HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No: 21826/2015

(1)	REPORTABLE: Yes
(2)	OF INTEREST TO OTHER JUDGES: No.
(3)	REVISED.

.....	.....
DATE	SIGNATURE

BRIAN KENNEDY Plaintiff

and

OASYS INNOVATIONS (PTY) LTD First Defendant
DOMINIQUE PARMEE Second Defendant

***Case Summary*: Contract – Remedies on breach – Cancellation on account of malperformance.**
Burden of proof - in accordance with the general rule, he or she who asserts must prove, onus of proving cancellation 'unlawful' on party asserting it, in this instance the plaintiff – it is only if cancellation is unlawful that, in casu, it can amount to a repudiation\]\ of the agreement.
Breach by independent service provider of service level agreement so serious as to justify cancellation by innocent party.

JUDGMENT

MEYER J

[1] This is a consolidated action in which the plaintiff, Mr Brian Kennedy, claims damages in the sum of R778 248.19 from the first defendant, Oasys Innovations (Pty) Ltd (Oasys), as a result of Oasys' alleged repudiation of a written service level

agreement concluded between them. He also claims damages in the sum of R100 000 by way of the *actio iniuriarum* and an interdict against Oasys and the second defendant, Ms Dominique Parmee, based on defamation. The interdict was sought by way of motion proceedings (case no. 21827/15), which were referred to trial, and consolidated with the action for contractual and delictual damages.

[2] Mr Kennedy, who was the chief executive officer of Oasys from November 2007 until March 2013, testified and he called Mr Mark Strydom, who took the position of chief executive officer over from him during March 2013, as a witness. Oasys called Ms Parmee as its only witness. She was appointed as acting chief executive officer when Mr Strydom left Oasys on 19 January 2015, and was appointed as its chief executive officer in May 2015. She resigned on 30 June 2016 due to personal circumstances and is now a consultant to Oasys, working about ten days a month. The background facts to the present litigation are essentially not contentious.

[3] Oasys is the biggest infrastructure supply company in the exhibition, event and conference industry (the events industry), with a branch in Johannesburg, in Cape Town and in Durban. Mr Kennedy joined Oasys as an employee and executive director in 1998. He, through the vehicle of a trust, purchased the entire shareholding in Oasys during 2007. He transferred 25% of the shareholding to a company controlled by a long-standing business associate of his, Mr Herman Mashaba.

[4] A French company, GL Events Services SA (GL Events), was keen to invest in the events industry in South Africa. It considered the Confederations Cup and World Cup events to be a good 'launch pad' for investing here, and acquired 50.34% of the share capital of Oasys in terms of a written *acquisition agreement*, which was concluded on 14 September 2009. The balance of the shareholding, after the acquisition, was held by Mr Kennedy's trust and the corporate entity controlled by Mr Mashaba, in the ratio 75:25. It is common cause (and was expressly accepted by Mr Kennedy in his evidence) that, in terms of clause 13 of the acquisition agreement, he had an obligation not to compete with Oasys on the terms set out therein. That obligation, in terms of clause 13.3.2, was binding on him for as long as he remained an employee of Oasys and for a period of three years thereafter.

[5] Oasys concluded a written *contract of employment* with Mr Kennedy on 18 December 2009. In terms of clause 19 of this agreement, he also agreed to wide ranging restraints of trade, including an obligation not to compete with Oasys. Clause 4.1.4 thereof placed the duty upon Mr Kennedy to 'honestly, faithfully and diligently and to the best of his ability fulfil the duties and responsibilities of the office to which he is appointed and in so doing [to] use his best endeavours to promote and protect the interests of the Company' and clause 4.1.6 the duty to 'be true and faithful to the Company and the Group in all dealings and transactions whatsoever relating to its business and interests'. He agreed, in terms of clause 4.2, during his employment not to, 'directly or indirectly, carry on or be engaged, concerned or interested in any other business, trade, profession or occupation in any capacity whatsoever'.

