



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG PROVINCIAL DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: no
- (4) Date of hearing: 24 March 2021

[Signature]
29/6/21

CASE NO: 13128/2021

In the matter between:

EQiGATE (Pty) Limited

Applicant

And

Myburgh DK

Respondent

JUDGMENT

A. INTRODUCTION

[1] The applicant, a former employer of the respondent, approached this court on an urgent basis seeking interdictory relief against the respondent. The applicant sought to enforce terms of a restraint of trade agreement it had entered into with the respondent.

[2] The Respondent opposed the application. The Respondent also filed a counter-application but had not filed a replying affidavit at the time the matter was heard.

[3] The applicant cited and relied on the respondent's continuing infringements of the terms of the restraint of trade agreement as the main reason for bringing this matter on an urgent basis in terms of Rule 6 (11) of the Uniform Rules of Court.

[4] The applicant alleged that the respondent has already breached the agreement between the parties, has failed to cease his actions, or to give an undertaking as requested by the applicant.

[5] It is common cause that the respondent had on the final day of his employment with the applicant, handed over his laptop to the technical executive of the employer to purge the laptop of some information belonging to the employer. It transpired that the technical executive did not remove from the respondent's laptop a so-called management software programme that had been installed at the time the respondent assumed his employment contract. This program enabled the employer to track activities on the laptop. This enabled

the employer to notice suspicious documents and activities which alerted it to the use of its confidential material by the respondent in breach of the restraint of trade agreement.

[6] The applicant is unable to bring this application on a normal unopposed basis, or even an opposed basis, if the matter were to be brought in the ordinary course of applications it would result in further infringements of its rights which could have serious and detrimental effects upon the Applicant's business.

[7] At that stage, the agreed upon restraint of trade would have run out or lapsed, and the applicant would have been unable to protect its interest, its business, and its trade secrets.

[8] The respondent's response both on urgency and the issue of the management software was not convincing.

[9] The court then heard the matter as one of urgency, given the cited circumstances.¹ An order was granted in the following terms:

"...2. That a provisional interdict, with immediate effect is granted, in the following terms:

2.1 That, in terms of the confidentiality agreement between the parties, the respondent be interdicted and restrained from using, distributing or referencing any and all documents of the

¹ Twentieth Century Fox Film Corporation & Another v Anthony Black Films (Pty) Ltd 1982 (3) SA 582 (JV) AT 586 G; Luna Meubel Vervaardigers (Edms) Bpk v Makin & Another (t/a Makin's Furniture Manufacturers) 1977 (4) SA 135 (W) at 136 H.

applicant, which include, but are not limited strategic business and technical information, plan aids, methods, process, computer programs, research projects, marketing information, products and techniques of the applicant, copyrighted program, material, manual, document, publication or concept legally owned by the applicant, or any other documents and information, that belongs to the applicant, and which the respondent obtained from the applicant, as a result of the respondent's employment with the applicant, and which the respondent has in his possession or control, either physically, or electronically;

That in terms of the restraint of trade agreement between the parties, the respondent is interdicted and restrained from, either directly or indirectly, solely or jointly, or on behalf of any person, or entity be employed by, or carry on or assist, financially or otherwise be engaged, concerned or interested in, or act as a consultant, an advisor, agent or representative of any person or entity, corporate or incorporate, which, within the Restraint Territory, carries on business which competes directly, or indirectly, with the business of the applicant, or carries on any business which is similar to or in competition with such business as the applicant may be carrying on at date of termination of the respondent's employment agreement.

That the restraint of trade over the respondent referred to in 2.3 above, will be effective for a period of six months, from date of termination of the respondent's employment agreement, being from the 30th of January 2021 to the 30th of July 2021, and this Restraint of Trade will be effective for the entire territory of the Republic of South Africa.

That the relief in paragraphs 2.1 to 2.4 above, excluding the costs of the application referred to in paragraph 3 hereunder, shall have immediate effect and operate as a rule nisi, pending the final judgment in this regard.

That the costs of the main application and the counter application are reserved."

[10] The order granted on the 24 March 2021 and dated 26 March 2021 was a provisional order which operated as a rule nisi.

[11] In terms of the restraint of trade agreement, the restraint over the respondent is effective for a period of six months from date of termination of the respondent's employment agreement, being from the 30th of January 2021 to the 30th of July 2021.

[12] I have perused the official case file on Caselines and have not been informed of any application to anticipate as at the writing of this document. The restraint is due to lapse on its own on the 30th July 2021 whereafter the current provisional order will become moot. The rule nisi will also be discharged on the said date.

COSTS

[13] The only issue that needs determination is the issue of costs which was stayed on the date of this provisional order.

Respondent to pay the applicant's costs.



J.S. NYATHI
Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Judgment: 29 June 2021

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