


IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

7/9/16

Case No: 6559/2016

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
7/09/2016	
	

In the matter between:

STEWARTS AND LLOYDS HOLDINGS (PTY) LTD

Applicant

and

RAUTENBACH, LEONARD

Respondent

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JUDGMENT

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VAN DER WESTHUIZEN, AJ

1. A rule *nisi* was issued on 7 March 2016 in terms whereof an *interim* interdict restraining the respondent from contravening the terms and conditions of the Restraint of Trade (attached as CHN2 to the *interim* order) with return date 18 April 2016. The respondent was directed to show cause on the return day why the *interim* interdict should not be made final and was granted leave to anticipate the return day. By agreement on 18 April 2016, the return day was extended to 5 September 2016.
2. The respondent filed an answering affidavit to which the applicant filed a replying affidavit.

3. The applicant is Stewarts and Lloyd Holdings (Pty) Ltd, a company that conducts the business of wholesaler and supplier to the market in respect of *inter alia* steel products, steel pipes, valves, pumps, irrigation systems and the like. It conducts its business through various branches across the Republic of South Africa.
4. The respondent was employed since November 2011 as a branch manager at the applicant's Booyens Division at Mafikeng. The respondent resigned during June 2015 as a result of alleged health problems. He would take up employment in the family business at Middelburg, Mpumalanga.
5. Incorporated in the formal employment agreement between the applicant and the respondent was a restraint of trade agreement. In terms thereof, the respondent undertook to refrain from taking up employment for a period of twelve months in competition with the applicant anywhere in the Republic.
6. As branch manager, the respondent was privy to the applicant's trade secrets and trade connections, confidential information deemed to extend to all confidential technical and commercial information that the respondent acknowledged as being exclusive property of the applicant. The respondent undertook, during the period of employment and thereafter, to respect and honour such confidentiality and proprietary rights. The respondent further acknowledged that the applicant would suffer considerable loss should any of the restraint provisions be breached. The respondent further undertook not to employ or solicit for employment any person in the employ of the applicant during the period that the restraint of trade was effective.
7. The respondent, in view of his position as branch manager, was obliged to conduct managerial functions that included *inter alia*

financial controls, stock controls, stock forecasting, analysis of the clients served by the branch, their needs and the like.

8. The applicant and Wasa Pumps Polokwane (Wasa) are business competitors, although Wasa was also a supplier to the applicant during the period that the respondent was in the employ of the applicant.
9. During the period leading up to the respondent's resignation, he discussed with his superior the reasons for his resignation and that he intended joining the family business in Mpumalanga, an entity that was not involved in business dealings that competed with the applicant's business. It was made clear to the respondent that he was subjected to a restraint of trade agreement upon his resignation. The respondent verbally assured his superior that he would not be contravening the restraint of trade agreement.
10. An advertisement in a local newspaper, in circulation in the Polokwane area, appeared indicating that the Wasa Pump branch in Polokwane, Limpopo Province, would open on 20 November 2015. The said advertisement clearly indicated that the respondent was the co-owner of that business. The Wasa Pump branch in Polokwane would conduct the same type of business as that of the applicant's branches in Mafikeng and Polokwane. The respondent is thus directly competing with the applicant in conflict with the existing restraint of trade to which the respondent is bound.
11. The applicant addressed a letter to the respondent to refrain from breaching his obligations in terms of the existing restraint of trade. The respondent declined to do so. That prompted the applicant to launch this application on an *ex parte* basis.
12. The respondent raises the following defences. The respondent seeks to raise a constitutional issue in respect of the restraint of trade.

However, there has been non-compliance with the provisions of Rule 16A of the Uniform Rules of court. There is no merit in that contention. It was not argued on behalf of the respondent when the matter was heard.

13. The further defence raised, related to alleged verbal variations of the terms of the restraint of trade. That defence is in conflict with the term of the agreement that any variation of the terms thereof shall only apply if it is in writing.<sup>1</sup>
14. The respondent alleges that after his resignation it was orally agreed between the applicant and himself, that the restraint of trade was to onerous. He further alleges that it was further agreed to reduce the period to a period of six months and to limit the area only to the Mpumalanga area, thus leaving the respondent to freely compete with the applicant in the remaining area of the Republic.
15. Opportunistically the respondent seeks to find support for his contentions in the letter of demand. On a purposive reading thereof, no support for the respondent's contention is to be gleaned there from. The letter of demand does record a reduced period that is limited to the area of Mpumalanga.
16. It is highly improbable, and nonsensical, that the applicant would waive its right to enforce the restraint of trade across the Republic and only limit it to the area of Mpumalanga for a reduced period, the family business not being a business competitor of the applicant. The respondent's averments in this regard are so far-fetched and untenable that they stand to be rejected.<sup>2</sup>

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<sup>1</sup> *SA Sentrale Koöp Graanmaatskappy Bpk v Shifren* 1964(4) SA 760 (A); see also *Brisley v Drotsky* 2002(4) SA 1 (SCA)

<sup>2</sup> *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984(3) SA 623 (A)

17. It follows that the respondent has failed to show cause why the *interim* interdict restraining him from breaching the restraint of trade agreement (CHN2) should not be made final.
18. It was submitted on behalf of the respondent that the period of twelve months lapsed on 26 June 2016, and hence this application has become moot between the parties. It was further contended that the exceptions that may find application do not apply in the present matter.<sup>3</sup>
19. In my respectful opinion that contention is without merit. There remains the issue of possible damages and costs in respect of the application. Had it not been for the procedural delays that inevitably occur in this Division, the matter would have been finalised prior to 26 June 2016.
20. It follows that the applicant is entitled to a final order.

I grant the following order.

- (a) The rule *nisi* issued on 7 March 2016 is confirmed.
- (b) The respondent is to pay the costs.

  
C J VAN DER WESTHUIZEN  
ACTING JUDGE OF THE HIGH COURT

On behalf of Applicant:  
Instructed by:

C D Roux  
R C Christie Inc.

On behalf of Fifth Respondent:  
Instructed by:

P A Wilkins  
Juan Kotze Attorneys

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<sup>3</sup> *Radio Pretoria v Chairperson, Independent Communications Authority of South Africa, et al* 2005(4) SA 319 (CC) [22]