THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: 2024-109219

In the matter between:

WACO AFRICA (PTY) LTD	**Applicant**
and	
ISMAIL AHMED	**First Respondent**
BATTALIONS-AT-HEIGHTS ROPE ACCESS (PTY) LTD	**Second Respondent**
AZRAD CONSULTING SOLUTIONS	**Third Respondent**

Heard: **3 December 2024**

Delivered: **11 December 2024**

This judgment was handed down electronically by consent of the parties' representatives by circulation to them by email. The date for hand-down is deemed to be 11 December 2024.

JUDGMENT

PRINSLOO, J

Introduction

[1] The Applicant trades throughout South Africa and Southern Africa and provides cutting-edge turnkey solutions in formwork, shoring, scaffolding, modular and relocatable buildings, portable sanitation hygiene services, hydraulic access and suspended platforms. It trades primarily in the South African mining, construction and energy-related sectors and is comprised of six different trading divisions and its core business can be divided into three separate lines of business. For purposes of this application, the relevant line of business is that of hydraulic access and suspended platforms, provided by SkyJacks.

[2] SkyJacks has been a leading supplier of specialist access systems and lifting equipment services including *inter alia* temporary suspended platforms, mobile elevated work platforms, telehandlers, construction hoists and mini cranes and it supplies a comprehensive selection of lifting products. SkyJacks' services are expended across numerous industries including construction, mining, industrial maintenance, building, events and film.

[3] The Applicant acquired SkyJacks as a going concern pursuant to a written sale of business agreement in 2015.

[4] The Second Respondent (Battalions) is a direct competitor of the Applicant's division of SkyJacks. Battalions provides rope access and fall arrest, scaffolding, mobile elevated platforms, suspended access platforms and access towers and ladders services.

[5] It is undisputed that the Applicant and Battalions are direct competitors, offering products and services in competition with each other and they are competing for the same client base throughout South Africa.

[6] The First Respondent (Respondent or Mr Ahmed) has been employed by SkyJacks since 2005 and he has held various positions. In September 2016, he was promoted to the position of contracts manager and he occupied this position until September 2022 when he resigned to join his brother-in-law's security business. Mr Ahmed subsequently requested to be re-employed by the Applicant and on 21 April 2023, he was appointed as a workshop manager with

effect from 1 May 2023. The parties signed a restraint of trade agreement on 26 April 2023.

[7] The restraint of trade agreement provided *inter alia* that after termination of his employment, the Respondent was restrained for a period of one year, from the date of termination of the agreement, from taking up employment or having an interest in any capacity in any business or concern which carries on operations or business in competition with the Applicant's business.

[8] The Respondent resigned on 6 May 2024 and he left the Applicant's employ on 6 June 2024. It is undisputed that when the Respondent was asked why he was leaving the Applicant's employ, he advised the Applicant that he would be taking up employment with his brother-in-law, where he was employed between September 2022 and April 2023. It is common cause that the Respondent, after leaving the Applicant's employ and with effect from 6 June 2024, took up employment with Battalions in the capacity of a Lifting Machinery Inspector (LMI).

[9] On 3 September 2024, it came to the Applicant's attention that Mr Ahmed was associated with Battalions, in contravention of the restraint of trade agreement and on the same date, the Applicant's attorney addressed a letter to the Respondent and demanded that he terminate his involvement with Battalions and that he keeps secret and confidential the Applicant's trade secrets and confidential information.

[10] The Respondent did not accede to the Applicant's demands, as per the attorney's letters and an urgent application seeking to enforce the restraint of trade was filed with this Court on 26 September 2024. The application was enrolled for hearing on 29 October 2024, when it was struck off the roll for lack of urgency.

