

COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: 47/IR/A/Jun00

In the matter between

Paarl Post Web Printers (Pty) Ltd

Applicant

and

**CTP Holdings Ltd
Republican News Agency**

**First Respondent
Second Respondent**

Reasons for the Tribunal's Decision To Award Costs to the Respondents

The respondents sought an order directing the applicant to pay their costs on the scale as between attorney and own client after the applicant filed a notice of withdrawal and indicating that the applicant did not consent to paying the costs of the respondents.

Background

On **13 April 2000** the applicant instituted an urgent application¹ for interim relief against the respondents.

According to the applicant the Registrar of the Competition Tribunal phoned Mr Rian Moore of Paarl Post Web Printers on **14 April 2000** and informed him that Paarl Post Web Printers would have to disclose the names of the publishers referred to in their filing affidavit. Mr Moore told the Registrar that this was not acceptable to the applicant because they were not, at that stage, prepared to expose the identities of the publishers. Mr Moore indicated that they might have to consider withdrawing the application for

¹ Note that in terms of the Competition Act an applicant for interim relief does not have to make out a case for urgency in order to obtain relief and the Rules provide fixed time periods for the filing of papers in such applications. If an applicant considers that relief is so urgently required that it would be prejudiced if these time periods were adhered to, it may on good cause shown request the Tribunal to reduce the time periods for the respective filings in terms of Rule 28(5). This is what the applicant sought in its Notice of Motion in this case and hence why we have referred to the application as having been sought initially on an urgent basis.

interim relief.

Unaware of all of this the Respondents' Attorney filed their answering affidavit on the points of urgency and points *in limine* on **20 April 2000**.

On **26 April 2000** Mr Rian Moore informed Mr Philip Valet, the Respondents' attorney, in a telephonic conversation that the applicant would not proceed with the matter on an urgent basis any more. There was some confusion about this date during the hearing and neither of the parties could confirm this date. However, the respondents' Attorney had sent a fax to the Registrar of the Tribunal on 26 April 2000 confirming the telephonic conversation on the same date. According to both parties it was also during this conversation that the parties agreed to meet on **10 May 2000** in Johannesburg with the view to negotiate a settlement.

Subsequent to this conversation the respondents filed their answering affidavit to the notice of motion within 15 business days on **10 May 2000** and also met with Post Paarl Web as was agreed upon. The respondents gave the applicants a copy of their answering affidavit at the meeting.

The applicant withdrew its application for interim relief on **14 June 2000** but did not tender to pay the respondents costs.

The complaint itself has not been withdrawn and we were advised that the Commission is presently investigating it, but cannot give us a date as to when it might be referred.

Discussion

The Tribunal has the discretion to decide whether to award costs at the end of an interim relief application or whether to reserve costs until the conclusion of the complaint referral proceedings. It might well be the case that a party loses on interim relief but succeeds at the complaint referral stage and the Tribunal at the conclusion of the complaint referral hearing might decide to award its costs for the interim relief application or not make an award of costs to either party. According to the authors of LAWSA an unsuccessful application for an interdict will not always lead to an applicant being mulcted for costs.²

In this case, as the applicant's decision to withdraw was based solely on the need to protect its witness's identities, the applicant requested that costs be reserved until the complaint is finally determined. Unfortunately for the applicant its conduct has not been consistent with this approach resulting in the respondents incurring unnecessary costs. Even though the conversation with the Registrar took place on the 14th April, the applicant took until 14 June 2000 to withdraw its application. The applicant's conduct in firstly bringing the application on the basis of urgency, then conceding it was not urgent

² See LAWSA Volume 3(2) First Reissue paragraph 401.

only after the respondents had filed their first set of papers on the 20th April, and then not timeously advising the respondents of their withdrawal, is of such a nature that the Tribunal was persuaded to order costs against them at this stage and not wait until the outcome of the complaint referral.

Conclusion

We have been asked to grant an order for costs on an attorney client basis. We do not need to decide whether this scale is appropriate as Rule 58 of the Tribunal Rules confines us to costs orders on a party and party scale.

Based on the above we order that the applicant pay the costs of the respondents on the scale as between party and party.

N.M. Manóim

2 October 2000

Date

Concurring: M. Holden, D. R. Terblance