



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NUMBER: 00014/2023**

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

22/02/2023

\_\_\_\_\_  
DATE

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SIGNATURE

**In the matter between:**

**MERCURY FITTINGS CC**

Applicant

**AND**

**DOORWARE CC**

Respondent

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**JUDGMENT**

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**OOSTHUIZEN-SENEKAL CSP AJ:**

## **INTRODUCTION**

*“When brothers fight to death, a stranger inherits their property”*

*African Proverb*

- [1] This is an urgent application that involves two lifelong friends, Mr Andrew Osborne-Young (“Andrew”) and Mr Martin Humphry (“Martin”), who build a most successful business as importers, sellers and distributors of stainless-steel ironmongery and door controls. Andrew, was the sole and controlling member of Mercury Fittings CC (“the Applicant”) and Martin is the sole and controlling member of Doorware CC (“the Respondent”), which mainly started up in their respective garages. Both parties worked extremely hard. The 20-year friendship, came to an end shortly after Andrew’s demise in July 2021. The untimely death of Andrew resulted in the applicant falling into complete disarray, which amongst others lead to this urgent application.

## **RELIEF SOUGHT**

- [2] The applicant seeks an interdict to restrain the respondent from breaching and/or continuing to breach an agreement which has been concluded between the parties 20-years ago.
- [3] Based on the terms of the agreement, the applicant, seeks an order in Part A in the following terms:

### **Part A**

1. That the non-compliance with the usual Rules and Practice Directives relating to forms, notices and time-periods be and is condoned in terms of Rule 6(12)(a) and that the matter be enrolled and heard as one of urgency.
2. That the respondent be and hereby is interdicted and restrained from selling and/or offering to sell and/or making available to sell and/or fulfilling orders and/or supplying, whether directly or indirectly, any product in the QS Product range within the geographical areas of:

2.1 The Province of the Western Cape;

2.2 The Province of the Eastern Cape; and

2.3 The Province of the Northern Cape.

3. That the respondent be and hereby is interdicted and restrained from selling and/or offering to sell and/or making available to sell and/or fulfilling orders and/or supplying, whether directly or indirectly, any product in the QS Product range to the entities, as set out in Annexure "A" hereto, in Namibia.
4. That the respondent be and hereby is interdicted and restrained from making contact with and/or approaching any of the applicant's customers, whether directly or indirectly, as listed in Annexure "B" hereto, within the geographical areas as set out in prayer 2 in respect of any aspect relating to any product in the QS Product range.
5. That the respondent be and hereby is ordered to close the office it opened in Cape Town, the Western Cape, presently situated at Unit C9, Boulevard Way, Capricorn Business Park, Muizenberg, Cape Town.
6. That the respondent be and hereby is interdicted and restrained from opening offices within the geographical areas set out in prayer 2.
7. That the respondent be and hereby is ordered, within 7 (seven) days of the granting of this order, to furnish to the applicant, on oath, a list of all customers or potential customers, including the names of the relevant person(s) in authority and contact details, the respondent made contact with within the geographical areas as set out in prayer 2 in respect of any aspect relating to any product in the QS Product range.
8. Costs of Part A on the attorney and client scale.

## **BACKGROUND**

- [4] For purposes of this judgment, I need to set out a succinct history of the matter.
- [5] During early 2002 Andrew, representing the applicant, and Martin, representing the respondent, decided to join forces to import, sell and distribute stainless-steel ironmongery and door controls (“the goods”) from China. After visiting China and sourcing manufactures, they decided that the range would be called, QS (Quicksilver).
- [6] The parties further agreed certain terms on which they would conduct their businesses, in an independent way, namely Mercury Fittings CC and Doorware CC. It was agreed that they would not compete with each other based upon geographical areas. It was decided that Andrew would trade in the Western, Northern and Eastern Cape, and Martin would cover Gauteng, KwaZulu Natal, Free State, Mpumalanga, Limpopo and the Northwest Province.
- [7] There was a further understanding amounting to an implied term, that if either party trade in each other’s geographical area, the gross profit of such transaction generated would be surrendered to the party operating in that area.
- [8] In respect of Massmart Holdings Ltd (“Massmart”) the situation was historically different. Massmart has a national footprint with stores such as Builders Warehouse, Builders Express and Builders Trade Depot being scattered across the country. The parties committed to supplying goods to Massmart under the name of the applicant, because Andrew had a legacy account and vendor number with Penny Pinchers which had been merged into Massmart. It was decided that it was more sensible to use the existing account and vendor number, rather than opening a new account. The applicant and respondent were responsible for their own invoicing and the supply of the goods ordered by Massmart in their respective geographical areas. Payment would be made by Builders Warehouse to the respondent and following reconciliation, the respondent would effect payment of the orders delivered by the applicant in its geographical area.

