

SOUTH AFRICA / JUDGMENT

Bragan Chemicals (Pty) Ltd v Meyer and Another (J 802/21) [2021] ZALCJHB 219 (9 August 2021)

[2021] ZALCJHB 219

COURT

Labour Court Johannesburg

BEFORE

Tlhotlhamajane

CASE / FILE NUMBER

J 802/21

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

No: J 802/21

In

the matter between:

BRAGAN

CHEMICALS (PTY)

LTD Applicant

and

SUNETTE

MEYER First

Respondent

CIM

CHEMICALS (PTY)

LTD Second

Respondent

Heard: 30

July 2021 (Virtual hearing)

Delivered: This

judgment was handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour

Court's website. The date and time for hand-down is deemed to be on 09 August 2021 at 11:00

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

- [1] With this urgent application, the applicant seeks an order enforcing the restraint of trade and confidentiality undertakings given by the first respondent (Ms Sunette Meyer) in its favour. It further seeks to have Meyer interdicted from breaching such undertakings, and in particular, from being employed by the second respondent or other competitors for a period of 24 months from the date of the termination of her employment with the applicant, and throughout the Republic.
- [2] The application is opposed by both the first and second respondents. The urgency of the application was not placed in dispute, and the matter will accordingly be treated as such.

Background:

- [3] The applicant is in the business of food chemicals and additives. It describes itself as a major supplier of raw chemical materials in South Africa and is involved in the business of importing a wide variety of ingredients primarily used in the food, beverage, bakery, dairy, pharmaceutical and cosmetic industries as well as raw chemical materials for use in the industrial and agricultural market. It has its head office in Kya Sands, Gauteng, and has warehousing and distribution centres in Johannesburg, Cape Town, Durban and Qheberha. Its customer base and trading is across the Republic.
- [4] Meyer was employed by the applicant as a Purchasing Manager with effect from January 2019, and was in charge of its Purchasing (local and import), Logistics, Clearing and Forwarding Departments. She had reported directly to the applicant's Managing Director, Nathan Bevis, who is also the deponent to the founding affidavit.
- [5] The contract of employment signed by Meyer in November 2018 provides for confidentiality and restraint of trade at its clauses 19 and 20. The existence of the contract and its provisions are not placed in dispute.

The

legal framework:

- [6] The principles applicable to restraint of trade need no introduction. Restraint of trade provisions are regarded as valid and enforceable,

unless they are unreasonable and contrary to public policy. The provisions will be considered unreasonable if they do not protect

some legally recognisable interest of the party in whose favour it is granted, but merely seeks to eliminate competition, or where they unreasonably restricts an employee's freedom to trade or to work. The reasonableness of the provisions must be determined with reference to the circumstances of the case, inclusive of those that existed when the parties entered into the agreement, and those prevailing at the time that enforcement is sought[1].

[7] An applicant seeking to enforce restraint of trade provisions need only invoke the contract and prove a breach of its terms. It is thereafter for the respondent to demonstrate on a balance of probabilities, that the restraint provisions are unenforceable because they are unreasonable[2].

[8] An enquiry into the reasonableness of the restraint is essentially a value judgment that encompasses a consideration of two policies,

i.e., the duty on parties to comply with their contractual obligations, and the right to freely choose and practice a trade, occupation or profession more particularly as guaranteed in section 22 of the Constitution[3].

[9] An enquiry into the reasonableness of the restraint as stated in *Basson v Chilwan and others*[4] requires a determination of four interrelated questions, viz;

- a) Does one party have an interest that deserves protection at the termination of the employment?
- b) If so, is that interest threatened/prejudiced by the other party?
- c) Does such interest weight qualitatively and quantitatively against the interest of the other party not to be economically inactive and unproductive?
- d) Is there an aspect of public policy having nothing to do with the relationship between the parties, which requires that the restraint be maintained or rejected? Thus, where the interest of the party sought to be restrained outweighs the interest to be protected, the restraint is unreasonable and consequently unenforceable.

[10] Added to the above factors is whether the restraint provisions go further than is necessary to protect the interests alleged[5]. The proprietary interests that may be protected by a restraint agreement, are essentially of two kinds, namely the 'trade connections' of the business which entail the relationships with customers, potential customers, and suppliers. The second kind is 'trade secrets', which entail all confidential matters which are useful for the carrying on of the

business, and which if in the hands of a competitor, may lead to a relative competitive advantage being gained[6].

