

In the matter between:

UNIPLATE GROUP (PTY) LTD

Applicant

and

NEW NUMBER PLATE REQUISITES CC

Respondent

SUMMARY

BESTER, AJ:

Interdict-in this matter the Applicant sought, in the main application, final, alternatively interim, interdict relief against the Respondent. The relief sought, is founded in an alleged unlawful competition. More specifically, the Applicant complains of an alleged unlawful and intentional interference by the Respondent with the contractual relationship created by the Applicant's standard customer rental agreement.

In a counter application, the Respondent sought a stay of the main application pending a referral, in terms of section 65 (2)(b) of the Competition Act, 1988, to the Competition tribunal of an alleged issue regarding the Applicant's rental agreement. The issue sought to be refereed is whether that agreement is lawful, alternatively whether the exclusivity provisions of that agreement are prohibited and/or liable to be declared void, having regard to sections 5(1) and 8(1)(a), (c) and (d) of the Competition Act.

On behalf of the Respondent it was contended that a crucial issue in the determination of the application and counter-application is the enforceability of the Applicant's rental agreement and, in particular, the exclusivity provisions in terms of that agreement. The agreement, it is alleged, not only contravenes the mentioned sections of the Competition Act, but is in any event *contra bonos mores* under the common law and is therefore unenforceable.

The Respondent's defence to the main application is, among others, that the Applicant has not shown a prima facie right because;-

- (a) the Applicant's standard rental agreement is unenforceable for reasons of public policy and because it is in breach of the Competition Act;
- (b) the Applicant has not shown that the Respondent had, intentionally and without lawful justification, induced the Applicant's customers to commit a breach of their agreements with the Applicant.

The Court found that the Respondent, intentionally and without justification, sought to induce or procure customers of the Applicant to breach their contracts with the Applicant. Moreover, because of the Respondent's persistent denials of its direct or, at

the very least, indirect intent to induce such breaches, and because of its tenacious insistence the Applicant's agreements are in fact unlawful, it was held further that the Respondent, unless interdicted, will simply persist with its unlawful conduct.

The order was granted as follows:-

- (a) the issue as to whether the Applicant's standard agreement concluded with its customers, alternatively the issue as to whether the exclusivity provisions in that agreement is to be prohibited or declared void in terms of the Competition Act, 1998 is referred to the Competition Tribunal to be considered on the merits in terms of section 65 of the Act;
- (b) pending the final determination of the issue so referred:-
 - (i) the respondent is interdicted and restrained from unlawfully and intentionally interfering with the Applicant's contractual relationship with its customers by soliciting, inducing and persuading and by attempting to solicit, induce or persuade any of such customers to sever and/or in any manner whatsoever to breach their agreements with the Applicant;
 - (ii) the Applicant's main application for final interdict relief under case number 25718/2012 is postponed sine die;
- (c) The costs of this application will stand over for final determination when the Applicant's main application for final relief is heard.