

**REPUBLIC OF SOUTH AFRICA**



**GAUTENG HIGH COURT, PRETORIA**

**Case No.: 6963/13**

(1)	REPORTABLE: <del>YES</del> / NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> / NO
(3)	REVISED.
<u>04/04/2014</u> .....	

4/4/2014

In the matter between:

**MAXI GROUP SCHEME (PTY) LTD**

Applicant

and

**JURIE SNYMAN**

Respondent

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**JUDGMENT**

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**MNGQIBISA-THUSI, J**

1. The applicant is seeking the following relief:
  - 1.1 an order interdicting the respondent to comply with a restraint agreement concluded between the parties on 1 November 2012 whilst the respondent was about to leave its employ;
  - 1.2 an order interdicting the respondent from disclosing confidential information to third parties and/or to use such information for his benefit; and
  - 1.3 a cost order on an attorney and client scale.
2. The agreement in provides, inter alia, that:
  - 2.1 the respondent is 'prohibited, for a period of 16 months after termination of employment to deal with any of the employer's existing clients.(clause 5.1.1);
  - 2.2 the respondent is prohibited for a period of 16 months to have any contact with any existing clients of the applicant and to

actively solicit business from existing clients whether directly or indirectly or through any entity anywhere.(clause 5.1.2);

2.3 the respondent will, in terms of the agreement, surrender to the applicant on demand and in any event on the termination of his employment with the applicant all documentation, written instruction, notes, computer programmes, sale material, disks, memoranda , or recordings, education materials relating to the business of his erstwhile employer in the broad and narrow sense, relating to the trade secrets which are made by him or which comes into his possession during the course of his employment with the applicant all of which shall be deemed to be in possession of the company. (clause 5.2.2).

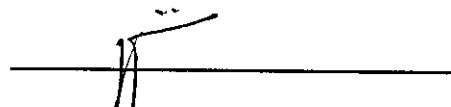
3. The applicant also sought condonation for the late filing of its replying affidavit. The replying affidavit was 39 days late. The applicant's reason for the late filing of the replying affidavit was that in the preparation of the affidavit, it was necessary for it to consult with various entities. The respondent opposed the granting of condonation on the ground that the applicant was abusing the court process in that the replying affidavit it seeks to have admitted consists of information which should have been included in the founding affidavit and which

information the applicant knew of at the time of the founding affidavit. Further, the respondent opposes condonation being granted on the basis that it has not been given an opportunity to reply to the new facts introduced by the applicant in the replying affidavit. Counsel for the applicant conceded that there was a lot more in the replying affidavit than there was in the founding affidavit.

4. I am satisfied that the applicant has not shown sufficient cause why the facts introduced in the replying affidavit were not included in the founding affidavit. The inclusion of the new facts in the replying affidavit prejudices the respondent who has not had the opportunity of responding thereto. The application for condonation ought, therefore, to be dismissed.
5. At the hearing of this application, the agreement was to expire in three days from the hearing of the application. There was agreement between the parties that a determination of this application would be academic.
6. The only issue to be determined was costs. It was submitted on behalf of the applicant that costs should be granted in favour of the applicant as it was necessary for the applicant to bring the application in order to protect its rights.

7. In general the successful party is entitled to its costs.
8. For the applicant to have succeeded in its application for a final interdict, it would have had to convince the court that: (i) it has a clear right; (ii) that an injury was actually committed or was reasonably apprehended; and (iii) that it has no other satisfactory remedy available to it.
9. As appears from the founding affidavit, the basis of the applicant relief is the agreement. It was submitted on behalf of the applicant that it has a clear right on the basis of the agreement. It was contended that the respondent has breached the agreement by making available to third parties its confidential information which the respondent allegedly obtained whilst still in its employ. From the papers it appears that the applicant relies on an alleged breach committed by the respondent in June 2012. As a result of the breach, the respondent was suspended and disciplinary procedures were conducted which culminated in the conclusion of the agreement on 1 June 2012. Furthermore, the applicant contended that the respondent has refused to return to it all the documents the respondent had sent to himself before leaving the employ of the applicant. This contention was not however, substantiated.

10. It is the respondent's contention that the applicant has not proven any breach of the agreement after it was signed.
11. I am of the view that based on the applicant's affidavit, no cause has been shown that since the signing of the agreement, that it has suffered any injury or that there is a reasonable apprehension that it will suffer any harm as it has not shown that the respondent has breached the agreement. The breach on which the applicant relies was committed whilst the respondent was still in the employ of the applicant, and before the agreement was signed. Consequently I am satisfied that the applicant would not have succeeded in the relief it sought.
12. I am of the view that the respondent is entitled to be awarded the costs of opposing the application. However, I am not convinced that the application was frivolous necessitating an award of damages on a punitive scale.
13. Accordingly the following order is made:
  1. The condonation application is dismissed with costs.
  2. The applicant to pay the respondent's cost of the application.



**NP MNGQIBISA-THUSI**

Judge of the High Court

Appearances:

For Applicant: Adv CPJ Strydom

Instructed by: GP Prinsloo Attorneys

For Respondent: Adv R Venter

Instructed by: Nel & De Wet Attorneys