IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

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

20/11/2014
DATE

SIGNATURE

CASE NUMBER: 66918/13

DATE: 20 November 2014

ANDRE GRÜNDLINGH	Applicant
V	
ULRICH OSMUND SCHÜLER	First Respondent
ULRICH OSMUND SCHÜLER N.O. (In his capacity as trustee of the Ulrich Schüler Familie Trust)	Second Respondent
SHERILL ANN SCHÜLER N.O. (In her capacity as the Ulrich Schuler Familie Trust)	Third Respondent
CHRISTIAN EDWARD SCHÜLER N.O. (In his capacity as trustee of the Ulrich Schuler Familie Trust)	Fourth Respondent
LEONIDAS CHRISTOFOROS GERONDOUDIS	Fifth Respondent
NICOLAS LAMBRAKIS	Sixth Respondent
DEREK JOHN MICHAEL	Seventh Respondent
THE TRUSTEES OF THE GRECO FAMILY TRUST N.O.	Eighth Respondent
BETTAGAMING US (PTY) LTD	Ninth Respondent
BETTAGAMING FREE STATE 1 (PTY) LTD	Tenth Respondent

JUDGMENT

STRYDOM AJ:

Introductory remarks

[1] The applicant seeks a final interdict to preserve a right of first refusal to purchase certain book making licenses located at Silverton, Secunda and Bloemfontein.[1] The applicant also seeks auxiliary relief that will provide him with certain documents and information relating to the ninth and tenth respondents to inform his decision whether or not to purchase the branches in question.[2]

[2] On 26 November 2013 the respondents filed a counter application to the applicant's application. It was common cause between the counsels who represented the parties that in event I grant the relief sought by the respondents, the relief sought by the applicant should be dismissed. Likewise, if I grant the relief sought by the applicant, the relief sought in the counter application should be dismissed.

[3] Counsel for both parties, Adv. Oosthuizen, SC, appearing for the applicant and Adv. Symon, SC, for the respondents, are in agreement that this matter turns on a single issue, being a proper interpretation of Clause 5.10 of a written agreement between the parties.

Relevant background facts

[4] The common cause background facts of this matter can be summarised as follows:

4.1 From about 1996 up until July 2010 the applicant and the first respondent were business partners. Their joint ventures included *inter alia* the conduct book making outlets, operated by the parties at branches (***"takke"***); which bookmaker's licenses was held by a close corporation by the name of Betsa CC (hereafter ***"Betsa"***). The

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1 See: Prayer 1 of the Notice of Motion, page 2 of the Record.
2 See: Prayer 2 of the Notice of Motion, page 3.

bookmaking branches were located at Silverton, Secunda, Bloemfontein, Nelspruit, Witbank, Germiston, Malelane and Burgersfort.

4.2 During 2010, the applicant and the first respondent (*"the parties"*) decided to terminate their joint ventures and entered into a written agreement (hereafter ***"the agreement"***), dated 2 September 2010,[3] in terms of which the parties *inter alia* divided the aforesaid bookmaker's licenses, held by Betsa, between them.

4.3 The first respondent transferred the licenses of the branches to which he became entitled to, being Silverton, Secunda and Bloemfontein, into the name of a close corporation by the name of **US Betting CC**,[4] of which he held 100% membership interest at the time. The bookmaker's licenses in respect of the latter branches is the subject matter of the present litigation.

4.4 During or about November 2011, the first respondent sold 80% of his membership interest in US Betting CC to the fifth, sixth, seventh and eight respondents, each of whom acquired 20% of the membership interest in the latter close corporation. The first respondent retained 20% membership interest in the US Betting CC.[5] The change in the membership interest in US Betting CC was advertised, in accordance with the requirements of the Mpumalanga Gambling Act, 1995.[6]

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3 The effective date of the agreement being 26 July 2010.

4 There is no evidence in the affidavits of the parties that they at any relevant time intended to hold the book makers licenses, (relating the branches) in their own name, prior or after the agreement. There is also no evidence that the first respondent at any relevant time transferred the licenses, to which he became entitled to in terms of the agreement, in his own name. Similarly there is no evidence before me that the applicant at any relevant time transferred the licenses, to which he became entitled to, into his own name.