[6] In December 2011, Mr Kennedy, on behalf of the trust, and Mr Mashaba, on behalf of the corporate entity, exercised the put options arising from the acquisition agreement in terms whereof GL Events were obliged to purchase their almost 50% shareholding in Oasys at the end of the next financial year. The sale took effect and the shares were paid for once Oasys' audit for the 2012 financial year had been finalised in March 2013. Oasys' turnover of about R240 million in 2012 exceeded any previous financial year, and from a loss of R17 million in 2011, it made a profit of R25 million in 2012. This resulted in a substantial valuation of the shares and in Mr Kennedy receiving a purchase consideration of about R60 million from GL Events. He rewarded Mr Strydom, who at that time was Oasys' chief executive officer, and other senior management members with gifts for their efforts in achieving the excellent financial results for that financial year. Mr Strydom received an Audi A5 motor vehicle that cost more than R500 000. Once Mr Kennedy had exercised the put option and refused to re-invest in Oasys, the relationship between him and the French directors soured. They, according to Mr Kennedy, believed that GL Events had paid too much for the almost 50% shareholding. Ms Parmee testified that the French directors were rather unhappy with the performance of the business of Oasys.

[7] The deteriorating relationship culminated in a written *mutual separation agreement* being concluded between Mr Kennedy and Oasys on 10 October 2013, in

terms of which his employment was consensually terminated. In clause 8 of this agreement it was agreed that the confidentiality and restraint of trade provisions that were concluded with him, would remain in place. Mr Kennedy agreed under cross-examination that the restraint provisions of the acquisition agreement thus remained binding on him until three years after the mutual separation agreement had been concluded, in other words until the end of 2016.

[8] At the same time a written *service level agreement* was also concluded between them, in terms of which Mr Kennedy, as independent service provider, agreed 'to manage the relationship' between Oasys and its clients listed in annexure 'A' to the agreement (THEBE, Nedbank Golf Challenge, SARCDA, DOGON, EMS, Home Makers Fair, GRAIN AGRI SA, Cape Town Convention Centre and Sun International) for a period of 24 months from 1 January 2014 until 31 December 2015, 'in promoting the interests' of Oasys. Those were major clients of Oasys with whom Mr Kennedy had a good and long-standing relationship going back more than 15 years. In Mr Kennedy's own words, most of them he 'controlled and serviced from beginning to end'. Mr Kennedy, in terms of clause 7 of this agreement, retained the position of non-executive director on the board of directors of Oasys. In clause 10 of this agreement it was agreed that Mr Kennedy 'may not perform any work that is within the scope of work of [Oasys]'.

[9] At the beginning of February 2015, Mr Kennedy addressed a letter entitled 'letter to prospective clients' to seven of Oasys' major and long-standing clients, namely THEBE, SARCDA, DOGON, EMS, Home Makers Fair, GRAIN AGRI SA and MMI (Mr Kennedy's proposal). In its presently relevant part, Mr Kennedy's proposal reads as follows:

'This being my 20th year as a supplier in the exhibition and events industry I have had the opportunity to be exposed to a huge number of Exhibition and Event Organisers. My experience has taught me that there are certain fundamentals that remain the same for an "event" to be successful.

One of these is choice of supplier as well as the quality of the supplier and their pricing. It's also imperative for the supplier to have sufficiently qualified staff in place to deliver the quality required by the organiser.

Many organisers have extremely long term relationships with their suppliers. This loyalty is extremely commendable. This I have experienced myself over the last 20 years very many times.

One's loyalty and long-term relationship can sometimes count against the organiser when it comes to supplier negotiations.

I would therefor like to offer your company a service to handle these negotiations on behalf of you and your company. Let me list my services and a few reasons and advantages you can benefit from.

- Next-Gen Business Solutions (Pty) Ltd (Brian Kennedy) to take advantage of 20 years' experience as a major supplier to the industry.
- Organiser to appoint NGBS as their contracted supplier negotiator.
- Organisers to remove themselves and staff from all negotiations – this removes relationships from negotiations as well as avoids any opportunity for corruption or temptation thereof.
- Suppliers to answer a detailed tender document. This will be scored according to a standard scorecard and presented to an organiser. This scorecard is to include BBBEE credentials.
- Organiser to make the final decision on which supplier is appointed as official supplier.
- NGBS to negotiate with services suppliers will supply to the organiser at "No Charge".
- Supplier pricing to be fixed for 12 months. However a longer time may be required for special ad hoc projects and tenders.
- Suppliers to sign a rebate contract with the organiser for design stands built on the exhibition if they have been approved and have been promoted to exhibitors by the organiser.
- Suppliers with approved status are to advertise in the exhibitors manuals.
- Organiser and NGBS to enter into a NDA for organisers protection and to maintain confidentialities.
- Suppliers and NGBS to enter into a NDA to maintain confidentialities.
- Organiser to appoint NGBS for a period of 36 months.
- Organiser to settle supplier accounts directly with suppliers.
- The savings to be split 60% NGBS and 40% to the organiser.
- Recon and payment to NGBS to be done within 14 days of the end of the exhibition.
- NGBS will also offer a project management service. This will be discussed and quoted on a project per project basis.
- Services information to be handed to suppliers 10 days prior to build up - forms part of the price negotiation. Represents a savings on overtime.

