

SOUTH AFRICA / JUDGMENT

Metro Limited and Another v Fenwick and Others (4927/2015) [2016] ZAFSHC 107 (17 June 2016) [2016] ZAFSHC 107

COURT

Free State High Court, Bloemfontein

BEFORE

Mhlambi, AJ

CASE / FILE NUMBER

4927/2015

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IN

THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION,
BLOEMFONTEIN

Case

number: 4927/2015

In

the matter between:

METPRO
LIMITED
1st
Applicant
METPRO
TECHNOLOGY AFRICA (PTY) LTD
2nd
Applicant
and
SEAN
FENWICK
1st Respondent
JOHN
FENWICK
2nd Respondent
RAPIDSRC
(PTY) LTD
3rd Respondent

CORAM: MHLAMBI, AJ
HEARD

ON: 26 MAY 2016

JUDGMENT

BY: MHLAMBI, AJ

DELIVERED ON: 17 JUNE 2016

- [1] This is an application to enforce restraint of trade agreements and confidentiality undertakings in the contracts concluded by the first and second respondents with the applicants;
- [2] The applicants seek to interdict the first and second respondents and limit the territory over which the restraints apply to South Africa, the United Kingdom, Germany, the United States of America, Spain, Italy and Hong Kong (although the applicants were initially of the view that the restraints applied over the area described as the “global VCI market or territory where VCI products are sold around the world);
- [3] The restraint period in respect of the first respondent is 12 months, starting from 31 July 2015 and terminating on 30 July 2016.
- 2016. The period sought to be enforced as against the second respondent is until 31 December 2016.

The application is opposed.

Background

facts

- [4] The first applicant is a company registered and having its head office situated in Kerry, Ireland. The second applicant is a duly registered company and incorporated in terms of the company laws of the Republic of South Africa and having its principal place of business at Fairbank Street, Vanderbijlpark.
- [5] The applicants consider themselves as leading global developers and manufactures of an extensive and diverse range of active and protective packaging systems for the preservation of high value products, predominantly in the automotive, steel and industrial manufacturing sector. Its product range caters for different sized companies, both locally and globally.

- [6] Second respondent, a technologist, owned 100% (one hundred per cent) of the members' interest and contributions in Pentakem CC. By a written memorandum dated 15 April 2010 the business of Pentakem was sold as a going concern to the second applicant; the first applicant and second respondent each acquiring 51% and 49% shareholding respectively in the second applicant. The business of Pentakem was defined in the memorandum as the goodwill, all the intellectual property including technological know-how, trade secrets, copy rights, patents and trademarks.
- [7] Subsequent to the memorandum, a written sale agreement was entered into on 4 September 2013 at Vanderbijlpark between the second

respondent, the first and second applicants in terms of which the second respondent sold his shareholding in the second applicant to the first applicant. Clause 6 of the sale agreement reads as follows:

“6.

EMPLOYMENT

6.1 The seller will be employed by the Purchaser on a fixed term contract basis for a period of 24 (TWENTY-FOUR) months from the effective date, on the material terms and conditions set out hereunder:

6.1.1 The seller will be paid the higher of:

(i) an Annual Retainer of 15,000 (FIFTEEN THOUSAND POUNDS STERLING) or amount as may be varied under 6.1.2 below, to be paid in 12 equal monthly installments

(ii) a Commission which shall be calculated at the rate 2.5% (TWO COMMA FIVE PERCENT) of the PURCHASERS Global Annual Sales derive from:

6.1.1.1 the SELLER'S new technology developed; and/or

6.1.1.2 the SELLER'S new technology provided, for the duration of his employment and whilst participating and being actively involved in the business of the PURCHASER

6.1.2 For the avoidance of doubt the Commission for relevant year will be calculated by 31 January of the following year and the amount by which the Commission calculated exceeds the Annual retainer will be paid to the SELLER immediately. If the Commission calculated is less than or equal to the Annual Retainer, then there will be no additional payment.

6.1.3 The annual retainer as per 6.1.1 will be reviewed an annually basis until the employment contract is terminated applying the South Africa CPIX rate.

6.2 The employment of the SELLER can be extended for a further 12 (TWELVE) months, by mutual agreement, which is to be communicated in writing by the PURCHASER to the SELLER not later than 30 days before due date of expiration of contact of employment.

6.3 The SELLER will also be subject to restraint of trade from the date of signature of this agreement and for the duration of his employment with the PURCHASER as set out in paragraph 7 hereunder.

