May 2026 this Court determined that the matter was urgent. The matter was then enrolled for hearing on the merits on 27 May 2026.

[5] On 27 May 2026, by agreement between the parties, the matter was postponed to 8 June 2026. Subsequent to the previous hearing, the parties reached a settlement, the terms of which were recorded by consent. In terms thereof, the respondent consented to the granting of an order in terms of prayers 2, 3.3 and 4 of the notice of motion. At the hearing, counsel for the applicant further informed the Court that the relief sought in prayers 6.1 and 6.2 of the notice of motion was abandoned and that no order is sought in respect of those prayers.

[6] The settlement further provided that, without prejudice to the applicants' right to contest the admissibility of the respondent's fourth set affidavit, the respondent would deliver such affidavit and the applicants would be entitled to respond thereto.

[7] The remaining relief concerns, in substance, prayers 3.1, 3.2, 3.4, and 5 of the notice of motion, together with costs. The issues that remain are whether the applicants are entitled to enforce the remaining restraint, confidentiality and non-solicitation relief, and whether any of the respondent's defences defeat such enforcement.

[8] The application has its origins in a commercial transaction concluded during July 2021 in terms of which the respondent sold her entire shareholding in the third applicant, Wealth Solutions (Pty) Ltd ("Wealth"), to the first applicant. Wealth in turn held the entire shareholding in the fourth applicant, Investments (Pty) Ltd ("Investments"). Collectively, these entities were known as "*Precept*".

[9] The sale was governed by a written Sale of Shares Agreement concluded on 26 July 2021. In terms thereof, the respondent disposed of the Precept business and its associated goodwill, client relationships and commercial value to the applicants. The transaction became unconditional on 1 August 2021.

[10] A condition precedent to the transaction was that the respondent would enter into an employment relationship with the second applicant, CIS, and continue to assist in the integration and development of the business. To that end, she became employed by CIS with effect from 1 August 2021 as an Advisory Partner. The parties simultaneously concluded a Confidentiality and Non-Solicitation Agreement on 27 July 2021.

[11] The respondent received substantial financial benefits arising from the transaction and her subsequent employment. In addition to the purchase price of R31 million paid for her shares, she received remuneration and incentive payments pursuant to her employment with CIS. The applicants contend that these payments, together with the contractual undertakings furnished by the respondent, formed part of a carefully structured commercial arrangement designed to protect the goodwill and client connections acquired through the transaction.

[12] Following the termination of her employment, a dispute arose concerning the respondent's post-employment conduct. The applicants allege that the respondent commenced steps to establish a competing advisory business, contacted clients associated with the Precept business and acted in breach of her restraint, confidentiality and non-solicitation obligations. A letter of demand was addressed to the respondent on 17 April 2026, but the dispute remained unresolved.

[13] The applicants accordingly launched these proceedings seeking urgent interdictory relief to enforce the contractual undertakings contained in the Sale of Shares Agreement and the Confidentiality and Non-Solicitation Agreement.

[14] The respondent opposed the application. While initially challenging the urgency of the matter, that issue was determined at an earlier hearing when the court found the application to be sufficiently urgent and directed that the merits be

heard on a later date. The respondent further challenged the authority of the applicants to institute the proceedings, disputed aspects of the interpretation and enforceability of the restraint provisions and contended that the agreements relied upon by the applicants formed part of a broader indivisible transaction which must be considered as a whole.

[15] The parties raised a number of preliminary issues which, if upheld, may impact upon the determination of the merits. I deal with those issues first.

Authority to institute the proceedings

[16] The respondent challenged the authority of the third and fourth applicants to institute these proceedings and, in particular, the authority of the attorneys acting on their behalf. The challenge was initially foreshadowed in paragraph 16 of the answering affidavit, where the respondent indicated that a preliminary point would be taken regarding whether resolutions had been passed by the third and fourth applicants authorising the institution of the application.

[17] On 13 May 2026, the respondent delivered a notice in terms of Rule 7(1) of the Uniform Rules of Court calling upon the applicants to prove the authority of the attorneys to act on behalf of the third and fourth applicants.