5 See: Answering affidavit at pages 113 to 114 of the Record, paragraph 12.7 thereof.

6 See: Founding affidavit, p 80 of the record.

4.5 Sometime after the first respondent sold 80% of his membership interest in US Betting CC, the latter close corporation was converted into a limited liability company, which conducted business under the name and style of **US Betting (Pty) Ltd.** The name of the latter company was again changed into **Bettagaming US (Pty) Ltd**, which is the ninth respondent in the present matter.[7]

4.6 During or about October 2012 the Bloemfontein bookmaking license, held in the name of Bettagaming US (Pty) Ltd, was transferred to **Bettagaming Free State 1 (Pty) Ltd**, being the tenth respondent in this matter. It is averred by the first respondent that the transfer occurred for no consideration.[8]

Point in limine

[5] The respondents raised a point *in limine,* (argued by the parties without separation thereof from the merits) that relief sought by the applicant is premature, since he should have followed the pre-emptive provisions of the *Promotion of Access to Information Act, 2000* (No. 2 of 2000, hereafter *"the Act"*), before he was entitled to approach the court.

[6] This point was raised *lazy fair* by the counsel for respondents and not fully argued. The applicant's counsel also did not argue the point in full, but submitted that the requirements of the act is in addition to private agreements for access to information, which is an implied term of the agreement between the parties.

[7] Part 3 of the Act give effect to the right in *section 32(1)(b) of the Constitution*, by providing in section 50 that the *"requester"* must be given access to any record of a private body:

> ***"if the record is required for the exercise or protection of any rights; the procedural requirements lay down in the act have been complied with; and***

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7 See: Answering affidavit at page 114 of the record, paragraph 12.8 thereof.
8 See: Ibid, paragraph 12.10, thereof.

access to the record is not refused on the grounds listed in chapter 4 of part 3 of the said Act".

[8] In terms of the Act private bodies are subjected to a less stringent standard of transparency than public bodies. All requirements, which is imperative, relates to the obligation of the private body holding the said information and not to the requester.

[9] I perused the Act, and could find no provision in the Act that prohibits parties from agreeing, expressly, or by implication (tacit or legally), that they are entitled to information from the other party.

[10] Furthermore, there is no provision in the Act that compels a person who contracted with another person that he will be entitled to information under certain circumstances to first exhaust the remedies of the Act to obtain the information before he would be able to apply to court to enforce his right to information.

[11] Accordingly the respondents' *in limine* plea is dismissed.

Interpretation of contracts

[12] The hermeneutical principles relating to the interpretation of contracts underwent a worldwide evolution over the past 10 years. The present relevant legal principles in our law, to be applied when interpretering a contract, were succinctly formulated in *Natal Joint Municipal Pension Fund v Endumeni Municipality*[9] and confirmed in the matter of *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk.*[10]

> *" ... the present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision*

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9 See: 2012(4) SA 593 (SCA) at par [18].
10 See: 2014(2) SA 494 (SCA).

or provisions in the light of the document as a whole and in circumstances intended upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provisions appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is that to be referred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert, and guard against, the temptation to substitute what they regard as reasonable, sensible or business-like for the words actually used. To do so in regard to a statute or statutory instrument is to cross the line between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The "point of departure is the language of the provision itself", read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."

Clause 5.10 of the Agreement

[13] I now turn to construe clause 5.10 of the agreement between the parties.

Clause 5.10 of the agreement reads as follows:[11]

"Die partye kom ooreen, indien hul enige van die takke wat hulle behou, in die toekoms wil verkoop, die ander lid eerste opsie het om slegs die bedrag te ewenaar om sodanige tak te koop. Daar moet wel voldoende bewys wees van sodanige "Offer to purchase" en die kondisie ook in die "Offer to purchase" moet staan."

[11] See: Agreement, clause 5.10 at page 62 of the record.

[14] Before construing the aforesaid clause due cognisance should be taken of the context and background of the entire agreement within which clause 5.10 was formulated. The following is noteworthy in this regard:

14.1 The agreement was entered into between the applicant and the first respondent, acting in personal capacity. *Abudandum cautella*, no legal person (in particular Betsa), through which the parties conducted their joint ventures, was a party to the agreement.