6.4 The essential terms of the SELLER'S employment with the PURCHASER as set out above will in conjunction with SELLER'S voluntary resignation from THE COMPANY on the effective date. A copy of the employment contract (annexure" A") and the resignation letter (annexure" B") is annexed hereto."

Annexure "A" reads as follows:

"Employment Agreement Dr JTF Fenwick

In terms of agreement of sale of his remaining shares in MetPro Technology Africa Pty Ltd, Dr JTF Fenwick will no longer be employed

by MTA from the 1st January 2014.

[8] MetPro Ltd. Has offered DR JTF Fenwick an "employment/restraint agreement" in the form of a stipend as laid down in the Sale Agreement. Such "employment/restraint agreement" entails acting as Chief Chemist to the MetPro Group and assist in driving sales in their business. On acceptance of this offer Dr JTF Fenwick shall, health permitting be available to MetPro to: -

1. Mentor personnel in technology supplied by him.
2. Undertake twice yearly visits to MetPro Ltd for duration of approximately 6 weeks
3. Assist on an "ad hoc" basis with MTA to drive sales

Any expenses incurred during this "employment/restraint agreement" for travel, accommodation and subsistence will on documentary evidence be refunded or paid for by MetPro Ltd."

9. Clause 7 of the agreement reads as follows:

"RESTRAINT OF TRADE

7.1 As from the date of signature hereof until 31st December 2013 and from the 1st of January 2014 until the 31st of December 2016, the SELLER shall be subject to restraint of trade as set out hereunder:

7.2 The PURCHASER shall pay the SELLER an amount of E1, 250.00 (ONE THOUSAND TWO HUNDRED AND FIFTY POUNDS) per month, from the 1st of January 2014 until the 31st of December 2016 and the SELLER shall in turn be restrained:

7.2.1 to enter into any business activity which competes directly or indirectly with the COMPANY or the PURCHASER, in particular, utilize the trade secrets or technology which is owned by the COMPANY and/or PURCHASER or approach any of the established clients of the COMPANY of the PURCHASER in order to procure or solicit orders in competition with the COMPANY or the PURCHASER:

7.2.2 nor shall the SELLER sell or otherwise deal in any products which are the same as or similar to any of the products within the COMPANY or PURCHASER alternatively, similar or in competition with the COMPANY or PURCHASER or otherwise compete with the products:

7.2.3 to be employed or associated with any business where such employment or association enables such business to compete with the COMPANY or the PURCHASER.

7.3 The above restraint shall be effective over the territory described as the global VCI market, which shall include such products as metal cleaners, metal working fluids and water based rust preventative coatings defined as worldwide

7.4 The SELLER acknowledges and agrees that such restraint is intended to prevent the SELLER from competing directly or indirectly with the company or the PURCHASER within the stipulated period and territory, furthermore to prevent the SELLER from diverting any work from the COMPANY or the PURCHASER to any other competing business during the period of the restraint.

7.5 The SELLER acknowledges that the aforesaid restraint is fair and reasonable in view of the investment made by the PURCHASER in the COMPANY, the contracts established by them with the existing clients of the PURCHASER, their acquisition of knowledge and information relating to the clients of the PURCHASER, and/or COMPANY and so forth.

7.6 The SELLER specifically acknowledges that his restraint is necessary for the protection of the business relationship existing between the COMPANY and the PURCHASER, the owner of the COMPANY or the PURCHASE and the established clients of the company or the PURCHASER.

7.7 The aforesaid restraints are specifically created in favour of the COMPANY and/or the PURCHASER and owners thereof.

[9] On 21 May 2010, the First Respondent concluded a written contract of employment with Fairy Wing Trading 115 (PTY) LTD, a company whose name was changed to that of the second respondent on 5 July 2010, and the contract continued in force. He was employed as a Technology Transfer Engineer and his employment contract was subject to confidentiality, competition and restraint clauses. Clause 16 of the employment contract reads as follows:

“16. Restraint of Trade

16.1 You acknowledge and agree that in the course of your employment with the Company, you will become acquainted with the employees, trade secrets and clients of the Company. In order to protect the proprietary interest, customer and employee base, and trade secrets of the Company, you agree and undertake that you will not, either directly or indirectly and in any capacity,

throughout the period of your employ and for 12(twelve) months after termination of your services, approach any existing employee, client or future client that you are aware is being contracted to the Company, for the purpose of providing, rendering or soliciting services or business that is allied or similar to the Company's business.

