

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 38147/2021

(1) REPORTABLE: ~~YES~~ / NO  
(2) OF INTEREST TO OTHER  
JUDGES: ~~YES~~ / NO  
(3) REVISED.

In the matter between:

**SCOIN TRADING (PTY) LTD**

Applicant

And

**THE ART OF MORE GROUP (PROPRIETARY) LTD**

First Respondent

**CHARL ALLAN WILLIAMS**

Second Respondent

**JOHN DE SOUSA**

Third Respondent

---

**JUDGMENT**

---

**MAKUME, J:**

- [1] This is a restraint of trade application. The Applicant approached this court on an urgent basis seeking interim relief restraining the Respondents from contacting one of its employees namely Thale Cook (Cook) and solicit from him confidential details relating to the Applicant's business.

- [2] The Applicant and the first Respondent are competitors in the business of selling of coins and medallions. Cook s an employee of the Applicant.
- [3] The second Respondent is a director of the first Respondent and was formerly in the employment of the Applicant. The third Respondent is in the employment of the first Respondent or has some business relationship with first Respondent as a broker in the coin trade.
- [4] The Applicant through Mr Rael Demby its Chief Executive Officer states that he noticed over a period that a large proportion of coins being withdrawn from the Applicant's facilities. He started suspecting persons with knowledge of the Applicant's business such as employees, ex-employees or brokers. He investigated this and was able to establish a link to the second Respondent.
- [5] On the 6<sup>th</sup> August 2021 Cook his employee confirmed that he has been selling confidential information to the third Respondent on behalf of the first and second Respondents.
- [6] On the 9<sup>th</sup> August 2021 Cook deposed to an affidavit before an independent attorney relating the *modus operandi* between him and the third Respondent. In his affidavit Cook says the following:
- [3] He knew that I had access to Scoins clients, including those who had coins stored in their safe custody facility and was particularly interested in large portfolios and those who wanted to withdraw them as well as details of clients and prospective clients who wanted to buy or sell coins to facilitate concluding transaction with them.
- [4] He told me that he was working with Charl Williams and the Art of More and I would be remunerated by them for providing these details as they would transact with these clients of Scion."

[7] Cook later received payment in the amount of R2 500.00 on the 22<sup>nd</sup> April 2021 and R500.00 on the 23<sup>rd</sup> July 2021 these payments were made after Cook had furnished to the third Respondent names of clients of the Applicant, namely:

- i) Berrick Robinson
- ii) Von Brackel
- iii) Thameer Hassan
- iv) Cecil Corringam
- v) Bluger Family Trust
- vi) Christian Steyn
- vii) Johann Els

[8] The transaction relating to the above clients were also picked up in the Whatsapp messages down loaded from Cook's cell phone. The Whatsapp messages clearly demonstrate discussions between Cook and the third Respondent on various days amongst others is where Cook ask about payment to him whereupon third Respondent replies as follows:

"Charl will give me cash and I will go straight to ATM and deposit yours bud."

Then also appear an exchange where Cook asks the third Respondent:

"Cook: Is Charl delaying with Steyn's payment" whereupon third Respondent replies as follows "I will sort it out bud."

[9] The list goes on and on clearly demonstrating a pattern of transactions aimed at taking the Applicant's clients.

[10] On the 26<sup>th</sup> August 2021 Cook made an about turn and deposed to an affidavit denying the contents of his affidavit. This is after Cook had a meeting with the second Respondent and told him how he was threatened with arrest at a meeting with Mr Demby and others on the 6<sup>th</sup> April 2021 and also that he signed an affidavit which was never read to him. He also distanced himself from the



whatsapp messages and told second Respondent that his cell phone was unlawfully taken from him and that he suspects that the messages were edited.

[11] In the final analysis so says Mr Williams that Cook and De Sousa the third Respondent denied that they ever exchanged details of the Applicants business transactions, safe custody deposits or clients' details.

[12] In his turn about affidavit in support of the second Respondent Cook says that he and De Sousa the third Respondent have been friends for several years their families socialise together. He denies having given the information that is in his affidavit made to the Applicant. He says that Demby did not ask him he interrogated him for six hours and threatened him with arrest.

[13] In paragraph 21 of his affidavit Cook says that the money he received from De Sousa is money he was owed by De Sousa when his wife fell pregnant. There are no details as to when that took place about the loan.

[14] Strangely enough in his affidavit Cook does not respond to the evidence about the whatsapp messages whether same are true or not he instead choses to rely on the Popi Act and says that none of the persons mentioned in the whatsapp messages have given him consent to have their personal information including their names and purchases disclosed.

[15] It is clear that the Respondents defence is wholly based on the affidavit made to them by Cook. Mr Cook's credibility is now seriously under a spot light. As I indicated during the hearing I doubt if he will survive the mildest cross-examination in explaining himself about the two affidavits. If Mr Cook was threatened as he wants the court to believe then why did he go and sign an affidavit three days later when he could have sought assistance with the Police or his own attorney.

[16] Counsel for the Respondent did not advance any argument in support of the contravention of the Popi Act. It was left open like that. I cannot find any thread

of evidence that Cook was threatened nor was the whatsapp messages taken without his consent.

[17] His retractions and denials are belied by what he says to Mr Demby in a text message when he said the following:

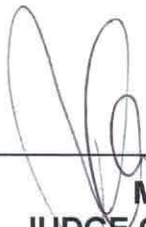
"thank you Rael I appreciate that I have made the hugest mistake of my life and also have to face the consequences of my actions."

[18] The mistake that Cook refers to in this text message of 11<sup>th</sup> August 2021 is his giving information about Applicant's clients to the Respondents and he is sorry about it.

[19] The Applicants seek interim relief and having heard counsel and read the papers I am persuaded that the Applicant has made out a prima facie case for interim relief and has satisfied all its requirements.

[20] In the result I make the draft order marked "X" attached to the papers an order of court as amended.

Dated at Johannesburg on this 14 day of September 2021

  
\_\_\_\_\_  
**M A MAKUME**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

DATE OF HEARING : 02 September 2021  
DATE OF JUDGMENT : 14<sup>th</sup> September 2021

FOR APPLICANT : ADV N Segal Sc  
INSTRUCTED BY : Gary Segal Attorneys

FOR RESPONDENT : Adv Lisa Metzger  
INSTRUCTED BY : JM De Villiers Attorneys