The submissions and evaluation:

The restraint of trade provisions and breach:

- [11] It has already been stated that the contract of employment and its confidentiality and restraint of trade provisions are not placed in dispute. This then requires an examination of whether there was a breach of these provisions.
- [12] The starting point is that it was not seriously disputed that the second respondent is a competitor of the applicant, and specifically, in the entities' food chemical divisions. The two competing entities further have the same geographical footprint; have branches in the same areas in the Republic; and there is an overlap of products marketed by both. At most, Meyer conceded that the applicant and the second respondent traded in commodity chemicals and in various sub-sectors of the chemical commodity industry, and that the trade in food chemicals constituted about 17% of the second respondent's business.
- [13] It is also not in dispute that Meyer joined the second respondent in the position of Procurement Manager since 1 June 2021. Even though she contended that she would only be involved in the foreign procurement side of the business, this is neither here nor there in that at the second respondent, she will be required to perform the same or similar functions as those performed whilst employed by the applicant. Whilst employed at the applicant, she was inter alia involved in both in both foreign and local procurement. Clearly the breach of the restraint provisions cannot be disputed.
- [14] Equally of concern are circumstances under which Meyer left the applicant's employ. She had handed in her resignation from the applicant on 28 April 2021, and amongst the reasons she had cited for her resignation was that the traveling distance of about 150km daily between her place of residence in Pretoria North and Kya Sand was taxing on her. She had stated that she had decided to seek employment opportunities close to her residence, and had accepted an opportunity in that regard.
- [15] It was further not in dispute that upon being asked by Bevis about her future employment, her response was that she was going to be employed by a small plastic company in the masterbatch industry. She had further stated that she would be paid less than what she previously earned, but would be working closer to her place of residence. Bevis averred that on the strength of that information, Meyer was permitted to serve her notice period until 28 May 2021. According to Bevis, the applicant's policy ordinarily did not allow employees subject to restraint of trade and confidentiality provisions to serve their notice period, where there was an intention to join a competitor. Such employees were paid out in lieu of notice.
- [16] Bevis further averred that on 25 June 2021, he was informed that Meyer had approached one of the applicant's main sugar suppliers on behalf of the second respondent. Upon acting on this information, it was confirmed that indeed Meyer was employed by the second respondent, which is situated in Woodmead, and which is about 40km from Kya Sand where the applicant is based.

- [17] Further investigations conducted by the applicant had revealed that Meyer had scanned a copy of her contract of employment with the second respondent (which also contained restraint of trade and confidentiality provisions), from the applicant's scanner to her email at the applicant on 30 April 2021, some two days after handing in her letter of resignation. She took employment with the second respondent as Procurement Manager some two days after terminating her employment with the applicant.
- [18] Meyer readily conceded that she had lied to Bevis about the reasons for her resignation and her future employment. She however contended that she left the employ of the applicant due to intolerable working conditions and the toxic and acrimonious relationship she had with Bevis. She had alleged that Bevis inter alia, tightly controlled the applicant's purchasing policies and activities; never fully had confidence in her abilities and competencies; kept her on the proverbial 'short leash'; was a micro-manager; difficult to work with; temperamental; petulant; was querulous with other employees; had left other employees in tears; and had unfairly subjected her to a disciplinary process.
- [19] She had averred that these conditions required her to seek medical assistance and she had then started job hunting from 2020, rather than pursue a constructive dismissal dispute, or lodge a complaint against Bevis. She had her interview with the second respondent on 13 April 2021 and her appointment was confirmed at the end of April
2021. She justified her lies to Bevis about her future employment on the grounds that the latter did not question her plans at the time that she handed in her resignation. She alleged that she had panicked when Bevis enquired about her future employment at a later stage, as she was weary of his reaction if she had revealed the truth about her new employment, and thus have her last days of employment made even more difficult. She further alleged that she was not aware of the applicant's policy of placing senior employees who have resigned on garden leave.
- [20] It was submitted on behalf of Meyer that the circumstances under which she had left the applicant's employ raised material factual disputes in the light of Bevis' alleged bare denials of the intolerable working conditions he had created for her, and that based on the Plascon-Evans[7] principle, it should be accepted that she was driven to resign, thus militating against the enforcement of the restraint undertakings.
- [21] In my view, given the circumstances of this case and the main issues to be decided, it is not necessary to attempt to deal with the disputed facts surrounding whether Meyer was subjected to intolerable working conditions or not. This is so in that there can be no merit in any contention that an employee's breach of restraint of trade and confidentiality undertakings ought to be overlooked if not condoned, simply based on allegations of intolerable working conditions created by an employer.
- [22] The fact of an employee leaving her employment due to unbearable working conditions created by the employer is a completely separate matter from that employee's obligations under restraint of trade agreement. There cannot be a conflation of the two issues, as the

