

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 24764/2017

In the matter between:

LEAD LAUNDRY AND CATERING (PTY) LTD

Applicant

And

CHETTY, PERAGALATHEN

First Respondent

MEGA-MELVILLE EQUIPMENT GROUP AFRICA CC

Second Respondent

SUMMARY

SPILG, J:

RESTRAINT OF TRADE

- Service technician subject to a restraint which provided that some 20% of the employees monthly remuneration would be apportioned as payment by it to the employee for the restraint. On breach the amount would have to be repaid. On face of it overreaching and offensive
- Case however decided on limited issue raised by respondent of no protectable interest.
- However packaged with regard to extent of training and job functioning the employee was a service technician. While there was a protectable interest in customer connections the reliance on confidential information in the form of technical knowhow on sophisticated equipment and business methodology was on analysis misplaced- in part the interest was that of the manufacturer of the product and in any event the employee did not pose a threat to such interests. *Reddy v Siemens Telecommunications (Pty) Ltd* 2007(2) SA 486 (SCA) applied

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ATTORNEYS PROFESSION

- Duty to client and duty to profession. Purpose of restraint, the pay-back provision and its potential of indenturing amounted to an invasion of constitutional rights bearing in mind that on papers before the court it amounted to a diminution of salary by way of forfeiture and predetermined penalty.
- The issue of the threshold beyond which an attorney may go when drafting a contract where it is evident that there is unequal bargaining power and potential for abuse and overreaching impacting on constitutional rights in the present case required consideration by the attorney's professional body. Referral of drafting of agreement to law society if done by an attorney.