16.2 You may not:

be engaged, concerned or interested or hold any material interest in either directly or indirectly in any capacity either on your own behalf or in conjunction with or on behalf of any person, firm, company, business, concern or enterprise whatsoever in the Relevant Business or in any business wholly or partly in competition with the Relevant Business: or directly or indirectly in any capacity either on your own behalf or in conjunction with or on behalf of any other person, firm, company, business, concern or enterprise whatsoever;

- (a) Solicit or entice or endeavor to solicit or entice away from the service of the Company or any Association Undertaking any person employed by the Company or any Associated Undertaking in any capacity whatsoever whether or not you would commit a breach of your contact of employment by reason of leaving such service;
- (b) Canvass, solicit or approach or cause to be canvassed or solicited or approached for orders in respect of any service provided or any goods dealt in by Company or any Associated Undertaking any person, firm, company, business, concern or enterprise whatsoever who is or was at any time during the period of 6 months immediately preceding the termination of the Agreement employment a customer of or supplier to or in the habit of dealing with Company or any Association Undertaking or who is or had been during the said 6 month period negotiating with the Company for the supply of such services or goods; or
- (c) Interfere or seek to interfere to take steps as may interfere with the continuance of supplies to the Company or any Associated Undertaking (or the terms relating to such supplies) from any persons who are or who have been supplying components, materials, goods or services to the Company or to any Associated Undertaking at any time during the 6 month period immediately preceding termination of this agreement.

16.3 You acknowledge and agree that the restraints imposed on your terms of this clause are reasonable, and are reasonably required by the Company to protect and maintain the goodwill and proprietary interests of the Company.”

[10] The first respondent resigned on 31 July 2015

Submissions

The applicants contended that both first and second respondents engaged in unlawful competition during the subsistence of their employment with the applicants by making use of the applicants' resources, confidential information and customer and supplier connections as a springboard to launch their own business, in direct competition with the applicants and have thus breached the restraint of trade clauses/provisions of their respective contracts.

- [11] First and second respondents set up the third respondent company to engage in direct competition with the applicants' business, which is reflected in the third respondent's promotional material and its company profile. The first and second respondents have, in addition, also been approaching the applicants' customers and suppliers in breach of their restraints.
- [12] The first respondent does not provide a viable, or indeed any coherent, challenge to the restraint, and does not challenge the reasonableness of the restraint or the area over which the restraint applies. The second respondent has failed to deliver a comprehensive answering affidavit. On the basis of *Plascon-Evans Paints Limited v Van Riebeck Paints (Pty) Ltd* [1984] ZASCA 51; 1984 (3) SA 623 (A), the applicants are entitled to relief.
- [13] The first respondent disputes that the applicants have protectable interests, which are being infringed and denies that a restraint of trade is in force against the first and third respondents. The second respondent does not dispute the relevant restraint of trade provisions that apply to him but denies that he was ever employed by the applicants.
- [14] It is argued on behalf of second respondent that, had he been employed by the applicants, he would have received benefits in

accordance with the Basic Condition of Employment Act. He never received such benefits. He was retained over the fixed term on a monthly retainer as stated in the relevant agreement.

- [15] The first respondent contested the interpretation given by the applicants to clause 16 of the agreement. He admitted the restraint

in clause 16.1. He contended that clause 16.2 was totally separate from clause 16.1 and was clearly not subject to a 12(twelve)-month

period after the termination of the contract.

- [16] Even though the first respondent is the director of the third respondent, the latter was not trading but investigating solar and energy markets within which to venture. It disputed that it was a manufacturer of the products alleged by the applicant. First

respondent denied having spoken to potential customers and suppliers of the applicants.

- [17] Relying on *Den Braven SA (Pty) Ltd v Pillay* 2008(6) SA 229 (D) paragraph 9, it was argued on behalf of the first respondent that the order was not needed as the remaining period for the restraint to lapse was but a few weeks away and, at most, it could take 6(six) months to train

new personnel. Furthermore, the applicants had failed to prove by way of admissible evidence that a restraint of trade existed in as far as the first respondent was concerned. Even if the respondent was contravening the restraint clause, an order was not necessary a mere month before its expiration.

[18] The first respondent raised issues disputing the authority of the applicants' attorneys to act on their behalf; the authority of Ms. Du Plessis to depose to the affidavit in support of the applicants' application; and the validity of the confirmatory

affidavit deposed to by Rick Earley due to it allegedly being improperly executed outside of the Republic of South Africa.

All of these issues were abandoned on behalf of the respondents during oral argument. It was also conceded on behalf of the first

respondent that, should it be found that clause 16.2 was not inconsistent with clause 16.1, then the full effect of the restraint

clause should come into effect.