[18] On 18 May 2026, the applicants responded to the Rule 7 notice and furnished resolutions of the boards of directors of the third and fourth applicants authorising and ratifying the institution and prosecution of these proceedings and authorising the attorneys to act on their behalf.

[19] The respondent's complaint, advanced during oral argument, was not that resolutions had not been produced. Rather, the complaint was that the resolutions appeared to have been adopted in terms of section 74 of the Companies Act 71 of 2008("The Companies Act") and were signed by only two of the three directors. The respondent's signature did not appear on either resolution. It was contended that the applicants had failed to place before the Court proof that notice of the proposed resolutions had been given to the respondent as contemplated in section 74 and that, in the absence of such proof, authority had not been established.

[20] Rule 7(1)[1] exists to enable a litigant to challenge the authority of a person purporting to act on behalf of another. The purpose of the Rule is to ensure that litigation is properly authorised and not instituted without the knowledge or approval of the litigant concerned. It is not directed at the resolution of internal disputes concerning the procedural validity of corporate decision-making save where such disputes genuinely place the authority to litigate in issue.

[21] The applicants produced resolutions signed by a majority of the directors of the third and fourth applicants authorising the institution of these proceedings and the appointment of attorneys. Those resolutions constitute prima facie proof of authority.

[22] Importantly, after the applicants responded to the Rule 7 notice and furnished the resolutions, no further challenge was raised by the respondent. No supplementary affidavit was delivered. No objection was recorded in correspondence. Nor was the point pursued in the respondent's heads of argument. The applicants were therefore entitled to assume that the Rule 7 challenge had been addressed to the respondent's satisfaction.

[23] The argument now advanced, namely that section 74 of the Companies Act required proof that notice of the proposed resolutions had been given to the respondent before the resolutions were adopted, surfaced for the first time during oral argument.

[24] There is considerable force in the applicants' submission that had this point been raised in the papers, they could readily have dealt with it by placing the relevant documentation before the Court. Counsel informed the Court that the respondent had in fact been notified of the resolutions and that confirmation of receipt existed in email correspondence. Whether that is so or not need not be determined.

[1] Uniform Rules of Court

[25] The difficulty confronting the respondent is that the factual foundation necessary to sustain the challenge was never properly laid in the affidavits. Motion proceedings are decided on the papers. A litigant is generally not permitted to advance a new factual challenge for the first time during oral argument where the opposing party has had no opportunity to answer it on oath.

[26] Moreover, the respondent does not contend that the third and fourth applicants themselves did not wish to institute these proceedings. Nor does she contend that the directors who signed the resolutions lacked authority to do so. Her complaint is confined to an alleged procedural irregularity in the adoption of the resolutions.

[27] In the circumstances of this case, the production of resolutions signed by a majority of the directors constitutes sufficient proof of authority for purposes of Rule 7(1). The respondent has failed to place before the Court facts establishing that the resolutions are invalid or that the attorneys lack authority to represent the third and fourth applicants.

[28] The Rule 7 challenge must therefore fail. I am accordingly satisfied that the third and fourth applicants properly authorised the institution and prosecution of these proceedings and that the attorneys acting on their behalf are duly authorised to do so.

The fourth affidavit

[29] The respondent seeks the admission of a fourth set affidavit. She contends that the affidavit is necessary because the initial answering affidavit was prepared under extreme pressure, in circumstances where incomplete and unsigned papers were initially served on the eve of a long weekend, the completed papers were served only on 5 May 2026, and she had very limited time to respond to a voluminous record. The respondent submits that the affidavit deals with the central issue of reasonableness and that the interests of justice require the Court to have all relevant facts before it.

