

SOUTH AFRICA / JUDGMENT

**Dreameworks Investments 138 (Pty)
Ltd and Another v Brettchneider
and Another (10445/2006) [2007]
ZAGPHC 354 (23 February 2007)
[2007] ZAGPHC 354**

COURT

High Courts - Gauteng

BEFORE

E M Patel

CASE / FILE NUMBER

10445/2006

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**IN THE HIGH COURT
OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)**

Date:	23/02/2007
	Case
	No: 10445/2006
	UNREPORTABLE
	In
the matter between:	DREAMEWORKS INVESTMENTS 138 (PTY) LTD 1ST APPLICANT THE SPECIAL HOLDINGS (SA) (PTY) LTD 2ND APPLICANT And LEANIE BRETTCHNEIDER 1ST RESPONDENT LB PLAAGBEHEER CC 2ND RESPONDENT

JUDGMENT**PATEL J:**

- [1] I have done a lot of research in this matter and I planned to write a very comprehensive judgment motivating my findings. Unfortunately, at present, my personal condition does not allow me to write such a judgment. As it is of great importance to the parties to get an order, and as I have come to a definite decision as to what order I must make and why, I am going to make an order after having stated very briefly what considerations led me to the conclusion to which I have come. The following are my reasons:
- [2] Although the restraint of trade clause is set out in great detail and dealt with from various angles, it is difficult to work out from a practical point of view exactly what interests of the applicant have been protected. One must not forget that the business is a pest control business, that there are many pests everywhere in the country, and that there are many entrepreneurs in the country fighting those pests. Moreover the second applicant claims to be the franchisor of 37 franchises all over the country.
- [3] Although the applicants state regularly that they have a reasonable apprehension that the respondent will cause them considerable financial loss through unfair competition, there is no convincing evidence that the respondent has indeed lured any particular client of the first applicant away. There is also no convincing evidence that there was any cut back in the first applicant's turnover as a direct result of the respondents actions.
- [4] I am of the view that the limitations placed upon the respondent in the agreements are too stringent and unfair and that they hamper free competition to the detriment of the general public.
- [5] It is unclear to me why there must be a disqualification for 36 months after termination of the agreements for the respondent to re-enter the market. A disqualification of between four and six months seems to me to be fair. Anything longer than that is oppressive and not in the public interest.
- [6] The restraint in question disqualifies the respondent to conduct a pest control business anywhere in the country or 150 kilometres outside its borders, in certain instances. That is clearly oppressive. There can be no reason for such a wide limitation. I fail to see what harm can befall the first applicant if the respondent is restricted from conducting a pest control business within the Centurion area.
- [7] In my view the applicants failed to indicate any wrongful act by the respondent in an area where it could damage the business of the applicants during a reasonable time after severing her ties with the applicants. In short, I remain unconvinced that, at the relevant time of this application, the applicants had an interest that was protectable.
- [8] The application is dismissed with costs.

E M Patel

Judge of the High Court

Heard on: 3/08/2006

Counsel for the Applicant: Adv Ferreira

Instructed by: E Y Stuart Attorneys

Counsel for the Respondent: Adv Els

Instructed by: Gideon Ferreira Attorneys

Date of Judgment: 23/02/2007

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Prepared on 11 October 2026 · Esheria