14.2 It is recorded in the preamble of the agreement[12] that the applicant and the first respondent[13] each hold 50% (according equal) membership interest in various closed corporations.[14] The preamble further recorded that the applicant and the first respondent intended to rearrange their interest[15] in the various closed corporations.[16]

14.3 In clause 5.1, of the agreement, the parties agreed to divide ***"die boekmakers lisensies wat geregistreer is in die naam van BETSA BK"***[17] in the manner and form set out in the rest of clause 5. The parties also agreed in the latter clause to co-operate in order to transfer the relevant licenses to the party ***"wie dit toekom"***.[18]

14.4 Clauses 5.1.1 and 5.1.2 of the agreement divides the bookmaker's licenses, between the parties (both being natural persons) while it again records that the bookmaker's licenses to which the applicant became entitled to were registered in the name of Betsa (a legal person).

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12 See: Paragraph A, page 53 of the record.
13 Both parties being natural persons.
14 See: record page 53.
15 Which can only refer to their membership interest in the relevant close corporations
16 See: Ibid, paragraph B.
17 All of which was registered in the name of Betsa CC (a close corporation). Compare: page 57 of the record.
18 See: page 57 of the record.

14.5 Clause 5.3 of the agreement records that the applicant will be entitled to retain Betsa,[19] and will become the sole holder of the membership interest in the latter close corporation. The first respondent undertook to sign all documents to give effect to the agreement between the parties.

14.6 The agreement is silent on the manner in which the first respondent was required to acquire the bookmaker's licences in respect of the branches to which he became entitled to by virtue of the agreement between the parties. There is no specific clause in the agreement which provide that the bookmaker's licenses in respect of the branches should be transferred to him personally, or to a legal vehicle of his choice, be it a trust, or other company. It follows however from the manner in which the parties gave effect to the agreement, that they at all relevant times intended to hold the licenses, to which they became entitled to, in the name of a legal person and not in their own names.[20]

[15] The latter observations provide the context in which clause 5.10 were set and form the background for interpretation thereof.

Right of first refusal

[16] Although the parties used the terms *"eerste opsie"* ("first option") in clause 5.10 to describe the right they gave to each other, it is clear from the wording that they did not intend that each party should have an option[21] as defined in law to purchase.

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19 See: Clause 5.3 at page 59 of the record.

20 Counsel for both parties agreed that certain clauses alludes to this conclusion (ie clause 19.1 of the agreement), and that this was the manner in which the parties gave effect to their agreement.

21 An option is a contract to keep a substantive contract open for a specified or reasonable time

[17] On the wording[22] the parties granted each other a right of first refusal.[23] This much is common cause between the parties, in respect of the said right.

[18] The action of any of the parties that triggers the right of first refusal is, according to a literal reading of clause 10.5, the intention of any of the party to sell (***"verkoop"***) any of the branches which they retained (***"behou"***), in terms of the agreement. The applicant and respondents vehemently contested the meaning ownership of bookmaking licenses / branches; the meaning of the terms *retain, sell* and more in particular what action of either parties triggers the right of first refusal.

Applicant's construction

[19] The applicant urged me to find that the parties intended, by the term ***"behou"*** (retain) in clause 5.10 that they will receive direct or indirect *"ownership"* of the bookmaker's licences of the relevant branches. Direct ownership, being that a party will hold the bookmaker license in his own name. Indirectly ownership being, ownership of membership interest in a close corporation or sharers in a company that holds a bookmaker's license. This in effect means, according to the applicant, *retention of control and/or beneficial ownership.* To do otherwise, according to the applicant will be unbusinesslike and will not lead to a proper construction of clause 5.10.

[20] The applicant argued further that the term ***"verkoop"*** should be construed to mean the direct opposite of ***"behou"***. On this argument the term "verkoop" (sell) should not be construed as a sale contemplated in the strict common law meaning of a purchase agreement, but in a

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22 *"die ander lid eerste opsie het om slegs die bedrag te ewenaar om sodanige tak te kan koop".*

23 This right is in the context of the sales agreement referred to as "a right of pre-emption". See: Van der Hoven v Cutting 1903 DS 299. There is a difference between a pre-emption right and a right of first refusal. The obligation of a party against who a right of pre-emption operates needs only to grant the holder of the right the opportunity to make an offer to purchase when he intends to sell his/her property. He is not bound to accept that offer if he receives a higher offer from a 3rd party. The holder of the pre-emption right has no further right to meet the offer of the 3rd party in such The right of first refusal gives the latter right to the holder thereof.

broader sense to mean "dispose of a branch" (tak), either directly or indirectly by either of the parties.