- [9] In addition to the geographical arrangements, the respondent became the main producer of all the sales literature (catalogues) and the applicant would buy the catalogues from the respondent.
- [10] Over the years the applicant and respondent (jointly) succeeded in being serious players in the ironmongery industry in South Africa and were considered favourably within the architectural fraternity. Their service both in terms of stock holding and delivery speed were unequalled in South Africa. There have been, and still are, many companies who have tried to emulate their success, however, they have never been able to topple the applicant and respondent from their position as leading importers of the range they cover.
- [11] On 7 July 2021 Andrew sadly passed away, whereafter his wife, Charmain took control of the applicant. During 2022, she appointed Mr Shaheid Schreuder (“Schreuder”), an attorney, to assist in management of the applicant. In order to come to grips with the workings of the applicant and its dealings in respect of QS products, Ms Rebecca Humphry (“Rebecca”), Martin’s daughter and CEO of the respondent, sent an explanatory email to Schreuder on 28 July 2022, the contents thereof not relevant at this stage.
- [12] Mr Pierre Nieuwhoudt (“Nieuwhoudt”), the executor of Andrew’s estate also enquired as to the terms of the agreement between the parties following his appointment. Martin compiled a Memorandum of Understanding (“MoU”) in respect of an agreement to trade between the applicant and respondent. The MoU was never signed.
- [13] During August 2022, Rebecca, representing the respondent approached Massmart and caused a change to all the supply, payment and contact details of the applicant pertaining to the said account. She furthermore, did not seek to obtain a new vendor number, she merely changed the details of the holder of the vendor number. As a result, Massmart orders were placed and fulfilled directly by the respondent.
- [14] During October 2022 Charmain appointed Mr Werner Laubscher (“Laubscher”) as CEO of the applicant, who investigated the relationship between the applicant and the respondent in order to manage the applicant.

[15] On 17 January 2023 Laubscher received information that the respondent was approaching customers in the geographical area of the applicant, in particular in Cape Town. It further transpired that the respondent opened up an office in Cape Town. As a result of the information received by Laubscher this urgent application was launched.

## **URGENCY**

[16] In a nutshell, the respondent avers that the applicant has delayed in initiating the proceedings, due to the fact that the applicant became aware of the respondent opening an office in Cape Town as far back as 17 January 2023, whereafter it only launched the application on 27 January 2023.

[17] The issue is whether a matter should be enrolled and heard as an urgent application is governed by the provisions of Rule 6(12) of the Uniform Rules of Court.<sup>1</sup>

[18] It is important that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.<sup>2</sup>

[19] In my view, the 10-day delay in instituting the proceedings is not, on its own, a ground, for refusing to make a finding that the matter is urgent. After considering the circumstances of the case and the explanation given for the delay, it is evident that the

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<sup>1</sup> The aforesaid sub rule allows the court in urgent applications to dispense with the forms and service provided for in the rules and dispose of the matter at such time and place in such manner and in accordance with such procedure as to it seems meet. It further provides that in the affidavit in support of an urgent application the applicant “... shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.”

<sup>2</sup> *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196 para [6].

applicant during the said period attempted to settle the matter and furthermore, collected more facts regarding the information received early January 2023.

[20] In addition, despite the delay, it is clear that the matter remains urgent. The respondent opened up offices in Cape Town during January 2023, which has a direct impact on the applicant's business, which was conducted in accordance of a 20-year agreement.

[21] In the circumstances, I am satisfied that the matter is sufficiently urgent to be enrolled and heard as an urgent application.

[22] All the facts in this matter are common cause, the issues in dispute are whether the agreement concluded by Andrew and Martin constitutes a "*gentleman's agreement*" and this can be found to be an oral agreement and, furthermore, who are the parties to the agreement.

#### **SUBMISSIONS BY THE APPLICANT**

[23] Counsel for the applicant argued that the agreement between the parties exists. Mr Thompson contended that the court can only adopts one of two positions in law;

1. The agreement could only ever have been entered into between the applicant and respondent, or
2. As a *stipulation alteri*, a contract on behalf of the applicant and the respondent concluded by Andrew and Martin, as the sole and controlling members of the entities.