[30] Reliance is placed by the respondent on *Thint (Pty) Ltd v National Director of Public Prosecutions and Others* 2009 (1) SA 1 (CC), *Sigaba v Minister of Defence and Police and Another* 1980 (3) SA 535, *Pretoria Portland Cement Company Ltd and Another v Competition Commission and Others* 2003 (2) SA 385 (SCA), and *Tantoush v Refugee Appeal Board and Others* 2008 (1) SA 232 (T), for the proposition that further affidavits may be allowed where fairness and the interests of justice so require.

[31] The applicants object to the admission of the affidavit. They submit that the respondent bears the onus of establishing that enforcement of the restraint would be unreasonable, and that the answering affidavit was the proper place for that case to be made out. They rely on *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* 1984 (4) SA 874 (A), *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA), *Experian South Africa (Pty) Ltd v Haynes and Another* 2013 (1) SA 135 (GSJ), *Townsend Productions v Leech and Others* 2001 (4) SA 33 (C), and *Michelin Tyre Company South Africa (Pty) Ltd v Coetzee and Others* [2019] ZALCJHB 107.

[32] The applicants further submit that the fourth affidavit is not a true reply to new matter in their replying affidavit, but an impermissible attempt to introduce a new case after the respondent failed to advance one in her answering affidavit.

[33] Rule 6(5)(e) of the Uniform Rules of Court makes it clear that the filing of further affidavits beyond those ordinarily permitted is not a matter of right but requires the leave of the court.[2] The admission of such affidavits falls within the court's discretion, which must be exercised judicially upon a consideration of all the relevant circumstances.

[2] See also Hano Trading CC v J R 209 Investments (Pty) Ltd (650/11) [2012] ZASCA 127; 2013 (1) SA 161 (SCA); [2013] 1 All SA 142 (SCA) (21 September 2012) at para 11

[34] As was observed in *Meso Group (Pty) Ltd v Avanthi Hylas 2 Cyprus Ltd*[3], the orderly administration of justice requires adherence to the established sequence of affidavits in motion proceedings, namely the founding, answering and replying affidavits. Parties are accordingly required to set out fully and clearly in their principal affidavits the facts upon which they rely, rather than assume that material facts are common cause or seek to supplement deficiencies at a later stage. As a general rule, a fourth set of affidavits will not be permitted unless the applicant demonstrates the existence of essential or special circumstances justifying a departure from the ordinary procedure.

[35] I accept that a fourth set affidavit is not delivered as of right. The ordinary rule remains that affidavits must be confined to their proper sequence and purpose.[4] However, the Court retains a discretion to admit further affidavits where fairness, the interests of justice and the proper ventilation of the issues require it.[5]

[36] In this matter, the better course is to admit the respondent's fourth affidavit, together with the applicants' response thereto. The applicants have answered the allegations and no procedural prejudice remains. The question is rather what weight should be attached to the allegations advanced and whether they establish a defence to the relief sought.

[37] I therefore admit the fourth and fifth sets of affidavits. Their admission does not, however, mean that the respondent has discharged the onus resting upon her.

The applicable legal principles

[38] The principles governing the enforcement of restraint of trade agreements are now well established in our law. They were comprehensively summarised in

[3] *Meso Group (Pty) Ltd v Avanthi Hylas 2 Cyprus Ltd* (59900/2016) [2017] ZAGPJHC 265 (18 September 2017) paras 5–6 where reference is made to several authorities including

[4] James Brown & Hamer (Pty) Ltd v Simmons NO **1963 (4) SA 656** (A) at 660 D-H.
[5] James Brown & Harmer Pty Ltd Supra at para 11

Experian South Africa (Pty) Ltd v Haynes and Another[6], drawing upon the seminal decision in *Magna Alloys and Research (SA) (Pty) Ltd v Ellis*.[7] The starting point is that there is nothing in South African law which renders agreements in restraint of trade inherently invalid or unenforceable. Such agreements are enforceable unless their enforcement would, in the circumstances of the particular case, be contrary to public policy.[8]

[39] Public policy requires that contractual undertakings freely and voluntarily entered into should generally be honoured. Equally, public policy recognises that individuals should, as far as possible, be free to participate in commercial and professional activity. The enforceability of a restraint of trade agreement therefore depends upon whether its enforcement would be contrary to the public interest.[9] A party seeking to avoid the consequences of a restraint to which he or she has agreed bears the onus of establishing that its enforcement would be unreasonable and therefore contrary to public policy.[10]