Respondents construction

[21] The respondent on the other hand insisted that the correct interpretation of clause 5.10 is firstly that the parties only intended that the *"sale"* of a branch ("tak"), should occur within the common law meaning thereof.

[22] At common law the *essentialia* of a sales agreement includes: (1) a "*buyer*" and a "*seller*", (2) the *merx* (the subject matter of the sales agreement), (3) the *pretium* (the price) and (4) the mutual consent of the contracting parties.[24] It was emphatically argued, that if there is no price there is no sale. The respondents placed reliance in this regard on Voet[25] and the matter of *Treasure-General v Ormund.*[26]

[23] According to the argument of the respondents, only in event, that ownership of a branch is intended to be transferred to a third party by sales agreement as contemplated in the common law; the right of the parties of first refusal is triggered. If the license of a branch is transferred for no consideration (ie. as a donation),[27] the agreement is not a sales agreement and do not fall within the ambit of clause 5.10.

[24] Secondly, the respondents urged that I should apply the distinction in law between members (shareholders and/or members of a close corporation) and a legal entity (close corporation and/or companies) settled in our law and adhered to countries which applies the common

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24 Reference in this regard was made Normans, Law of Purchase and Sale in South Africa, 5th Edition, chapter 1, at 121 thereof.

25 See" (Gane's translation) Voet 18.1.23, Vol III at pages 277-279.

26 2 SC 127 and Westinghouse Bank and Equipment (Pty) Ltd 1986 (2) SA 555 (A) at 574 B-C.

27 In this regard the counsel for respondents relied on Pothier, Obligations, SS 6-8, cited in Christie's Law of Contract, 6th Edition on page 165 and Grotius 3.4 14.1 (Lee's translation volume 1 page 359, cited in Norman's Law of Purchase and Sale in South Africa, 5th Edition, page 2 at 112).

law tradition (the United Kingdom) and hibried legal systems, similar to our law in the USA (being the Companies laws of Texas).

[25] The distinction between members of a legal entity and the legal entity itself is trite in our law. The *locus classicus*, is probably the matter of *Dadoo Ltd and Others v Krugersdorp Municipal Council*.[28]

Ownership of the bookmaker's licenses

[26] The manner in which the parties phrased the division of the bookmaker's licenses which was operated at the branches, by necessary implication, leads to the conclusion that they made no distinction between themselves and the legal person, Betsa, which ultimately legally held the licenses. This so because the parties divided the licenses (by reference to the branches) between the two of them, as if they were the joint owners of the licenses, i.e. the licenses were registered in both of their names. There is no evidence that the parties were at any relevant time the direct owners of the bookmaker's licenses of the branches. The necessary legal consequence is that the parties considered the legal entity which held the licenses (in respect of the branches) as there *alter ego*.

[27] My view is *inter alia* fortified by clause 5.9 where the parties agreed that:

> ***"Die partye kom ooreen dat die personeel van elke tak deur die party behou moet word wie die tak oorneem alternatiewelik indien die betrokke party verkies om personeel in te kort sal sodanige party self verantwoordelik wees vir die koste daarvan insluitende enige "retrenchment" koste en enige ander eise wat daaruit mag voortspruit."***

[28] The situation contemplated by the parties in the quoted clause[29] is legally improbable for the following reasons: All the licenses, in respect of the different branches were held in the

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[28] 1920 530 (TS).

name of Betsa. Since the licenses of the branches in respect of which the applicant became entitled to, by virtue of the agreement, was in the name of Betsa, no transfer of ownership in respect thereof was required. It follows that although the applicant became the "owner" of the branches (bookmaker's licenses) no real transfer of ownership of the branches occurred in respect of the applicant. The Labour Act, 1995 (Act No. 65 of 1995) regulates retrenchment of employees and the transfer of employees upon change of ownership of business and the employers rights in terms thereof. The employer, being the legal entity Betsa would have been the person who incurred liability if employees were retrenched as a result of the restructuring. The applicant and the first respondent notwithstanding the aforesaid legal position, undertook to be personal liable for costs of retrenchment if any employee should be dismissed due to the division of branches between them.