[11] It is unfortunate that the Respondent took the approach to challenge the issue of urgency, as this Court's stance on the issue of urgency in restraint of trade applications is well known. In *Boomerang Trade CC t/a Border Sheet Metals v*

Groenewald and Another[1], the Court restated the principle that proceedings for the enforcement of the restraint of trade agreement are by their very nature urgent since they invariably seek to interdict ongoing unlawful conduct. Be that as it may, the Court struck the matter for lack of urgency and after intervention by the Judge President of the Labour Court, the matter was re-enrolled for hearing on the merits on 3 December 2024.

[12] It is unfortunate that a matter that was already allocated a Court day is back in Court for a second time, only a few weeks after the first hearing, when the scarcity of resources is no secret and this is no doubt, at a great expense for the parties.

Issues to be decided

[13] The Applicant's case is that it conducts business in direct competition with Battalions as numerous of Battalions' business activities compete with the Applicant's business activities. The Respondent did not deny that Battalions competes with the Applicant, but he denied that it was a 'major competitor' of the Applicant. This is because the Applicant is a *"much larger operation by comparison to the second respondent and as a result, the second respondent cannot be considered to be a commercial threat to the Applicant".*

[14] In my view, there is no merit in the Respondent's attempt to downplay the size of or the commercial threat that Battalions poses, as it is undisputed that they are direct competitors, competing in the same industry and that the Applicant already lost two contracts it was previously awarded, which were recently awarded to Battalions.

[15] The Applicant submitted that historically Babcock has been the Applicant's client for over 20 years and that it has been subcontracted to Babcock on various Eskom projects since 2015. It is not disputed that Babcock is a shared client of the Applicant and Battalions. The Applicant's case however is that Mr Ahmed, now employed by Battalions, is using the Applicant's client connections

[1] [2012] ZAECELLD (18 September 2012).

and confidential information to assist Battalions in obtaining business from Babcock, where such business would have been channelled to the Applicant.

[16] The Respondent's case is that Battalions has a pre-existing relationship with Babcock and it cannot claim an exclusive relationship. Babcock has knowledge of the equipment and service offerings of both companies, it has been privy to the pricing of both and has been able to assess the competitive nature of such pricing.

[17] This is denied by the Applicant, whose case is that it does not claim exclusivity in respect of Babcock, but historically Babcock relied on the Applicant for suspended platforms and on Battalions for its rope access. Furthermore, Babcock was quoted client prices and did not have knowledge of the Applicant's price margins or costing, which is different from the quoted price and which is information Mr Ahmed has.

[18] I deem it prudent to set out the issues that are common cause and which remain for this Court to decide.

[19] The starting point in an application such as this one is that a party seeking to enforce a restraint of trade is required to invoke the restraint agreement and prove a breach thereof. If the restraint is reasonable, it will be enforceable.

[20] The party seeking to avoid the restraint, bears the onus to show that on a balance of probabilities, the restraint agreement is unenforceable because it is unreasonable.[2]

[21] *In casu,* the Respondent did not dispute the validity, existence or the terms of the restraint of trade agreement (the agreement) that the Applicant seeks to enforce. It is further common cause that Mr Ahmed is employed by Battalions,

[2] *Basson v Chilwan and Others* [1993] ZASCA 61; 1993 (3) SA 742 (A) (*Basson*) at 761I - J; *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* [1984] ZASCA 116; 1984 (4) SA 874 (A) at 493E - F and 496D; *Reddy v Siemens Telecommunications (Pty) Ltd* [2006] ZASCA 135; 2007 (2) SA 486 (SCA) (*Reddy*); *Den Braven SA (Pty) Ltd v Pillay and Another* [2008] ZAKZHC 22; 2008 (6) SA 229 (D); *Experian South Africa (Pty) Ltd v Haynes and Another* [2012] ZAGPJHC 105; 2013 (1) SA 135 (GSJ) (*Experian*).

who is a direct competitor of the Applicant and that, in taking up employment with a direct competitor, Mr Ahmed acted in contravention of the agreement.