The

issues

[19] The issues to be determined are:

1. Whether the Applicants have a protectable proprietary interest;
2. Whether the Respondents are subject to the restraints of trade;
3. Whether the restraints are unreasonable or contrary to public policy.

Restraints of trade – legal principles

[20] In *Magna Alloys and research (SA) (Pty) LTD V Ellis* [1984] ZASCA 116; 1984 (4) SA 874 (A) the following principles were adopted:

20.1 Prima facie every restraint agreement signed by a restrainee is enforceable. Where a restrainee wishes to be released from his restraint

obligations, the onus lies on the restrainee to show that the restraint is not only unreasonable, but contra bonos mores, that is, contrary to public policy.

20.2 In determining whether a restraint is contra bonos mores, a court will look at the facts and circumstances at the time that the restrainer is attempting to enforce the agreement against the restrainee and weigh up to two main considerations. The first is that the public interest requires, in general, that parties should comply with their contractual obligations even if these are unreasonable or unfair [*pacta sunt servanda*]. The second consideration is that all persons should, in the interest of society, be permitted as far as possible to engage in commerce or the professions freely. Expressing this differently, it is detrimental to society if an unreasonable fetter

is placed on a person's

freedom of trade or a person's freedom to pursue a profession.

20.3 In determining whether a restraint is contra bonos mores, a court will consider, among others, the following factors:

20.3.1 the duration of the restraint;

20.3.2 the area in which the restraint applies;

20.3.3 whether a restraint payment was paid to the restrainee;

20.3.4 whether the restrainee still has the ability to earn a living

20.3.5 the "proprietary interest" or capital asset that the restrainer seeks to protect."

[21] In *Basson v Chilwan and others* 1993(3) SA 742 (A) at 767 it was stated that the court should pose four questions in assessing the reasonableness of a restraint.

These are:

- a) is there an interest of one party, which is deserving of protection at the termination of the agreement?
- b) is such an interest being prejudiced by the other party?
- c) if so, does such interest weigh up qualitatively and quantitatively against the interest of the latter party that the latter should be economically inactive and unproductive?
- d) Is there another facet of public policy having nothing to do with the relationship between the parties but which requires that the

Restraint should either be maintained or rejected?

[22] The person who sells a business and then seeks to make use of the trade connections that he sold will be interdicted from doing so even in the absence of a restraint of trade agreement where a business sought to protect itself by securing a restraint of trade undertaking from an employee. There is no reason for the courts or the law to review this with disfavor. *Den Braven SA (Pty) LTD v Pillay* 2008(6) SA 229 (D) at paragraph 35.

Discussion

The first respondent

[23] In essence, and taking into account the heads of argument and the oral argument, the first respondent's opposition revolves

around the interpretation of clause 16 of the employment agreement. The terms of the agreement, having been drafted by the second

applicant, it is argued by the respondents, must convey a clear meaning. In the event of an ambiguity, an interpretation less favourable for the applicant should be given to the term. I cannot agree with this approach especially when the argument is advanced

that clause 16.1 and 16.2 are separable. The restraint of trade provision is contained in clause 16 under the heading “restraint

of trade” consisting of three sub-clauses. My view is that the clause should be read as a whole for the elucidation of the clause and to ascertain the intention of the parties. *Chotabhai v Union Government* 1911 AD 13 at 24; *Turfontein Estate v Mining Commissioner, Johannesburg* 1917 AD 419 at 431. I therefore agree with the applicants’ argument that clause 16.2 elaborates on the type of conduct that would be prohibited during the period of the restraint. Even if I am wrong, if one looks at the whole scheme of the employment contract, the circumstances which gave rise to such employment contract, the inclusion of confidentiality and competition clauses, it is evident what protection is being sought; and in my view, which could be granted in the absence of a restraint of trade undertaking from an employee: *Den Braven*, *supra*. It is noteworthy that first respondent does not contest, save for the interpretation of clause 16.1 and 16.2, the contents of the whole of clause 16.