latter relates to an employee's contractual obligations when she resigns from her position, whilst the former relates to an employer's conduct during the course of her employment. In any event, it has since been stated that the need for the protection of proprietary interests exists independently of the manner in which the contract of employment was terminated, and even if the termination occurred in consequence of a breach by the employer[8]. In the end, to permit employees to simply breach their contractual undertakings merely on allegations of intolerable working conditions

created by employers would in my view, render such contractual arrangements superfluous and meaningless.

Proprietary Interests:

- [23] In the light of the conclusions that there is a clear breach of the restraint provisions, the issue is whether in line with established principles, it can be said that the restraint of trade and confidentiality undertakings are not enforceable. In this regard, the enquiry is whether the applicant has an interest that deserves protection, and if so, whether that interest is threatened or prejudiced by Meyer having joined the second respondent. It is therefore for the applicant in this case to demonstrate that it has protectable interests worthy of protection in the form of trade connections and trade secrets, irrespective of the circumstances that led to Meyer's resignation.
- [24] In regards to confidential information, it is trite that such information must obviously meet minimum criteria including that it is or will be useful or is of economic value to competitors or the ex-employee; that it was not in the public knowledge and/or be public property; and that it is capable of application in the trade or industry[9]. It is thereafter for Meyer in this case to establish that she had no access to that information or that she had never acquired any significant personal knowledge of the information in question while in the applicant's employ.
- [25] It is not in dispute that while employed by the applicant, Meyer occupied a fairly senior position within its business. In this regard, she had access to the applicant's supply chain and all information related thereto; tenders; costing of materials; pricing; accounting systems and sales strategies; costing principles and procedures; transport rates; identity of applicant's suppliers, customers; contacts and strategies; supplier strategies; stock forecasting systems; electronic filing system; development of sales reports; management of stock; sales volumes; and accounting systems. Meyer had throughout her employment attended all management team meetings including national sales, and branch managers meetings, where a variety of confidential information was discussed and shared.
- [26] Meyer for her part conceded that in her position, she was privy to some extent to the confidential information of the applicant. She further contended that the only potentially confidential information she had obtained related to suppliers' prices, which were in any event of limited lifespan, and which lost their currency quickly. She however denied that she was exposed to highly confidential information, more particularly since her focus whilst in

the employ of the applicant was strictly on the procurement side of the business. She contended that even though she knew what the applicant paid for chemical commodities at that time, her knowledge as at May 2021 had no value since the prices of commodities were subject to regular fluctuation. She further contended that her exposure to the applicant's confidential information was not wide-ranging, more particularly since her interaction with the sales team was restricted to ensuring that the applicant had sufficient stock on hand to meet

orders.

- [27] The applicant however did not claim supplier prices as confidential information. Its focus is on confidential information related to costing principles and procedures, supplier strategies, stock management, customer data base, purchasing, sales strategies and discount structures, which have a useful lifespan of at least 24 months.
- [28] In regards to trade connections, the applicant had conceded that that Meyer did not have direct contact with its customers. It was however submitted that its focus is mainly on confidential information related to its customers and suppliers. Meyer for her part conceded that she had contact with the applicant's suppliers and service providers, but contends that the contact was not of such a nature as to result in trade connections with the suppliers that she could leverage in favour of the second respondent or any other competitor, and further that there was no risk to the applicant arising from her occasional contact with the suppliers. She further averred that she had no customer lists in her possession and would not know who the contact persons at each customer was.
- [29] Meyer conceded that she knew who the applicant's suppliers were and what their process for specific orders were. She insisted however that her knowledge was neither current nor of any use to any competitor as inter alia, the identities of suppliers within the chemical industry were widely known, and it was an open secret as to who supplied whom, and that many of the applicant's competitors purchased from the same suppliers.
- [30] Meyer had conceded that she had encountered confidential information of the applicant in the performance of her duties and during management meetings and other information sharing sessions. Even though she had made attempts at downplaying the significance of her access to confidential information, as correctly pointed out on behalf of the applicant, other than in respect of the suppliers' prices, she could not seriously mount any significant factual dispute related to the importance of the confidential information the applicant seeks to have protected. The mere fact that some of the confidential information may on Meyer's version have passed its sell-by date does not in my view come to her assistance, unless of course such a fact was conceded to by the applicant. This however is not the case.