- With an unemotional focus savings are a definite.
- Offer to pay suppliers for onsite changes. Organiser therefore needs to hand over accurate information. This forms part of the negotiation with the supplier.
- Possibly route payment via NGBS to take advantage of BBBEE.
- Year one's savings to be used as a base percentage going forward.

I am certain that this proposal makes clear sense to you. Please let me know if you would like me to make an appointment to discuss this in more detail.
Assuring you of my support and best attention at all times.'

[10] Mr Kennedy's proposal to Oasys' major and long-standing clients was made at a time, according to Ms Parmee, when Oasys was in financial distress; it made a loss of R17 million in 2011, a profit of R25 million in 2012 and losses of R2 million in 2013, R18 million in 2014 and R19 million in 2015. The only year when Oasys made a profit was when Mr Kennedy exercised the put option and was paid about R60 million. When Mr Kennedy's proposal to Oasys' major clients was detected, it was thus, according to Ms Parmee, of great concern to her. She considered Mr Kennedy an astute businessman and there was mutual respect between the two of them. Ms Parmee consulted Oasys' attorneys, who advised her and drafted a letter dated 26 February 2015 to Mr Kennedy, which letter was signed by Ms Parmee.

[11] In the letter, Oasys summarily and with immediate effect terminates the service level agreement with Mr Kennedy. It is stated that Mr Kennedy conducted himself unlawfully and breached the service level agreement by failing to promote the interests of Oasys, by competing with it, by failing to keep confidentiality and by breaching his fiduciary duties. Mr Kennedy's approach, on behalf of Next-Gen Business Solutions (Pty) Ltd (Next-Gen), made to certain of Oasys' established clients with the proposal of acting as the negotiator between event organisers and suppliers, is mentioned, and it is stated that-

'. . . the proposal to act as a direct intermediary between event organisors (including clients of the company [Oasys]) and event suppliers (which would obviously include the company) is in direct conflict with [his] obligation to promote the interests of the company …'.

It is also stated that Mr Kennedy's breach of the service level agreement was-

'. . . material as it undermines its very foundation'.

(The view I take of the matter makes it unnecessary to refer to other alleged breaches referred to in this letter of cancellation of the service level agreement.)

[12] On 26 February 2015, Ms Parmee handed the letter to Mr Kennedy, who read it and he then said to Mr Sameer Khan, Oasys' financial director who was also present: 'You will live to regret this' and 'this company's doors will be closed in December'. When this evidence was foreshadowed during Mr Kennedy's cross-examination, he conceded that he might have said this. He was emotional, he said, and Oasys was not performing well, it lost market share.

[13] It is common cause that Ms Parmee also sent out a letter to Oasys' nine long-standing clients (THEBE, Nedbank Golf Challenge, SARCDA, DOGON, EMS, Home Makers Fair, GRAIN AGRI SA, Cape Town Convention Centre and Sun International) notifying them that the service level agreement with Mr Kennedy had been cancelled because of his material breaches thereof, and advising them who at Oasys would be looking after their affairs. Mr Kennedy considered the content of this letter to be defamatory of him. Ms Parmee testified that she had written this letter to inform Oasys' clients who had been approached by Mr Kennedy that she was aware they had been approached by him in his Next-Gen capacity and that what he had done was contrary to what Oasys had engaged him to do. (Oasys' defence to the defamation claim is essentially that the statements were substantially true and the publication thereof for the public benefit, including the benefit of the recipients thereof, or, that the publication thereof was privileged, and therefore not wrongful.)

[14] By letter dated 20 March 2015, Mr Kennedy's attorneys informed Oasys that its letter dated 26 February 2015 constituted a repudiation of the service level agreement, that Mr Kennedy accepted the repudiation and that he elected to thus terminate the agreement. Mr Kennedy also resigned as a director of Oasys on the same day. The present litigation followed.