- [24] In oral argument, I was referred by respondents’ counsel to page 17 of the employment contract appearing on page 176 of the bundle of documents which dealt with the acceptance and offer of the contract. This paragraph entails that the first respondent should confirm acceptance of the terms and conditions of employment by initialing each page and signing the final page of the agreement before he could commence employment. Counsel remarked that the contract was not signed as the space reserved for the Chief Executive Officer remained blank.
- [25] The employee’s signature and that of a witness appear at the bottom of the page under the heading “declaration by the employee”, where the latter confirmed having read and received the explanation of the terms and conditions which he confirmed that he understood and accepted in full. Each and every other page was initialed. I did not understand the Counsel’s submission about the missing signature of the Chief Executive officer on the last page of the contract. If the submission suggested that an employment relationship did not exist between the second applicant and the first respondent on the terms and conditions as set out in the contract document, I would disagree for the following reasons: firstly, the first respondent’s signature on the contract was never in dispute; secondly, save for suggesting a different interpretation of clause 16 of the contract, the contract itself was not pertinently disputed, or a submission to that effect made. In paragraph 4.2 of the answering affidavit, the first respondent admitted the restraint of trade contained in clause 16.1 of the contract but averred that the twelve (12) month restraint period contained therein should not be extended to clause 16.2. It is clear to me that for all intents and purposes, the relationship between the parties was regulated by the terms and conditions set out in the contract document. I am therefore satisfied that an employment contract with a valid restraint of trade provision existed between the second applicant and the first respondent.

The second respondent

- [26] The second respondent stated briefly in his opposing affidavit that he was never employed by the applicants and was not in contravention of any restraint. Despite strong allegations and accusations by the applicants that as a technologist and a previous shareholder of the second applicant, he was intimately involved in the creation of some of the second applicant's technology; and, together with the second respondent, interacted with both the applicants' customers and suppliers and formed strong customer and supplier connections with them, he chose not to address and respond to these allegations. Litigants are required to seriously engage with factual allegations they seek to challenge and to furnish not only an answer, but also countervailing evidence particularly where the facts are within their personal knowledge; *Wight v Wight & Another* 2015(1) SA 262 SCA paragraph 15.
- [27] One would have expected the second respondent to respond and clarify the restraint of trade contained in paragraph 7 of the agreement of sale concluded on 4 September 2016, amongst a host of allegations leveled against him. I agree with applicants' counsel that the respondent has not presented his version before the court. He has failed to properly address the facts raised against him and resorted to bald denials and evasiveness. His version does not raise a genuine dispute of fact and justifies its outright rejection: *Plascon-Evans, supra* at 634E-635; *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008(3) SA 371 SCA at paragraph 12.

The third respondent

- [28] The third respondent is a company of which the first respondent is the sole director. Applicants hold the view that it is the alter ego of the first respondent and used as a vehicle by first and second respondents to compete unlawfully with the applicants in breach of their restraint of trade undertakings. In the applicants' founding affidavit and in particular paragraph 120, it was alleged that, in the third respondent's promotional material, which had been designed and produced prior to first and second respondents' exit from the second applicant on 31 July 2015, the first respondent is described as the project manager while the second respondent is described as the technologist and chief chemist. In the answering affidavit, on behalf of both first and third respondents the response was as follows: "There is still much call for John's expertise in various other chemical sectors from water treatment to plant optimization. The allegations do not constitute a contravention of second respondent's agreement."
- [29] Similarly, in paragraphs 121 to 125 of the founding affidavit it was alleged that the third respondent stated in its company profile that its current product base included "industrial, hygiene and pharmaceutical base products as well as specially packaging products developed for very specific needs", a manufacturer of products in competition with applicants and claims to be an authorized agent of dessicants for humidity control. In the answering affidavit, save to state that the third respondent was not a manufacturer, the rest of the allegations were denied without an explanation.

The Proprietary interest

[30] Trade secrets, pricing and customer connections are all proprietary interests which justify protection. A protectable customer or supplier relationship exists where an employee has personal knowledge of and influence over the customers or suppliers of his employer so as to enable him, if the competition were to be allowed, to take advantage of his former employer's trade connections. *Rawlins & Another Caravan truck (Pty) LTD* 1993 (1) SA 537 (A) at 541 E, 543 C-G. In *Reddy v Siemens Telecommunications (Pty) LTD* 2007 (2) SA 486 (SCA), the court applied a 12 month restraint against an employee who had joined a competitor stating that it was not necessary for the court to find that the employee would use his previous employer's trade secrets and confidential information in his new employment but that it was sufficient if he could do so.

[31] Though first and second respondents refused that they colluded with each other to breach the restraint agreements, the documentary

evidence in the form of e-mails between the two respondents clearly show that they were aware of the restraint clauses and were willing to act in breach of such clauses. Consequently, I am of the view that the applicants have an interest that is threatened by the respondents, worthy of protection.