- [31] Equally of no assistance to Meyer is any contention that the confidential information sought to be protected is already within the public domain especially in the industry in question. It has long been stated that knowledge of that information gained in the course of one's employment remains protectable.
- [32] To the extent that even on her own version, Meyer had conceded to having had access to the confidential information in question, it would not make any sense for the Court to start making distinctions between what is highly confidential information and what is not. Such a distinction will invariably result in an exercise in semantics pertaining to the applicant's operations in regards to what is to be regarded as 'highly' or 'insignificantly' confidential information.
- [33] Ultimately, and based on Meyer's own limited concessions, there is no basis for any conclusion to be reached that she has raised real, genuine and bona fide disputes of fact in relation to the confidential information she had access to, inclusive of both trade connections and secrets. All that was required of the applicant was to demonstrate that there was confidential information in whatever form which deserved protection, and to which Mayer had access to, and which she could, in theory, transmit if so inclined[10]. The mere fact she had access to some and not all of the information is therefore not to be accorded any weight. Mere access or exposure in itself is sufficient for a protectable interest to be claimed, and it was not even necessary for the applicant to demonstrate that the information had already been disclosed or utilised[11].
- [34] In the end, I am satisfied that the applicant has demonstrated that Meyer had access to confidential information, which is of economic value, and which can be used by the second respondent as a competitor to its advantage. It ought to be concluded that the information in question in line with her restraint undertakings deserves protection.
- [35] It is common cause that in response to the applicant's attorneys' letter of demand, Meyer in her response through her attorneys of record gave an undertaking to adhere to the confidentiality undertakings. The undertaking, for what it is worth, came about more than a month after she took up employment with the second respondent. Clearly such undertakings are little or no comfort to the applicant. It has long been held that the very purpose of a restraint agreement is that the applicant does not wish to have to rely on the bona fides or lack of retained knowledge of confidential knowledge on the part of the respondent[12]. Furthermore, I agree with the sentiments expressed in *Biobee Integrated Crop Solutions (Pty) Ltd v Botha and Others*[13] that an ex-employee considering herself as not being a threat stands in paradox with her undertakings not to breach confidentiality. In a nutshell, if an ex-employee insists that she is not in possession of any confidential information, there would be no need to make any undertakings in that regard. Even worse for Meyer in this case is that she had already breached her restraint undertakings by taking employment with the second respondent. Furthermore, the circumstances under which she left the applicant's employ to join the second respondent, makes any undertakings from her worthless. Even if the breach has taken place, the applicant is still nonetheless entitled to

protection of its interests.

- [36] Once it is established that the applicant's proprietary interests are deserving of protection, it follows that Meyer's continued employment with the second respondent, a competitor, poses a threat to those interests. There is no dispute that the chemical commodity industry is an extremely competitive one. Thus any confidential information that is useful, inclusive of costing principles and procedures, supplier strategies, stock management, customer data base, purchasing, sales strategies and discount structures, and customer and supplier list or database, which the applicant seeks to protect, would become invaluable to the second respondent. There can be no doubt that such information in any successful business takes time to build, and clearly the advantage to any competitor handed such information is apparent.
- [37] In regards to whether the proprietary interests sought to be protected through the enforcement weigh qualitatively and quantitatively against the interest of Meyer not to be economically inactive and unproductive, it was submitted on her behalf that the provisions of the restraint are wide in both area and period, and that what the applicant sought to do was to impose unreasonably wide impediments on her economic freedom. In this regard, it was submitted that given the limited scope of the applicant's actual protectable interests, Meyer's right to remain economically active qualitatively and quantitatively outweighs the applicant's interests.
- [38] In pursuing the above argument, reference was made to the circumstances leading to Meyer's departure, which it was contended further militated against the enforcement of the restraint. In this regard however, conclusions have been made in respect of the weight to be attached to the circumstances leading to an employee's departure from her employment with the applicant, as against her contractual obligations under the restraint of trade undertakings. Thus, the mere fact that Meyer left the applicant's employ on account of intolerable conditions allegedly created by Bevis carries little weight in this case. This is made even worse given Meyer's blatant lies when she was asked about her future employment and the fact that she was permitted to serve out her notice period when already employed by a competitor. Her conduct of lying when asked about her future employment when she already knew that she was going to join a competitor, and thus being allowed to serve her notice period, is indeed deplorable.
- [39] The applicant seeks that Meyer be restrained for a period of 24 months rather than the 36 months provided for in the contract of employment. On these grounds, it was submitted on her behalf that this was indicative of an awareness that the restraint is unreasonably wide. However, this argument falls flat in that there is nothing untoward when an employer pares down any condition in the restraint