[15] In accordance with the general rule – he or she who asserts must prove (*Pillay v Krishna* 1946 AD 946 at 951; *Strydom v Engen Petroleum Ltd* 2013 (2) SA 187 (SCA) at 203H-I) - Mr Kennedy bears the onus of proving that Oasys' cancellation of the service level agreement was 'unlawful'. It is only if the cancellation is unlawful that, *in casu*, it can amount to a repudiation of the agreement

by Oasys. (See *Mobil Oil Southern Africa (Pty) Ltd v Mechin* 1965 (2) SA 706 (A) at 712.) The crucial question for determination is whether Mr Kennedy breached the service level agreement, and, if he did, whether the breach is so serious that it justified cancellation by Oasys. Olivier JA, in *Singh v McCarthy Retail Ltd* 2000 (4) SA 795 (A), para 12, said that-

'[t]he right of a party to a contract to cancel it on account of malperformance by the other party, in the absence of a *lex commissoria*, depends on whether or not the breach, objectively evaluated, is so serious as to justify cancellation by the innocent party'.

[16] When is a breach, in the form of malperformance, then so serious to justify cancellation by the innocent party? Olivier JA, in *Singh*, answered this question thus:

'[15] I perceive the correct approach to be as follows: The test, whether the innocent party is entitled to cancel the contract because of the malperformance by the other, in the absence of a *lex commissoria*, entails a value judgment by the Court. It is, essentially, a balancing of competing interests – that of the innocent party claiming rescission and that of the party who committed the breach. The ultimate criterion must be one of treating both parties, under the circumstances, fairly, bearing in mind that rescission, rather than specific performance or damages, is the more radical remedy. Is the breach so serious that it is fair to allow the innocent party to cancel the contract and undo all its consequences?'

[17] The evidence of Mr Strydom did not materially advance Mr Kennedy's case. However, his attempt at claiming tax relief on the Audi, which was donated to him by Mr Kennedy, and his evasive and unimpressive responses when cross-examined on the matter, adversely affect his credibility as a witness. Mr Kennedy too was not an impressive witness. His memory was often selective (his apparent inability to recall how much was paid to him for his shares being one example), he was evasive (when in difficulty with propositions put to him, he resorted to saying that he did not remember or disagree) and his attempts at wriggling out when confronted with matters that might be prejudicial to his case (e.g. he conceded that he was aware that the restraint provisions contained in clause 13 of the acquisition agreement only expired at the end of 2016 but then tried to wriggle out by saying that there was 'some confusion' for him 'as a layman' whether clause 11 of the service level agreement terminated the restraint provisions of the acquisition agreement). His efforts to explain his preparedness to assist Mr Strydom in claiming tax relief on the

Audi which he donated to him and to explain his claim for business expenses, which was disallowed, also did not instil confidence in his credibility as a witness. Ms Parmee, on the other hand, was singularly impressive. She appeared to me to be a formidable person and was not shaken as a witness, despite lengthy cross-examination.

[18] There is a distinction between Mr Kennedy's obligations under clause 13 of the acquisition agreement, on the one hand, and those under clause 10 of the service level agreement, on the other. The latter are clearly wider than the former and extend beyond prohibiting mere competition into any work that is within the scope of work of Oasys. Mr Kennedy (in his evidence) also recognised expressly that he owed a fiduciary duty to Oasys as its agent and also as a director thereof. Mr Kennedy's duties towards Oasys and the various obligations imposed on him (including the obligation not to compete and not to perform any work that is within the scope of work of Oasys) continued uninterruptedly throughout the period covered by the service level agreement until, at best for him, 31 December 2015. (As emerged during the evidence, the use of the phrase 'the restraints' was intended to cover, not only restraints of trade properly so-called, but, more generally, Mr Kennedy's duties and obligations towards Oasys, whatever their nature and source).

[19] Mr Kennedy's case on the pleadings and affidavits in the application, simply put, is that, notwithstanding his duties and obligations owed to Oasys, he was not precluded from doing business as a 'supplier negotiator', because Next-Gen, through which he operated, was not a competitor of Oasys and these activities did not fall foul of the 'restraints'. In his founding affidavit in the interdict application, which was deposed to on 10 June 2015, Mr Kennedy stated the following:

'38.1 I am still a businessman and have business interests with Next-Gen Business Solutions (Pty) Ltd which operates as an events and exhibition supply negotiator. I am still exploring the viability of this company and have conducted no business through it as yet. However, it is important to state that this company is not a competitor of the first respondent [Oasys] as its focus is on negotiating with suppliers of companies such as the first respondent on behalf of exhibitors and vice versa.'