[40] In *Basson v Chilwan and Others*, the Supreme Court of Appeal confirmed that a party seeking to enforce a restraint need do no more than rely upon the agreement and establish a breach thereof. The burden then shifts to the covenantor to demonstrate, on a balance of probabilities, that the restraint is unreasonable and should not be enforced.[11] As Botha JA explained, if the court is unable to conclude that the restraint is unreasonable, the restraint must be enforced, since public policy favours compliance with contractual obligations freely undertaken.[12]

[41] The enquiry into reasonableness was formulated in *Basson* as comprising four questions: first, whether the party seeking enforcement has an interest

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[6] *Experian South Africa (Pty) Ltd v Haynes and Another* (2013) 34 ILJ 529 (GSJ) paras 12–15.

[7] *Experian South Africa (Pty) Ltd v Haynes and Another* (2013) 34 ILJ 529 (GSJ) paras 12–15.

[8] *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* 1984 (4) SA 874 (A) at 897F–898E.

[9] *Magna Alloys* supra at 897F–898E.

[10] *Magna Alloys* supra at 897F–898E; *Experian* supra para 12

[11] *Basson v Chilwan and Others* 1993 (3) SA 742 (A) at 776H–777B.

[12] *Basson* supra at 776H–777B.

deserving of protection after termination of the agreement; secondly, whether that interest is being prejudiced by the conduct of the other party; thirdly, if such prejudice exists, whether the protectable interest weighs qualitatively and quantitatively against the interest of the other party in remaining economically active and productive; and fourthly, whether there are any broader considerations of public policy, unrelated to the parties' relationship, which require that the restraint either be enforced or rejected.[13]

[42] To these considerations a further enquiry was added in *Kwik Kopy (SA) (Pty) Ltd v Van Haarlem and Another*, namely whether the restraint goes further than is reasonably necessary to protect the interest relied upon by the covenantee.[14] A restraint that exceeds what is reasonably required for the protection of a legitimate proprietary interest will not be enforced.

[43] The enquiry into the reasonableness of a restraint ultimately involves a value judgment informed by competing constitutional and public policy considerations. As the Labour Appeal Court observed in *Labournet (Pty) Ltd v Jankielsohn and Another*, the court must balance the principle that parties should be held to their contractual undertakings against the constitutional right freely to choose and practise a trade, occupation or profession.[15] A restraint will therefore be enforceable only where it serves to protect a legitimate proprietary interest deserving of legal protection. It is not reasonable to enforce a restraint merely to prevent competition as such.[16]

[44] In motion proceedings, where the reasonableness of a restraint is disputed on the papers, factual disputes are resolved in accordance with the Plascon-Evans rule. Where the accepted facts demonstrate that the restraint is reasonable, enforcement

[13] *Basson* supra at 767G–H.

[14] *Kwik Kopy (SA) (Pty) Ltd v Van Haarlem and Another* 1999 (1) SA 472 (W) at 484E.
[15] *Labournet (Pty) Ltd v Jankielsohn and Another* (2017) 38 ILJ 1302 (LAC) para 41

[16] *Labournet* supra para 41; *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA).

will follow. Conversely, where those facts establish that the restraint is unreasonable, the application must fail.[17]

[45] *Reddy v Siemens Telecommunications (Pty) Ltd*[18] confirms that where an employee with access to confidential information joins or intends to join a competitor, the risk of disclosure or use may justify enforcement without requiring proof of actual disclosure.

[46] The applicants must therefore establish the restraint agreement and breach or threatened breach. Once they have done so, the respondent bears the onus of establishing that enforcement would be unreasonable.

The agreements and protectable interests

[47] The respondent sold her shareholding in Precept Wealth to Citadel Holdings. The value of the transaction was calculated with reference to goodwill, client connections and the integration of the Precept client base into the applicants' group.