[24] The first interpretation renders the respondent's version untenable as the agreement can only be between the applicant and the respondent as the distributors of the QS Products. It also renders the respondent's version palpably untrue, so they submit.

[25] Regarding the second interpretation, the applicant argued that the version of the respondent, as read with the version of the applicant as admitted by the respondent, entitles the applicant the relief it seeks.<sup>3</sup> Counsel for the applicant asserts that the

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<sup>3</sup> *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) at para [26]:

agreement between the Andrew and the Martin could be nothing other than a *stipulatio alteri* for the benefit of the applicant and the respondent.

[26] Therefore, the applicant argued that on either the above approaches, it is entitled to the final relief it seeks as it demonstrated that;

1. The agreement exists and it therefore has a clear right to prevent breach thereof,
2. A harm actually committed and/or a reasonable apprehension of harm, and
3. No alternative remedy is reasonable available to the applicant.

### **SUBMISSIONS BY THE RESPONDENT**

[27] Counsel for the respondent argued that there are a number of *bona fide* disputes of fact which are not capable of resolution on the papers.

[28] Amongst others the following dispute of facts were referred to by Mr Jackson:

1. The nature of the agreement concluded between Andrew and Martin, whether the agreement was an oral “*gentleman’s agreement*”.
2. Furthermore, that it is evident throughout a reading of the papers, there is a clear dispute as to whether Andrew and Martin were representing their two close corporations when they entered into their oral “*gentlemen’s agreement*”.

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“Motion proceedings, unless concerned with interim relief are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant’s (Mr Zuma’s affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent’s version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far- fetched or so clearly untenable that the court is justified in rejecting them merely on the papers.<sup>13</sup> The court below did not have regard to these propositions and instead decided the case on probabilities without rejecting the NDPP’s version”



3. Another dispute of fact which is not capable of resolution on the papers is whether Andrew and Martin intended binding their heirs and successors-in-title to their agreement.

[29] The respondent asserts that many of the averments contained in the applicant's founding affidavit constitute hearsay evidence. It is common cause that Laubscher only joined the applicant at the end of October 2022 and knew nothing of the arrangement or agreement between Andrew and Martin. The respondent argued that the hearsay evidence in this regard should be struck from the record. Furthermore, they submitted that the hearsay evidence does not fall within the provisions of Section 3 of the Law of Evidence Amendment Act, 45 of 1998.

[30] The respondent argued that due to the numerous *bona fide* disputes of fact, which are not capable of resolution on the papers, the application should be dismissed.

## **THE LAW**

[31] In the *National Director of Public Prosecutions v Zuma supra*, Harms DP observed that motion proceedings were really designed for the resolution of legal disputes based on common cause facts. In most applications, however, disputes of fact, whether minor or more substantial, arise. As a result, rules have been developed to determine the facts upon which matters must be decided where disputes of fact have arisen and the parties do not want a referral to oral evidence or trial.

[32] In proceedings for final relief the approach to determining the facts was authoritatively set out by Corbett JA in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*<sup>4</sup> as follows:

“It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the

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<sup>4</sup> *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634H-635C.

respondent, together with the facts alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances, the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact . . . If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under Rule 6(5)(g) of the Uniform Rules of Court . . . and the Court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks . . . Moreover, there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers . . .”

[33] Thus, generally speaking in motion proceedings in which final relief is sought, factual disputes are resolved on the papers by way of an acceptance of those facts put up by an applicant that are either common cause or are not denied as well as those facts put up by the respondent that are in dispute.

[34] However, there are two exceptions to the general rule, firstly, where the denial by a respondent of a fact alleged by the applicant is not such as to raise a real, genuine or *bona fide* dispute of fact. If the court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and may include this fact among those upon which it determines whether the applicant is entitled to final relief.

[35] The second exception is where the allegations or denials of the respondent are so clearly untenable that the court is justified in rejecting them on the papers. If the respondent's version is “so improbable and unrealistic that it can be considered to be fanciful and untenable”,<sup>5</sup> then it may be rejected on the papers by adopting a “robust, common-sense approach”.<sup>6</sup>

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<sup>5</sup> *Truth Verification Testing Centre CC v PSE Truth Detection CC* 1998 2 SA 689 (W) at 699F-G. See also *NDPP v Geysers* [2008] ZASCA 15 (25 March 2008) para 11.

<sup>6</sup> *Ibid* 5 at 698I.

