

REPUBLIC OF SOUTH AFRICA



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

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

CASE NO: 2023-075730

.....
DATE SIGNATURE

IN THE MATTER BETWEEN

NSR SPORTS AND EDUCATION (PTY) LTD
t/a IAM 360

APPLICANT

AND

GARY VAN HEERDEN
NATASHA JACOBS

1ST RESPONDENT
2ND RESPONDENT

JUDGMENT

LOXTON AJ

1. On 22 August 2023 the applicant, NSR Sports And Education (Pty) t/a IAM360 brought an urgent application against the respondents for the following relief:

“2. The respondents are interdicted, for a period of 12 months, from directly or indirectly:

2.1 using for any purpose whatsoever the applicant’s confidential information including its list/s of current and prospective customers and clients, customer leads, customer information, pricing of contracts (“the confidential information”);

2.2 approaching, canvassing, contacting, soliciting or doing business (directly or indirectly) with the applicant’s customers as set out in the list (to be handed to the court and which will be marked “A” and which will be attached to this order) or any customers dealt with through the respondents’ involvement with the applicant (“the customers”);

2.3 directly or indirectly divulging to third parties any of the confidential information or customers;

- 2.4 *using the confidential information to advance the respondents' own competing business interests or the completing business interests of a third party;*
- 2.5 *discouraging any of the customers (directly or indirectly) from doing business with the applicant.*
3. *Ordering the respondents to deliver, within seven (7) days of this Order, to the applicant all copies of the confidential information in respondents' possession or under their control in all formats (soft and hard copies) alternatively a written undertaking by all the respondents, within seven (7) days of this Order, that the respondents have destroyed, are not in possession of and do not have access to any of the confidential information.*
4. *Ordering the respondents to disclose and deliver to, within seven (7) days of this Order, the records of all communications between the respondents and the customers."*
5. In the alternative, the applicant sought certain interim relief *"pending the determination of an action to be instituted by the applicant against the respondents for the relief set forth in paragraphs 2 to 4 above, the provisions of the said paragraphs 2-4 to operate as an interim interdict"* (I have, in quoting the relief sought, corrected obvious grammatical errors.)
6. The second respondent played no part in these proceedings which, were defended only by the first respondent.

7. At the outset of his argument counsel for the applicant, Mr Viljoen, indicated that the applicant was not proceeding with the alternative interim relief. In the circumstances of this case, the interim relief was not appropriate because it would result in an interdict far exceeding the 12 month period for which the permanent interdict was sought.
8. The application for an urgent interdict was heard by Bezuidenhout AJ on 5 September 2023, who struck the application off the roll for lack of urgency.
9. The first respondent denied that he had or has engaged in the conduct which is the subject matter of the interdict and denied in particular that he was, or is, in possession of any confidential information of the applicant, including customer lists. The application of the Plascon-Evans rule means that the applicant is unable to establish, on the uncontroverted evidence that, save for the event described below, the first respondent has engaged in the conduct sought to be interdicted.
10. What emerges clearly from the papers is that the respondents, who both rendered services to the applicant either as employees or independent contractors, had a close relationship with each other. The services of both respondents were terminated in mid-June 2023. The first respondent, on his own version, started to operate on his own account in the same industry as that engaged in by the applicant. He admits to having carried on business with Green Room Futures, a competitor of the applicant. The second respondent was also

associated with Green Room Futures and received a payment of R40,000.00 for her services to that entity.

11. In an email dated 19 June 2023, the second respondent indicated to one Reese Adriaanse, a client of the applicant, that she had asked the first respondent to contact him *“about something amazing that might work out better for you going forwards ... when the dust has settled.”* The email suggests strongly that the second respondent was signalling to a customer of the applicant that she would be contacting him about a business proposition once the “dust” created by the termination of her employment with the applicant had settled.
12. For his part, the first respondent does not deny that he shared an encrypted spreadsheet, entitled *“Leads GRF Current”* with Jacobs on 8 June 2023 and invited her to edit it. The first respondent denied that the document had anything to do with the applicant but declined to explain what the document was. Given the first respondent’s refusal to explain what the document was, the probabilities are that the letters *“GRF”* refer to Green Room Futures and the encrypted spreadsheet contained information about the business of the applicant which the first respondent intended to share with Green Room Futures.
13. Importantly, the encrypted spreadsheet was shared by the first respondent with the second respondent at a time when both were employed by the applicant and both owed the applicant a duty of good faith and were obliged not to take any action designed to promote their

own interests at the expense of the applicant or to promote the interests of a competitor of the applicant.

14. In the circumstances I am persuaded that whilst he was an employee of the applicant, the first respondent acted unlawfully by failing to keep the confidentiality of the applicant and by misusing that confidential information for his own gain.

15. That is however not the end of the matter. It is settled law that in order to succeed in obtaining a final interdict, an applicant must establish:

15.1 a clear right;

15.2 an injury actually committed or reasonably apprehended; and

15.3 the absence of similar protection by any other ordinary remedy.

16. In this case the difficulty which the applicant faces is that the uncontested evidence does not demonstrate that there is a reasonable apprehension that the applicant will suffer harm if the interdict is not granted.

17. In those circumstances I am of the view that the applicant has not established its right to the relief which it seeks and its application must therefore be dismissed.

18. Before turning to the question of costs, I must make it clear that in my view the contention advanced by Mr De Wit on behalf of the first respondent in his heads of argument to the effect that the application is

an abuse of process, and that the applicant is not entitled to relief because it has come to court with unclean hands, has no merit. In my view the applicant was entitled to come to court and may well have succeeded, had its application not been struck off the roll in August 2023.

19. I have found that the first respondent acted unlawfully when he compiled the encrypted spreadsheet entitled "*Leads GRF Current*" and invited the second respondent to edit it. Having regard to that finding, and the basis upon which I have decided to refuse the relief sought by the applicant, I am of the view that it is in the interests of justice that there be no order as to costs.

20. In the circumstances I make the following order:

20.1 The application is dismissed.

20.2 There shall be no order as to costs.

CDA LOXTON
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA,
GAUTENG DIVISION,
JOHANNESBURG

Appearances:

Date of hearing : 12 March 2024

Date of Judgment : 03 April 2024

For the Applicant : Adv H M Viljoen

Instructed by : Brittan Law

For Respondent : Adv V de Wit

Instructed by : K Jordaan and Associates Inc