provisions, especially since those provisions as in this case are stated to be separable in its various components inclusive of the period. Furthermore, Court are enjoined to consider such paring down where circumstances so dictate[14]. In this case, it was the applicant's contention that the confidential information in question remains useful for over a period of at least 24 months, and that it would take a competitor at least between 2-3 years to gather strategies and systems of the applicant. To the extent that Meyer could not seriously dispute these contentions other than suggesting that there was no evidence that the confidential information in question remained useful for over a period of 24 months, and further taking into account a variety of factors as they prevailed when this application was brought, there is no basis for this Court to interfere with the period of the restraint, as it satisfies the requirements of rationality and reasonableness.

- [40] In regard to the area of the restraint, Meyer's contended that she has a long association with the chemical commodity industry, which is her area of expertise, and that should the restraint be enforced, this will result in significant and unreasonable harm to her career and earning capacity. She further contended that she was free to avail herself of the skills she obtained during her career, including the time that she was employed by the applicant, and that the restraint provisions would effectively remove her from the only industry of which she has knowledge or experience. The applicant on the other hand contended that it does not seek to enforce the restraint to remove Meyer from the industry altogether as she alleged, but is more concerned about her involvement in the food chemical industry.
- [41] The applicant is correct in pointing out that Meyer was employed for over 18 years by entities in the chemical industry, and who are not in competition with it, and that her only exposure to the food chemical industry was when employed by it. This contention is supported by Meyer's own copy of her curriculum vitae[15], which reveals that she was employed by various entities in the chemical industry prior to being employed by the applicant. The contention

therefore that the enforcement of the restraint provisions would remove her completely from the chemical industry is not supported by the material placed before the Court. Meyer remains employable elsewhere in the chemical industry, as long as she is not in breach of provisions of the restraint through her involvement in the food chemical industry. In fact, on her own version, she was able to secure two invitations for interviews at potential employers, which she had declined simply on account of her own convenience. There is therefore no merit in any contention that she will be rendered unemployable. The enforcement therefore will not at all handicap her from being economically active, nor will she be prevented from availing herself of her skills and expertise in the chemical industry as a whole.

[42] In regards to the area of the restraint, the competitive interface between the applicant and the second respondent has been set out elsewhere in this judgment, and it is not in dispute that both operate on a national basis and in the same areas. Not much argument was advanced by Meyer as to the reason the restraint should not be enforced in the whole of the Republic.

Conclusions:

[43] I am satisfied that the applicant has made out a case for the relief that it seeks. Meyer has blatantly acted in breach of her restraint of trade and confidentiality undertakings. The applicant's proprietary interests are threatened by her continued employment with the second respondent, and it is therefore entitled to their protection. These interests weigh qualitatively and quantitatively against those of Meyer, who as already concluded, could not demonstrate that the enforcement would be unreasonable as it render her to be economically inactive and unproductive. The restraint provisions therefore do not go further than is necessary to protect the applicant's interests.

[44] It has been repeatedly stated that public policy requires ultimately that restraint of trade provisions be enforced where found to be reasonable[16]. Meyer as correctly pointed out on behalf of the applicant has not raised any aspect of public policy. On the contrary, there is no basis why it should not be concluded that she was clearly aware of the significance of her restraint of trade and confidentiality

undertakings and the implications thereof, and had yet blatantly breached her undertakings. Accordingly, there are no public considerations militating against the enforcement of the restraint provisions as they are found to be reasonable.