[48] The transaction was accompanied by restraint, confidentiality and non-solicitation undertakings. The applicants contend that the respondent sold not merely shares, but the commercial substance of a business relationship, including client goodwill.

[49] The respondent does not seriously dispute that the applicants have protectable interests. She admits, expressly or by necessary implication, that she had access to client connections, confidential information, client details, contractual arrangements, internal systems and business information. The respondent also accepts that customer lists and client information may, in appropriate circumstances, constitute confidential information. This is consistent with *Mathias International Ltd and Another v Baillache and Others*[19] .

[17] *Labournet* supra para 40; *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA); *Ball v Bambalela Bolts (Pty) Ltd and Another* (2013) 34 ILJ 2821 (LAC) para 19.

[18] (251/06) [2006] ZASCA 135; 2007 (2) SA 486 (SCA); (2007) 28 ILJ 317 (SCA) (30 November 2006) at para 20

[19] 2015 (2) SA 357 (WCC)

[50] The applicants have therefore established protectable interests in confidential information, customer connections and goodwill. The respondent's intended competitive activity threatens those interests. The respondent had longstanding relationships with the relevant clients. She is able, by reason of those relationships, to influence the movement of clients away from the applicants. That is precisely the harm that the restraints were designed to prevent.

Indivisibility of the agreements

[51] The respondent submits that the Sale of Shares Agreement, Memorandum of Employment and Confidentiality and Non-Solicitation Agreement form one indivisible contractual arrangement. She relies on the fact that the Employment Agreement and Confidentiality Agreement were conditions precedent to the Sale of Shares Agreement, and that the transaction contemplated the integration of Precept clients into the applicants' group.

[52] I accept that the agreements formed part of one broader commercial transaction. They must be read contextually and with regard to their commercial purpose. It does not follow, however, that every breach alleged under one agreement automatically defeats enforcement of every obligation under the others. The question remains whether the particular obligation sought to be enforced is conditional upon prior performance of the obligation allegedly breached.

[53] The fact that the agreements are commercially connected does not mean that the respondent is released from restraint and confidentiality obligations merely because she alleges that she did not receive the full contingent purchase price.

The mora clause

[54] The respondent contends that the application is premature because the applicants failed to comply with clause 18 of the Sale of Shares Agreement, which required a ten-day notice to remedy breach. She relies on *Henriques and Another v*

Lopes[20], where the Court held that compliance with a ten-day notice provision formed part of the applicant's cause of action, and on *Badenhorst v Theophanous*[21] , where the enforcement of a restraint was described as a form of specific performance.

[55] The difficulty with the respondent's argument is that the remaining relief is not confined to a claim under the Sale of Shares Agreement alone. It includes enforcement of independent confidentiality and non-solicitation obligations arising from the employment-related agreements.

[56] In any event, the relief sought is prohibitory. It seeks to restrain ongoing or threatened conduct inconsistent with negative obligations already undertaken by the respondent. The alleged conduct was not one that could sensibly be remedied by the respondent within ten days in a manner that would preserve the applicants' interests pending compliance.

[57] The correspondence placed before the Court sufficiently alerted the respondent to the applicants' complaint and to the threatened enforcement of their rights. In urgent restraint proceedings of this nature, a contractual notice provision should not be interpreted so as to deprive the innocent party of effective protection where protectable interests are under imminent threat. The mora clause defence is accordingly rejected.

The exceptio non adimpleti contractus

[58] The respondent's principal defence is that the applicants cannot enforce the restraint while approximately R22 million of the purchase price remains unpaid. She relies on *International Executive Communications Ltd t/a IIR v Turnley*[22] , *Universal Storage Systems (Pty) Ltd v Crafford*[23] , and *Datacentrix (Pty) Ltd v Duffy*[24] .