[36] *Wightman t/a JW Construction v Headfour (Pty) Ltd and another*<sup>7</sup> considered this very issue. Heher JA dealt with how courts should decide on the adequacy of a respondent's denial in motion proceedings for purposes of determining whether a real, genuine or *bona fide* dispute of fact had been raised. He stated:

“[11] The first task is accordingly to identify the facts of the alleged spoliation on the basis of which the legal disputes are to be decided. If one is to take the respondents' answering affidavit at face value, the truth about the preceding events lies concealed behind insoluble disputes. On that basis the appellant's application was bound to fail. Bozalek J thought that the court was justified in subjecting the apparent disputes to closer scrutiny. When he did so he concluded that many of the disputes were not real, genuine or *bona fide*. For the reasons which follow I respectfully agree with the learned judge.

[12] Recognising that the truth almost always lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion must, in the event of conflict, accept the version set up by his opponent unless the latter's allegations are, in the opinion of the court, not such as to raise a real, genuine or *bona fide* dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers . . .

[13] A real, genuine and *bona fide* dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say “generally” because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a

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<sup>7</sup> *Wightman t/a JW Construction v Headfour (Pty) Ltd & another* 2008 (3) SA 371 (SCA) paras 11-13.

decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter.”

## CONCLUSION

[37] In this matter before me, it is evident that during 2001, Andrew and Martin, the sole and controlling members of the parties concluded an oral agreement whereby the applicant and respondent would conduct their business in certain geographical areas.

[38] This agreement remained in effect, until the death of Andrew, the sole and controlling member of the applicant. During October 2022, after the appointment of Laubscher as the CEO of the applicant, the relationship between the applicant and the respondent broke down to such an extent that the parties are currently at loggerheads with each other. The main dispute between the parties is whether the oral agreement still subsists.

[39] The applicant relies on the agreement and therefore demands compliance of the terms relating to the geographical areas in which the parties should conduct business. On the other hand, the respondent is of the view that the agreement was a oral “*gentleman’s agreement*” between Andrew and Martin and that the agreement was not intended to bind their heir/s or successors in title, therefore the agreement ended on the death of Andrew.

[40] Although the papers are replete with factual disputes regarding the central issue of whether an agreement was concluded between Andrew and Martin on behalf of the applicant and respondent, the business conduct of the parties over two decades cannot be ignored. The applicant argued that the respondent’s version should be rejected as untenable on the papers and that final relief should be granted. I do not agree. The respondent set out what transpired after the death of Andrew, a proposed MoU was delivered to the executor of the estate of Andrew in order to provide for the oral

agreement between Andrew and Martin to be formally concluded. Neither, the executor nor the applicant responded regarding the proposal by the respondent. I am not persuaded that the respondent's version can be rejected as palpably false and untenable on the papers.

[41] Furthermore, the conduct of Rebecca regarding the Massmart account and the change of the supply details is also a contentious issue. According to the respondent, Rebecca acted in accordance with a "Signing authority with Massmart, Massbuild and Builders Warehouse for Mercury Fittings (9469)". This document was signed on 27 June 2013 by Andrew and Martin and provides the following:

"To whom it may concern

With respect to all applications, contracts and other decision making (*sic*) regarding trading terms with Massmart, Massbuild and Builders Warehouse we do declare Rebecca Humphry in her capacity as CEO of Doorware and representative of Mercury Fittings (vendor 9469) as our signing authority with permission to conduct business on our behalf with Massmart, Massbuild and Builders Warehouse."

[42] The question has to be raised, does the authority as mentioned above, give Rebecca the prerogative to remove the applicant as the holder of the vendor number and, whether Rebecca disregarded the duty of care, alternatively, the fiduciary duty imposed on her in respect of the applicant arising from the authority. Furthermore, what would the legal implications be of the authority following the death of Andrew.

[43] However, the circumstances present in this matter and the protracted dispute after the death of Andrew, does not justify a dismissal of the application. In terms of Rule 6(5) (g),<sup>8</sup> where an application cannot properly be decided on affidavit, the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision. In particular, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact.

[44] In the exercise of my discretion this is one of those instances where the issue and dispute between the parties as to whether the agreement concluded between Andrew

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<sup>8</sup> Uniform Rules of Court.

and Martin subsist and the nature of the said agreement, can only be properly ventilated by referring the matter to oral evidence. Furthermore, the authority provided to Rebecca to act as representative on behalf of Andrew and Martin regarding to the Massmart account also needs clarification.