[32] The question that crops up is whether, on the given facts, the applicants have proprietary interests that deserve protection.

Applying the principles in the *Plascon-Evans* case, it is crystal clear that the respondents have failed to resist the onslaught as made against them as well as the relief sought.

The documentary evidence presented supports the allegation that the third respondent was nothing else but an alter ego of the first and second respondents.

Relief sought

[33] Prayers 1-6 in the notice of motion are mandatory in nature and seek to compel the respondents to do certain things. These are a regurgitation of what the first respondent was prohibited to do under the heading "Intellectual Property" in paragraph 7 of the employment agreement. This clause, according to the contract, applies to the intellectual property used, created, produced, invented or discovered during the first respondent's employment with the company, which, in the opinion of the company, may be capable of being used. The facts presented are not consistent with the relief sought and in my mind require evidence of clarification to determine the range of such relief. Besides, the thrust of the clause is restricted to the period of employment of the first respondent and not beyond. Counsel for the respondents correctly pointed out in his heads of argument that, apart from the enforcement of the restraint of trade, none of the other relief is seriously being pursued by the applicants. I agree.

[34] Prayer 9 seeks to interdict and to restrain the first to the third respondents for a period of 12 (twelve) months from 1 August 2016 from approaching any customer or supplier or prospective customer or supplier of the applicants. This relief cannot be granted as it is without base.

Conclusion

[35] The applicants have established proprietary interests worthy of protection, which, if not so protected by the enforcement of the restraint, may lead to the applicants suffering irreparable harm. Both first and second respondents have not shown that the period of the restraint is unreasonable. The second respondent will receive compensation for the remainder of the period of the restraint. He would therefore not be economically inactive and unproductive.

Costs

[36] In the result, costs should follow the event.

Order

[37] An order is granted on the following terms:

1. interdicting and restraining the first respondent, for a period of 12 months after termination of the first respondent's services with the second applicant, being until 31 July 2016:
2. from, either directly or indirectly and in any capacity, approaching any existing employee, client or future client of the second applicant for the purpose of providing, rendering or soliciting services or business that is allied or similar to the second applicant's business;
3. being engaged, concerned or interested or holding any material interest in, either directly or indirectly in any capacity, either on his own behalf or in conjunction with or on behalf of any person, firm, company, business concern or enterprise whatsoever in the relevant business (as defined in the Employment Contract annexed marked "FA6" to the founding affidavit) or in any business wholly or partly in competition with the relevant business:

4. directly or indirectly in any capacity, either on his own behalf or in conjunction with or on behalf of any person, firm, company, business concern or enterprise whatsoever:

4.1 soliciting or enticing or endeavoring to solicit or entice away from the service of the second applicant or any associated undertaking (as defined in the Employment Contract annexed marked "FA6" to the founding affidavit), any person employed by second applicant or any associated undertaking in any capacity whatsoever;

4.2 canvassing, soliciting or approaching, or causing to be canvassed or solicited or approached, for orders in respect of any services

provided or any goods dealt in by the second applicant or any associated undertaking, any person, firm, company, business concern

or enterprise whatsoever who is or was at any time during the period of 6 months immediately preceding the termination of the Employment

Contract a customer of or supplier to or in the habit of dealing with the second applicant or any associated undertaking or who is or had been during the said 6 month period negotiating with the second applicant for the supply of such services or goods;

4.3. interfering or seeking to interfere, or to take steps as may interfere with the continuance of supplies to the second applicant or any associated undertaking from any persons who are or who have been supplying components, materials, goods or services to the second applicant or to any associated undertaking at any time during 6 months period immediately preceding termination of the Employment Contract.

5. interdicting and restraining the second respondent, against payment of the sum of \$ 1,250 (British pounds) per month to the second respondent, until 31 December 2016, from:

5.1. entering into any business activity which competes directly or indirectly with the applicants, in particular utilizing the trade secrets or technology which is owned by applicants, or approaching any of the established clients of the applicants in order to procure or solicit orders in competition with the applicants;

5.2. selling or otherwise dealing in any products which are the same as or similar to any of the products within the applicants, alternatively, similar or in competition with the applicants or otherwise compete with their products;

5.3. from being employed or associated with any business where such employment or association enables such business to compete with the applicants.

6. Costs are granted on the scale as between party and party.

JJ MHLAMBI, AJ

On behalf of applicants:

Adv. Z.M. Navsa

Instructed by:

Phatshoane Henney Attorneys

Bloemfontein

On behalf of 1st, 2nd and 3rd respondent: Adv. S.J. Reinders

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