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[20] 1978 (3) SA 356 (W)
[21] 1988 (1) SA 793 (C)
[22] 1996 (3) SA 1043 (W)
[23] 2001 (4) SA 249 (W)

[59] Those cases establish that where the consideration for a restraint is reciprocal to the restrained party's obligation, and the applicant has failed to perform the reciprocal obligation that had to be performed first, the respondent may raise the *exceptio non adimpleti contractus*.

[60] The present case is distinguishable. The unpaid amount was not an unconditional amount due and payable merely in exchange for the restraint. It was contingent upon the achievement of defined vertical integration and bonus targets. The respondent did receive substantial consideration under the transaction. The remaining amounts became payable only upon fulfilment of performance-linked requirements.

[61] The respondent's case is not simply that the applicants failed to pay an amount admittedly due. Her case is that the applicants caused her failure to meet the targets, and that the targets should therefore be deemed to have been fulfilled by operation of the doctrine of fictional fulfilment.

[62] That contention may found a separate claim for payment if properly pleaded and proved. It does not, on the papers before this Court, establish that the applicants are precluded from enforcing the restraints.

[63] The respondent has not established that the applicants deliberately prevented fulfilment of the targets, nor has she established facts sufficient to justify the conclusion that fulfilment must be fictionally deemed.

[64] At best for the respondent, she raises disputed allegations concerning the extent of support provided by the applicants, the reason for the Addendum and the operational circumstances in which she failed to meet later targets.

[65] Those allegations do not establish that the restraint obligations and the unpaid contingent payments are reciprocal in the strict sense required for the *exceptio* to

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[24] 2014 JDR 0834 (ECP)

succeed. The *exceptio non adimpleti contractus* is accordingly not available to the respondent on these papers.

Disputes of fact and oral evidence

[66] The respondent contends that material disputes of fact exist concerning the reason for the Addendum and the reason she failed to achieve the targets from 2024 onwards. She submits that those disputes should be referred to oral evidence. Reliance is placed on *Kalil v Decotex (Pty) Ltd and Another*[25] and *Spur Steak Ranches Ltd and Others v Saddles Steak Ranch*[26] .

[67] I accept that a court has a discretion to refer disputes of fact to oral evidence where the disputes are real, genuine and material and where viva voce evidence may affect the result. The question is whether the disputes identified by the respondent are material to the determination of the remaining relief. In my considered view, they are not.

[68] The reason for the Addendum and the reasons for the respondent's failure to meet later targets may be relevant to a damages or payment claim under the Sale of Shares Agreement. They may also be relevant to a future action concerning the alleged balance of the purchase price.

[69] They do not, however, defeat the applicants' presently established rights to protect confidential information, client connections and goodwill for the limited remaining restraint period. The respondent has not shown that the applicants' alleged failures destroyed the protectable interests, released her from the restraints, or rendered enforcement contrary to public policy.

[70] A referral to oral evidence would delay the effective protection of the very interests for which the restraints were concluded. In restraint matters, delay may render the relief hollow. The request for referral to oral evidence is therefore refused.

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[25] 1988 (1) SA 943 (A)
[26] 1996 (3) SA 706 (C)

Confidential information

[71] The respondent submits that prayer 5 is overbroad because it includes client identity, names, addresses and contact details, some of which she knows from memory. Reliance is placed on *Mathias International Ltd and Another v Baillache*[27] *and Others* and *Automotive Tooling Systems (Pty) Ltd v Wilkens and Others*[28] , for the proposition that a restraint may not be used to prevent a former employee from using general skill, knowledge and experience.

[72] That principle is sound. A former employee cannot be ordered to wipe her memory clean. However, that is not what the applicants seek. The applicants seek to prevent the respondent from using or disclosing confidential information, including client information and contractual information, for purposes of competing with them or soliciting their clients.

[73] The fact that some information may be remembered does not deprive it of protection where it forms part of the applicants' confidential business information or client connection and where its use would undermine the transaction concluded between the parties.

[74] The relief under prayer 5 should, however, be understood as restraining the misuse of confidential information and not the respondent's ordinary stock of skill, knowledge and experience.