[45] The main question however to be considered at this stage is whether prima facie the “*gentleman’s agreement*” can be interpreted as an enforceable contractual obligation. In *Siyepu and Others v Premier, Eastern Cape, Alkema J* analysed the law pertaining to gentleman’s agreements as follows:

“[23] How does the law distinguish between a ‘*gentleman’s agreement*’ and an enforceable contractual obligation? Historically, the demands of the merchant community required a person to honour his undertaking. The principle of sanctity of contract – *pacta servanda sunt* – is not only based on moral conceptions of good faith, but also on practical considerations necessary for healthy commercial trade. In *Absa Bank Ltd (supra)* Cameron JA said at 181 para 7 that a contractual provision can only be regarded as enforceable if it makes commercial sense or has business efficacy. This was also the approach in *MAN Truck & Bus (SA) v Dorbyl Ltd t/a Dorbyl Transport Products 2004 (5) SA 266 (SCA)* at 232 para 9. The Court must therefore also have regard to the nature of the undertaking.”<sup>9</sup>

[46] It is evident that the dispute between the applicant and the defendant is a factual one, and to a certain degree a matter of interpretation of the conduct of the parties over the passed 20 years. I have before me two mutually destructive versions relating to the exitance or not, of a contractual relationship between the applicant and the respondent prior to the death of Andrew and thereafter. The applicant argued that there was a legally enforceable agreement in place between them, which provided a number of terms and conditions regulating their business relationship. The respondent denied the existence of an agreement between the parties following the death of Andrew.

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<sup>9</sup> *Siyepu and Others v Premier of the Eastern Cape* (203/2000) [2011] ZAECBHC 8; 2013 (2) SA 425 (ECB) (8 September 2011). Also see *N&Z Instrumentation and Control v Trolex SA (Pty) Ltd* (2012/A5052) [2013] ZAGPJHC 251 (4 June 2013).

[47] Having considered the facts in the matter at this stage, it is appropriate to grant interim relief.

## **ORDER**

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

1. The dispute relating to the existence of an agreement between the parties, the nature thereof and the authority provided to Ms Rebecca Humphry on 27 June 2013 is referred to oral evidence.
2. It is ordered that the notice of motion stand as simple summons and the answering affidavit as a notice of intention to defend.
3. The declaration shall be delivered within 15 days of this order and the Uniform Rules dealing with further pleadings, discovery and conduct of trials shall thereafter apply.
4. Pending the outcome of the trial:

4.1 The respondent be and hereby is interdicted and restrained from selling and/or offering to sell and/or making available to sell under fulfilling orders and/or supplying, whether directly or indirectly, any product in the QS Product range within the geographical areas of:

4.1.1 The Province of Western Cape,

4.1.2 The Province of Eastern Cape, and

4.1.3 The Province of Northern Cape.

4.2 The respondent be and hereby is interdicted and restrained from selling and/or offering to sell and/or making available to sell and/or fulfilling orders and/or supplying, whether directly or indirectly, any product in the QS Product range to the entities, as set out in Annexure "A" hereto, in Namibia.

4.3 The respondent be and hereby is interdicted and restrained from making contact with and/or approaching any of the applicant's customers, whether directly or indirectly, as listed in Annexure "B" hereto, within the geographical areas as set out in paragraph 4.1 hereof in respect of any aspect relating to any product in the QS Product range.

4.4 The respondent be and hereby is interdicted and restrained from selling and/or offering to sell and/or making available to sell and/or fulfilling orders and/or supplying, whether directly or indirectly, any product in the QS Product range from its office opened in Cape Town, Western Cape, currently situated at Unit C9, Boulevard Way, Capricorn Business Park, Muizenberg.

4.5 The respondent be and hereby is interdicted and restrained from opening offices within the geographical areas set out in paragraph 4.1 hereof.

4.6 The respondent be and hereby is ordered, within 30 (thirty) days of the granting of this order, to furnish to the applicant with a list of all customers or potential customers, including the names of the relevant person(s) in authority and contact details, the respondent made contact with, within the geographical areas as set out in paragraph 4.1 hereof in respect of any product in the QS Product range.

5. Costs in the cause

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**CSP OOSTHUIZEN-SENEKAL  
ACTING JUDGE OF THE HIGH COURT  
GUATENG DIVISION, JOHANNESBURG**



This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *Case Lines* and by release to SAFLII. The date and time for hand-down is deemed to be 16h00 on 22 February 2023.

**DATE OF HEARING:** 15 & 16 February 2023

**DATE JUDGMENT DELIVERED:** 22 February 2023

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