[29] As indicated above the common intention of the parties which appear from a proper interpretation of the contract is that they did not intent to hold the relevant licenses in a narrow legal sense in their own name. This also holds good for the transfer of the bookmaker's licenses to the legal vehicle designated by the first respondent, being US Betting CC. The elected legal vehicles which held the bookmaker's licenses, serving as the parties alter egos, necessitate the inference that the key component of the *"ownership"* which the parties acquired in terms of the agreement is the effective control by a party of a branch to which a bookmaker's license relates. It follows further by necessary implication that the parties intended that there should be no legal veil between them and the legal persons which hold the licenses on their behalf.

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[29] Other clauses (*vide inter alia* clauses 5.2.1; 5.2.1; 15.4; 5.6) provides for division of costs between the parties.

[30] Consequently by virtue of the agreement the parties did not only receive the bookmaker's licenses in respect of the branches but the full right, title in and to the branches in respect of the bookmaker's licenses. The ownership of the parties thus stated, (with cognisance of the fact the ownership legally vested at all relevant times in the name of legal persons), in fact relates to effective control of the bookmaker's licenses and the branches in respect thereof.

[31] In view of my finding, the distinction between a legal person and its members, and the separate ownership of the legal person, relied on by the respondents, finds no application in the present matter.

Sales agreement as trigger

[32] On proper reading of clause 5.10 of the agreement the parties expressly intended the second sentence to qualify the parties' right of first refusal by making it subjective to ***"bewys van sodanige "Offer to purchase" in die kondisies ook in die "Offer to purchase".*** Counsel for the applicant urged me to construe the agreement in "a normal businesslike manner", and more in particular that the phrase *"enige takke wat hulle behou"* the counter side of the phrase *"in die toekoms wil verkoop"* is. The reason for this is that retention of ownership stands directly in opposition to estrangement of ownership. On this line of argument the applicant's right of first refusal arises the moment the first respondent disposes his right, title and interest in any manner to a third party.

[33] This however not wat the parties contemplated in clause 5.10 of the agreement. It is in my view too wide construction to construe the word *"verkoop"* (sale) to include any disposal of a party's right, title and interest in and to the bookmaker's license situated at the branches. Logically disposal of any nature stands in direct opistion to retain ("behou"). Disposal of any

nature by necessary implication also includes a mortis cause testamentary disposal. I am of view that the parties did not intend the clause to have such a wide meaning.

[34] Within the context of clause 5.10 and the interpretation of the words used by the parties, a party's right of first refusal is limited to a sales agreement. This is so because the parties themselves only refer to "verkoop" as an "offer to purchase". In normal event a sales agreement can be separated into two components. Firstly, an offer to purchase and, secondly, an unconditional acceptance of that offer. A party's right of first refusal is limited by clause 5.10 to the second component, being an unconditional exception of the terms and conditions of the sale of a branch offered by a third party.

[35] It follows by necessary implication that in event any of the sales agreements of the legal entities, which the parties viewed as their alter ego, have the effect that such a party looses his effective control and or share the control of a bookmaker's license which relates to a branch, the other parties right to first refusal is triggered.

[36] It follows further by necessary implication that the applicant's right of first refusal arose the moment the first respondent made, or received an offer to purchase any of his membership interest in to US Betting CC in November 2011. It is in my view neither here nor there what name changes US Betting CC underwent and which restructuring endeavours it later engaged in whether it was for personal gain, or for the gain of any company, be it personal or in order to avoid taxation.

Legally implied right to information

[37] The applicant seeks, as part of his remedy against the respondents, access to information in order to make an informed decision whether or not to exercise his right of first refusal. It follows by necessary implication that a party would not be able to make an informed decision

whether to purchase a branch by meeting an *"Offer to purchase"* and accept *"die kondisies ook in die "Offer to purchase"*[30] if a party is not granted access to the information of the other party.