Reasonableness

[75] The respondent bears the onus of showing that enforcement is unreasonable. The restraint arises from a substantial commercial transaction in which goodwill and client connections were sold for significant value. This is not an ordinary employment restraint imposed upon a vulnerable employee with no bargaining power.

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[27] supra

[28] 2007 (2) SA 271 (SCA)

[76] The respondent was the seller of the business interests and the very person through whom many of the client relationships existed. The restraints were plainly designed to protect the value of what the applicants purchased. The applicants have established protectable interests. Those interests are threatened by the respondent's intended competition and dealings with relevant clients.

[77] The restraint is limited by duration, client category and subject matter. It is directed at protecting client connections, goodwill and confidential information. It does not impose an absolute prohibition on all economic activity. The respondent has not established that enforcement would render her economically inactive or that her right to trade outweighs the applicants' proprietary interests.

[78] Public policy requires that parties who freely conclude commercial agreements of this kind should, absent established unreasonableness, be held to their bargain. The respondent has therefore failed to discharge the onus of proving that enforcement of the remaining restraints would be unreasonable.

Conclusion

[79] The applicants have established the existence of valid and binding restraint of trade, confidentiality and non-solicitation undertakings. They have further established protectable proprietary interests in their confidential information, customer connections and goodwill, all of which are threatened by the respondent's intended conduct.

[80] The respondent has failed to discharge the onus resting upon her of demonstrating that the enforcement of the remaining restraint provisions would be unreasonable or contrary to public policy. Neither the alleged failure by the applicants to provide support in relation to the achievement of the vertical integration targets, nor the alleged non-payment of portions of the purchase price, constitutes a defence to the enforcement of the remaining restraints on the facts before this Court.

[81] The respondent's reliance on the mora clause, the exceptio non adimpleti contractus, and the alleged disputes of fact requiring referral to oral evidence cannot

be sustained. The disputes identified by the respondent do not affect the applicants' entitlement to the protection of their proprietary interests during the remaining restraint period.

[82] In all the circumstances, the applicants are entitled to the remaining relief sought in the notice of motion.

Order

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

1.The respondent is interdicted and restrained, until 14 May 2028 and within the Republic of South Africa, from:

1.1 providing or supplying any services that are the same and/or substantially similar to the services rendered by the second, third or fourth applicants as at 14 May 2026 or during the preceding 24 months ("Relevant Services") to any client of the second, third or fourth applicant, or any prospective client of the second, third or fourth applicant (being any person or entity approached by the second, third or fourth applicant, or in respect of whom strategies had been devised, as at 14 May 2026 or in the 24 months immediately preceding 14 May 2026) ("Relevant Clients"), irrespective of whether the Relevant Client first made contact and/or approached the respondent or vice versa;

1.2 in any capacity whatsoever, dealing with, rendering advice to or consulting
with any Relevant Client in relation to Relevant Services;

1.3 in any capacity whatsoever, otherwise performing and providing any Relevant Services to any Relevant Client.

2.The respondent is interdicted and restrained from using, divulging, disclosing or disseminating to any third party any confidential information of any Group entity, including but not limited to:

2.1 the identity, names, addresses and other contact details of the Relevant Clients;

2.2 the contractual arrangements in place between any Group entity and any Relevant Client; and

2.3 any other information relating to the business of any Group entity which is not readily available in the ordinary course of business to a competitor of any Group entity, or attempting to do so.

1. It is recorded that the relief sought in prayers 2, 3.3 and 4 of the notice of motion was settled between the parties.
2. It is further recorded that the applicants abandoned the relief sought in prayers 6.1 and 6.2 of the notice of motion and no order is made in respect thereof.
3. The respondent shall pay the costs of the application on Scale C, including the costs consequent upon the employment of two counsel where so employed.

MF Adams

Acting Judge of the High Court

<u>Appearances</u>

Counsel for Applicant: Adv C Whitcutt SC

Adv C de Witt

Instructed by Webber Wentzel

Counsel for Respondent:	Adv B Pincus SC Instructed by Geniv Wulz attorneys inc