And in his replying affidavit, which was deposed to on 16 July 2015, he stated:

'36.1 I deny that Next-Gen is in opposition to the first respondent.

36.2 Next-Gen is an events and exhibitions supply negotiator. Something that the second respondent [Ms Dominique Parmee] is well aware of and even confirms in annexure "D" where she describes its business as "acting as a negotiatior between event organisers and event suppliers."

36.3 The first respondent is an event supplier and accordingly the business of next-Gen would have been to negotiate agreements between the firs respondent and event organisers, something which would have been to the benefit of the first respondent. More importantly this would not have contravened the terms of the SLA [service level agreement].'

[20] In somewhat of a *volte-face*, while on the one hand still maintaining that his activities (or those of Next-Gen) did not infringe the service level agreement when he testified, Mr Kennedy, on the other hand, conceded that they would have, had he implemented the Next-Gen 'idea'. He testified that he had come up with the idea to establish the supplier negotiator business towards the end of 2014/beginning 2015. He consulted his attorney about his restraint obligations and was advised that clause 13 of the acquisition agreement would be binding upon him for three years from the date he ceased to be an employee of Oasys. It is for this reason that he sought to buy his way out of the restraint by making the following offer to Mr Strydom on 7 January 2015:

'I currently have approximately 21 months left of my obligation not to compete. If the company is prepared to release me of this obligation, I will walk away from my current contract as well as all the monies due for the duration of the contract as mentioned above.

To give the company comfort, I will also agree not to compete in any way with Oasys on the list of organisers I currently manage the relationship with for the duration of the 21 months left in my obligation not to compete.'

The period of 21 months referred to should, so Mr Kennedy conceded, have been 24 months. The offer was not accepted. Mr Kennedy conceded that he could not implement his Next-Gen idea until he had 'finished' his contract with Oasys, because of his obligation not to compete (clause 10 thereof).

[21] Mr Kennedy's proposal put to Oasys' clients, so he testified, was not 'put into practice' but was only an 'idea' and the letter containing it was sent out to a 'few friends in the industry' for them to act as a 'sounding board'. The contention that, because he had not put it into practice he was not in breach of the restraints, is

without any merit and rejected. Mr Kennedy conceded that his case was correctly summarised by his attorney in a letter dated 20 March 2015, wherein it was stated-

'that, far from competing with yourselves, our client is actually endeavouring to obtain more work for your company by negotiating transactions between your customers and yourselves for events supplies'.

[22] If Mr Kennedy truly believed that the scheme would be for the benefit of Oasys, one would have expected him to raise it with Oasys, which he conceded he did not do, rather than approaching its clients surreptitiously and on a 'very confidential' basis. Furthermore, if Mr Kennedy was only 'sounding out' his friends in the industry on the basis that, if so advised, he would implement the scheme after his obligations to Oasys had been fulfilled, why start the process before he had received any feedback and a year ahead of time and why not mention in the letter that the supplier negotiator services would only be available from a future date in time?

[23] There is also nothing in Mr Kennedy's proposal which indicates, even remotely, that he was merely sounding out his friends in the industry, rather than putting a firm offer to them. On the contrary, he expressly and in no uncertain terms offered his services to the major and long-standing clients of Oasys, he listed his services on offer, the benefits thereof to the organiser, he requested them to let him know if they would like him to make an appointment with them 'to discuss this in more detail' and he gave the assurance of his 'support and best attention at all times'. Furthermore, under cross-examination Mr Kennedy conceded that, during December 2014 and January 2015, he also opened a bank account for Next-Gen, he changed his cell phone number from Oasys to himself and he registered a new web-site domain for Next-Gen. Mr Kennedy's proposal, therefore, was no less than an attempt at persuading Oasys' major and long-standing clients to do business with Next-Gen on the terms set out in that letter.

[24] Mr Kennedy placed great emphasis on the different role players in the events industry and their respective fields of activities to support his contention that Next-Gen was not a competitor of Oasys and that its activities did not fall foul of the restraints. The evidence indeed establishes that there are three main role players in the events industry, namely the venues, organisers and suppliers. The person

entitled to the venue rents out the empty venue to an organiser. Organisers create the concept for the exhibition, event or conference, sell space to exhibitors and the like, market the exhibition, event or conference to the public, trade or both and rent infrastructure from a service provider, such as Oasys. Suppliers carry stock of infrastructure and equipment, such as carpets, booths, electrical goods and air conditioners, furniture, marquees and signage, they supply the infrastructure to an organiser on a rental basis, and render services, such as labour, project management, quoting and price negotiating, design and plans.