[45] In regards to an order of costs, the applicant sought such an order on a punitive scale on account of Meyer's opposition to the application being not only unmeritorious, but also mala fide and vexatious. The applicant made reference to her lies which had caused it to allow her to continue her employment, and thus continue

to have access to confidential information and trade secrets, whilst she was already involved with a competitor.

[46] Inasmuch as Meyer contended that the applicant did not approach the Court with clean hands to the extent that her resignation was allegedly forced, it need to be said outrightly that her conduct related to the circumstances under which she resigned from the applicant ought to be frowned upon. I agree with the submissions made on behalf of the applicant that such conduct deserves censure, and that her opposition was not only unmeritorious but also lacked bona fides.

[47] In regards to the second respondent, it is not clear on what basis it sought to oppose the application, when it was merely cited as an interested party. Ordinarily with such applications, the second respondent cited in this manner would either file a Notice to Abide or take no steps whatsoever, especially where the Notice of Motion indicates that costs would be sought only in the event of an opposition. The second respondent however chose to be party to the proceedings as evident from a Special Resolution of its

Directors/Shareholders dated 15 July 2021[17], which also confirmed the appointment of the respondents' attorneys of record. In these circumstances, one can only surmise

what its interest is in the outcome, in circumstances where Meyer is clearly in flagrant disregard of her restraint of trade and

confidentiality undertakings. Equally then, the second respondent's opposition is unmeritorious and lacked bona fides, and there is no reason why it should also not be held liable for costs. I am however not convinced upon a consideration of the requirements of law and fairness, that any such costs order should be on a punitive scale.

[48] Accordingly, the following order is made;

Order:

1. The forms and service provided for in the Rules of this Court are dispensed with, and this matter is treated as one of urgency.
2. The First Respondent is interdicted and restrained until 28 May 2023, and in the Republic of South Africa, from being directly or indirectly, associated with, concerned in, employed by, engaged or otherwise interested in, whether as administrator, advisor, agent, assistant, consultant, contractor, director, employee, financier, partner, principal, proprietor, shareholder, representative or otherwise, and whether or not for reward, any entity or person of any nature that competes with the business of the Applicant.
3. The First Respondent is ordered to forthwith, terminate her employment with the Second Respondent.
4. The First Respondent is interdicted and restrained until 28 May 2023 and in the Republic of South Africa from soliciting, interfering with, enticing or attempting to entice away from the Applicant any entity or person that is a customer of the Applicant or was a customer of the Applicant at any time during the twelve months preceding 28 May 2021.
5. The First Respondent is interdicted and restrained until 28 May 2023 and in the Republic of South Africa from soliciting, interfering with, enticing or attempting to entice away from the Applicant any person who is or was an employee of the Applicant between 1 January 2019 and 28 May 2021.

6. The First Respondent is interdicted and restrained from using, disclosing or divulging to any entity and trade secrets or confidential information of the Applicant, which information shall include but not limited to the technical details, techniques, know how, methods of operating, costs, products, pricing and marketing policies, price lists, information pertaining to customers and potential customers of the Applicant, customer confidential information revealed to the Applicant in the course of business with customers and the customer requirements, contact and similar information.
7. The First and Second Respondent are ordered to pay the costs of this application jointly and severally, the one paying the other to be absolved.

Edwin Tlhotlhemaje

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv.

R Grundlingh, instructed by VDT Attorneys INC

For the 1st and 2nd Respondents: Adv. HM Viljoen, instructed by Duff Pretorius Attorneys and Notaries

[1] See *New Justfun Group (Pty) Ltd v Turner and Others* (J786/14) [2014] ZALCJHB 177; (2018) 39 ILJ 2721 (LC) at para 8; *J Louw and Co (Pty) Ltd v Richter and others* 1987 (2) SA 237 (N) at 243B-D; See *Labournet (Pty) Ltd v Jankielsohn and Another* [2017] 5 BLLR 466 (LAC) at paragraphs 39 to 45; *Sunshine Records (Pty) Ltd v Frohling and others* 1990 (4) SA 782 (A) at 794C-E; *Basson v Chilwan and others* at 767C-H

[1] See *New Justfun Group (Pty) Ltd v Turner and Others* (J786/14) [2014] ZALCJHB 177; (2018) 39 ILJ 2721 (LC) at para 8; *J Louw and Co (Pty) Ltd v Richter and others* 1987 (2) SA 237 (N) at 243B-D;