[38] In clause 11.1 and 11.2 of the agreement the parties expressly based their agreement on good faith (bona fides) and more in particular recorded that the restructuring is done in good faith[31] and that each party will at all times[32] give his full co-operation[33] to implement the agreement.

[39] In view of the latter considerations I find that the right to information, as described, is a legally implied term of each party's right of first refusal.

[40] It is trite law that in motion proceedings the affidavits of the parties serves both as pleadings and evidence on their behalf. It is further trite that if a party intends to rely upon a term implied by law in a contract,[34] the implied term must be specifically pleaded.[35] The respondents contended that the applicant failed to do so. This submission, is with due respect, incorrect. The applicant specifically averred in paragraph 63 as follows:[36]

> *"In the letter, the attention of the respondents are draw to the fact that I am, as holder of a right of first refusal, legally entitled to all information pertaining to the right, title and interest in the Silverton, Secunda and Bloemfontein bookmaker's branches and specifically to ownership of the shareholding and right, title and interest in any close corporation or*

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30 As termed by the parties in clause 5.10 page 62 of the Record.
31 See: page 67 of the Record, ***"bona fides en in goeie trou"***.
32 Ibid, ***"ten alle tye"***.
33 Ibid, ***"volle samewerking"***.
34 Although there is a difference between and agreement and a contract, I use the term agreement in this judgment within the meaning of a legally binding contract.
35 See in general Sishen Hotel (Edms) Bpk v SA Yster & Staal Industriële Korp Bpk 1987 (2) SA 932 (A) at 948-949.
36 See: Page 32 of the record.

company in which the first respondent may choose to hold his interest in the said bookmaker's branches."

[41] In my view the latter evidence is sufficient to constitute a proper plea of an implied right to information of the applicant's right of first refusal.

Relief sought

[42] The applicant seeks a final interdict against the respondents as well as auxiliary relief to information in order to ascertain whether to exercise its right of first refusal. In order to succeed with the relief sought the applicant should also meet the requirements set for a final interdict. There are three requisites for the grant of a final interdict, all of which must be present:[37]

(a) A clear right on the part of the applicant;

(b) Actual infringement (sometimes referred to as actual committed injury) on the clear right or a reasonable apprehension by the applicant that such an infringement will occur;

(c) The absence of any other satisfactory alternative remedy available to the applicant.

[43] The parties are *ad idem* that clause 5.10 of the agreement created a right of first refusal for both the applicant and the first respondent. It follows that the applicant has a clear right.

[44] I found above that this right is triggered in event any of the parties receives or make an offer to purchase in respect of the book makers branches which he received by virtue of the agreement. In accordance with my findings above the first respondent already infringed on

37 See: Erasmus (Van Loggenberg & Farlam), Superior Court Practice, pp E8-6C to E8-8.

the clear right of the applicant during or about November 2011 when it sold 80% of its membership interest to third parties. The applicant demonstrated that it has a reasonable apprehension of further infringement on its clear right, *inter alia* by the admitted estrangement of the Bloemfontein bookmaker's license by Bettagaming US (Pty) Ltd to Bettagaming Free State 1 (Pty) Ltd in October 2012, allegedly for no consideration. It might well be that the donation of the Bloemfontein Branch of the license held by Bettagaming US (Pty) Ltd up until 2012, was allegedly for no consideration and done only for a tax relief for the Bettagaming US group. This do no mean that the agreement, might be simulated and could be construed as an offer to purchase notwithstanding that it was couched in terms of a donation. I am not expressing any view in this regard, because (a) the agreement is not before me; and (b) I found that the initial sale of the membership interest in US Betting CC, by the first respondent, to four third parties prior to November 2011, triggered the right of first refusal of the applicant.

[45] I am of view that the applicant also meets the last requisite for the grant of a final interdict, which is that there is no satisfactory alternative remedy available to him. The respondents argued that an alternative remedy of damages is available to the applicant. The facts stated by the respondents, together with the admitted facts of the applicant's affidavit, militate against such finding. The applicant seeks information from the respondents in order to make an informed decision whether it should exercise its right of first refusal. No remedy of damages can serve as an alternative for this relief.

