

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

Case No: 26039/2017

In the matter between:

PAM GOLDING PROPERTIES (PTY) LIMITED

Applicant

And

BRADFORD MORGAN NEILLE

Respondent

SUMMARY

RESTRAINT OF TRADE- ESTATE AGENTS

Protectable interest.

Exists in customer connections and lists. However the residential property market does not have specific clients either on the supply or demand side and neither the sellers nor the buyers are beholden to any one estate agent save re sole mandates. This is because there is a regular turnover of prospective purchasers and sellers whose individual activity in the market is for a limited period.

Protectable interest – duration and area

The two stage enquiry of firstly ascertaining whether there is a protectable interest by reference to the nature of the interest allegedly threatened and then determining whether the restraint should be fully or only partially

enforced as to area and duration may, in many cases, not account for the multi-faceted considerations involved regarding the nature of the interests, the geographic extent and the duration- a protectable interest in cases such as the present one can have no value beyond its useful lifetime or geographic reach.

Protectable interest - Onus or evidential burden

It may be unnecessary in many cases to resolve the ongoing debate of onus and it may come down to the burden of adducing evidence in rebuttal to support an issue of law as opposed to a full onus in the ordinary sense. *Pillay v Krishna and Another* 1946 AD 946, *Mohunram and Another v National Director of Public Prosecutions and Another (Law Review Project as Amicus Curiae)* 2007 (4) SA 222 (CC) and *Centre for Child Law v Hoërskool Fochville and Another* 2016 (2) SA 121(SCA) considered.