See *Labournet (Pty) Ltd v Jankielsohn and Another* [2017] 5 BLLR 466 (LAC) at paragraphs 39 to 45; *Sunshine Records (Pty) Ltd v Frohling and others* 1990 (4) SA 782 (A) at 794C-E; *Basson v Chilwan and others* at 767C-H

[2] See *Basson v Chilwan* [1993] ZASCA 61; 1993 (3) SA 742 (A); *Siemens Telecommunications (Pty) Ltd* 2007

(2) SA 486 (SCA); *New Justfun Group* (supra) at para 9; *Experian South Africa (Pty) Ltd v Haynes and Another* (48711/2011) [2012] ZAGPJHC 105; 2013 (1) SA 135 (GSJ); (2013) 34 ILJ 529 (GSJ) at para 14

[3] *MMA Security Services CC t/a Broubart Security and Another v Callanan and Another* (495/10) [2010] ZAECPHC 23 (31 May 2010) at para 14

[4] At 767C-H

[5] Kwik Copy (SA) (Pty) Ltd v Van Heerden and another 1999

(1) SA) 472 (W)

[6] See Sibex Engineering Services (Pty) Ltd v Van Wyk and Another 1991

(2) SA 482 (T) at 502D-F; Experian (supra) at para 17

[7] Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] ZASCA 51; 1984

(3) SA 623 (A) at 634E-635C, where it was held; 'It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact . . . If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under Rule 6(5)(g) of the Uniform Rules of Court ... and the Court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks . . . Moreover, there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers . . . '

[7] Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] ZASCA 51; 1984

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fetches or clearly untenable that the Court is justified in rejecting them merely on the papers . . .’

[8] See *Reeves v Marfield Insurance Brokers CC* [1996] ZASCA 39; 1996

(3) SA 766 (A) 772, where it was held that; “An employee who by virtue of his employment would be in a position to exploit on his own behalf his employer's customer connections is free on leaving his employment, subject to certain limitations, to compete with his erstwhile employer for the business of the latter's customers unless restrained by contract from doing so. See *Freight Bureau (Pty) Ltd v Kruger and Another* 1979(4) SA 337 (W) at 341 E - H; *Cambridge Plan AG and Another v Moore and Others* 1987(4) SA 821 (D) at 846 13 - 847 A; *Meter Systems Holdings Ltd v Venter and Another* 1993 (1) SA 409 (W) at 430 I - 432 B. The legitimate object of a restraint is to protect the employer's goodwill and customer connections (or trade secrets) and the restraint accordingly remains effective for a specified period (which must be reasonable) after the employment relationship has come to an end. The need for the protection exists therefore independently of the manner in which the contract of employment is terminated and even if this occurs in consequence of a breach by the employer.”

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[9] See *Alum-Phos (Proprietary) Limited v Spatz and Another* [1997] 1 All SA (WLD); *Experian* (supra) at para 19

[10] *Vox Telecommunications (Pty) Ltd v Steyn* (2016) 37 ILJ 1255 (LC) par 31

[11] *Ball v Bambalela Bolts (Pty) Ltd* 2013

(34) ILJ 2821 (LAC) para 22.

[12] *New Justfun Group* (supra) at para 13; *Experian* (supra) at para 22

[13] (J 673/21) [2021] ZALCJHB 181 (6 July 2021) at para 18

[14] Omnirapid Mining & Industrial Supplies, a Division of PSV Industrial (Pty) Ltd v Cooper, Gillian & others, CASE NO: J414/20 Delivered on 20 May 2020 (Van Niekerk J) at para 4, where it was held that; “It is well-established that the court is entitled to enforce a restraint partially, by restricting the scope of its operation to reflect what is found to be reasonable (see National Chemsearch (SA) (Pty) Ltd v Borrowman & another 1979

(3) SA 1092 (T) at 1116D-G; Den Braven SA (Pty) Ltd v Pillay & another 2008

(6) SA 229 (D&CLD), at 263 A-C). The nature and extent of any partial restraint is a matter to be determined from the papers; the extent to which any restraint agreement ought to be pared down is ultimately the decision of the court, having regard to all of the

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[15] Annexure ‘FA3’ to the Founding Affidavit

[16] Reddy v Siemens Telecommunications (Pty) Ltd 2007

(2) SA 486 (SCA) at para 21; New Justfun Group (supra) at para 21

[17] Annexure ‘CA1’ to the Answering Affidavit

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