ORDER

After having heard the parties, and considering the evidence presented by them in their affidavits, the following order is made, upon the findings and considerations advanced above:

1. That, pending the election of the applicant as to the exercising of his right of first refusal within 30 days from the respondents delivering the documentation and information required in terms of this order, the respondents be interdicted from any and all of the following acts:

    1.1 Selling or in any way disposing of any right, title and interest it may hold in the Silverton, Secunda and Bloemfontein bookmaker's branches;

    1.2 Entering into or proceeding with any transaction relating to selling or in any way disposing of their right, title and interest in any shares they may hold in the ninth and tenth respondents;

    1.3 Disposing of any assets whatsoever of the ninth and tenth respondents.

2. That the first respondent be ordered to provide the following information under oath to the applicant within 5 days of date of the order being granted:

    2.1 With regard to the ninth respondent:

        2.1.1 What types or classes of shares have been issued since its inception;

        2.1.2 Who are the current shareholders;

        2.1.3 What percentages of the said shares are held by each shareholder;

        2.1.4 What are the different types or classes of shares being held by each of the shareholders;

        2.1.5 When were each of the shares so transferred;

        2.1.6 At what price was the shares purchased by each shareholder;

2.1.7 What was the complete terms and conditions pertaining to the transaction in terms whereof the shares were obtained by the shareholders;

2.1.8 What assets are currently owned by the ninth respondent;

2.1.9 What are the current liabilities of the ninth respondent;

2.1.10 In what name or entity is the ownership of the Silverton, Secunda and Bloemfontein bookmaker's branches currently held;

2.1.11 When the shares in the ninth respondent were obtained by the shareholders, were they informed of the right of first refusal of the applicant?

2.2 With regard to the tenth respondent:

2.2.1 What types or classes of shares have been issued since its inception;

2.2.2 Who are the current shareholders;

2.2.3 What percentages of the said shares are held by each shareholder;

2.2.4 What are the different types or classes of shares being held by each of the shareholders;

2.2.5 When were each of the shares so transferred;

2.2.6 At what price was the shares purchased by each shareholder;

2.2.7 What was the complete terms and conditions pertaining to the transaction in terms whereof the shares were obtained by the shareholders;

2.2.8 What assets are currently owned by the tenth respondent;

2.2.9 What are the current liabilities of the tenth respondent;

2.2.10 When the shares in the tenth respondent were obtained by the shareholders, were they informed of the right of first refusal of the applicant?

3. That the first respondent be ordered to provide copies of the following documentation to the applicant within 5 days of date of the order being granted:

3.1 With regard to ninth respondent:

3.1.1 The entire range of share certificates issued in respect of shareholding since its inception;

3.1.2 The form CM42 alternatively CoR36.1 and CoR36.2 in respect of any changes in shareholding ever submitted for registration at the offices of the Companies and Intellectual Property Commission (CIPC).

3.1.3 The CoR9.1 and CoR15.2 or similar documents submitted to Companies and Intellectual Property Commission (CIPC) pertaining to any and all name changes registered;

3.1.4 All and any shareholders agreements concluded, whether in existence, cancelled or expired;

3.2 With regard to the tenth respondent:

3.2.1 The entire range of share certificates issued in respect of shareholding since its inception;

3.2.2 The form CM42 alternatively CoR36.1 and CoR36.2 in respect of any changes in shareholding ever submitted for registration at the offices of the Companies and Intellectual Property Commission (CIPC);

3.2.3 All and any shareholders agreements concluded, whether in existence, cancelled or expired;

4. The relief sought by the respondents in their counter application is dismissed.

5. The respondents is ordered to pay the costs of the applicant for both the application and opposition of the respondents' counter application, the one to pay the other absolved, such costs to include the appearance of senior counsel on behalf of the applicant.

J.S. STRYDOM
ACTING JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Applicant:	*Adv. Oosthuizen (SC)*
Instructed by:	*Lüneburg & Janse van Vuuren Attorneys*
Counsel for the respondents:	*Adv. Symon (SC)*
Instructed by:	*Knowles Husain Lindsay Inc*
Date Heard:	*4 November 2014*
Date of Judgment:	*20 November 2014*