[25] But the distinction between the three main role players in the events industry and their activities does not advance the case for Mr Kennedy in any way. Mr Kennedy, through Next-Gen, was introducing a new role player into the events industry, that of 'contracted supplier negotiator', which new role player encroaches upon elements of the activities of both organisers and suppliers. In terms of Mr Kennedy's proposal he positioned Next-Gen between the supplier and organiser. Although the organiser was to make the final decision as to which supplier to appoint, the organiser and its staff were removed from all the negotiations with suppliers. Once Mr Kennedy's proposal had been accepted by an organiser, Oasys would no longer be able to negotiate directly with that organiser, which, according to Ms Parmee, is a consultative process and one of the main elements of Oasys' business. It is then Mr Kennedy (and not Oasys) who speaks to the supplier and furnishes it with his own scoring of Oasys, its prices, rebates, and the like.

[26] Moreover, Mr Kennedy's proposal was aimed at removing loyalty and long-term relationships between suppliers and organisers in the appointment of a supplier. This undermines precisely what he was appointed to undertake in terms of the service level agreement, 'to manage the relationship' between Oasys and its nine major and long-standing clients 'in promoting the interests of Oasys'. Through liquid lunches, Mr Kennedy himself testified, amongst others, was how he built up the business of Oasys. Also, Mr Kennedy offered Oasys' major clients the service of negotiating lower rates with suppliers at a financial benefit of 60%, of those savings to himself. In other words, a portion of the money which an organiser otherwise would have paid to its supplier, such as Oasys, would, in terms of Mr Kennedy's proposal, be paid to Next-Gen.

[27] Mr Kennedy's proposal to Oasys' clients might well result in some of them becoming clients of Next-Gen, in the relationship between Oasys and its clients being terminated in favour of a competing supplier or in Oasys contracting with an organiser on less favourable terms to itself. While Mr Kennedy maintained that the offer of his services was, in fact, one which would operate to the advantage of Oasys, he was forced to concede that, conversely, it might operate to its disadvantage.

[28] Mr Kennedy's activities, therefore, infringed the 'restraints' (not in the strict meaning), and specifically he, through Next-Gen, offered services to Oasys' major clients that were within the scope of the work of Oasys as contemplated in clause 10 of the service level agreement. He undermined the interests of Oasys with its major clients in breach of his duty to promote its interests. He, through Next-Gen, competed directly with Oasys by offering services that would position Next-Gen between Oasys and its major clients, aimed at financially benefitting to Next-Gen at the expense of Oasys. In offering Next-Gen's services to Oasys' clients he was also unlawfully interfering in the relationships between Oasys and its clients and he breached the fiduciary duties which he owed Oasys as director and agent. Approaching the matter from the 'broad perspective' set out in *Singh* (supra), I am of the view that the breach of the service level agreement by Mr Kennedy was so serious as to justify its cancellation by Oasys.

[29] Mr Kennedy and Oasys agreed that the defamation claim must follow the result of the contractual claim. The claim for an interdict, in my view, must also fail. On 25 March 2015 Oasys' attorneys wrote to Mr Kennedy's attorneys:

'Our client does not, however, intend to address any further correspondence to its customers concerning your client and there is, accordingly, no basis for an application to Court in this regard. If it becomes necessary to do so in the future, you will be given notice thereof to enable you to protect your client's rights (such as they are).'

There was, in these circumstances, no justification for Mr Kennedy in proceeding to seek an interdict.

[30] In the result the following order is made:

The plaintiff's claims are dismissed with costs, including those of senior counsel and the costs of the motion proceedings under case number 21827/15.

P.A. MEYER
JUDGE OF THE HIGH COURT

Date of hearing:	17 – 22 November and 8 December 2016
Date of judgment:	19 April 2017
Plaintiff's counsel:	EJ Ferreira
Instructed by:	Ramsay Webber Inc, Illovo
Defendant's counsel:	BA Acker SC
Instructed by:	Shepstone & Wylie Attorneys, Umhlanga Rocks C/o Shepstone & Wylie Attorneys, Sandton