[22] The relief sought by the Applicant is as follows:

> '1. Interdicting and restraining the First Respondent for a period of 12 months from the date of this judgment in terms of clause 16 of the First Respondent's restraint of trade agreement and within the areas of Gauteng, Mpumalanga, Limpopo, the Free State and the Northwest provinces from either directly or indirectly:
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> 1.1. being interested, in any way, as a director, proprietor, partner, shareholder, financier, advisor, member or otherwise, granting financial assistance or financial loans to or being employed by the Second Respondent and / or any business or concern which competes or may compete, directly or indirectly, with the business or any part of the business undertaken by the Skyjacks' division of the Applicant ("Skyjacks") or which, in any way, provides services which are substantially the same or similar to those undertaken by Skyjacks;
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> 1.2. approaching and / or soliciting any of the Skyjacks' clients (as defined in paragraph 1.3 of the First Respondent's restraint of trade agreement) including but not limited to Babcock International Group, for the purpose of soliciting business, whether for himself or on behalf of the Second Respondent and / or any other party (whether he has an interest in such other party or not), and in addition thereto shall not do business, whether as principal or employee;
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> 1.3. offering employment to or in any way assist or instigate employment being offered to any employee of Skyjacks who was an employee of Skyjacks in the preceding 12 month period prior to judgment being granted; and
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> 1.4. entering into any agreement, arrangement or understanding of whatsoever nature and howsoever arising with any employee of Skyjacks who was an employee of Skyjacks at any time during a 12 month period prior to this judgment being granted

which has the effect, whether directly or indirectly of enabling, enticing or encouraging such employee to undertake any interest, or be employed by the Second Respondent and / or in any business in competition Skyjacks which provides services which are the same or substantially similar to those of Skyjacks.

2. Interdicting and restraining the First Respondent from using Skyjacks' trade secrets and / or confidential information (as defined in paragraph 1.2 of the First Respondent's restraint of trade agreement), whether directly or indirectly, for his own benefit or for the benefit of the Second Respondent and/or any person or third party.

3. Costs against the First Respondent.'

[23] The Respondent, through his attorneys of record, made a with-prejudice tender in the following terms:

'1. Our client undertakes that he shall not in the provinces of Gauteng, Mpumalanga, Limpopo, Free State and KwaZulu-Natal and North West, for a period until 31 October 2025 either directly or indirectly:

1.1 approach or solicit any of the clients of your client's SkyJacks division ("Skyjacks"), who were clients of SkyJacks as at 6 June 2024 or in the 12 months preceding 6 June 2024, including but not limited to Babcock International Group or Concor Construction, whether on his own behalf of for the benefit of Battalions-at-Heights (Pty) Limited ("Battalions") or any other party (whether he has an interest in such other party or not);

1.2 do business with any clients of Skyjacks, whether as principal or employee, whether on his own behalf or for the benefit of Battalions or any other party (whether he has an interest in such other party or not) other than in the capacity as a Lifting Machinery Inspector in respect of those clients of the SkyJacks who are also clients of Battalions ("the shared clients");

1.3 have any dealings with any shared clients other than in his capacity as a Lifting Machinery Inspector;

1.4 offer employment to or in any way assist in instigating employment being offered to any employee of SkyJacks who was an employee of SkyJacks in the 12 months prior to 31 October 2024;

1.5 enter into any agreement, arrangement or understanding of whatsoever nature and howsoever arising with any employee of Skyjacks who was an employee of SkyJacks in the 12 months prior to 31 October 2024, which has the effect, whether directly or indirectly, of enabling, enticing or encouraging such employee to take up any interest or be employed by Battalions or any business which competes with the business of SkyJacks or which provides services which are the same or substantially similar to those provided by the applicant;

2. Our client further undertakes that he shall not directly or indirectly use the confidential information of SkyJacks for his own benefit or for the benefit of Battalions or any other third party.

3. Our client undertakes that he shall not directly or indirectly divulge SkyJacks' confidential information to Battalions or any third party.

4. Battalions undertakes that it shall not seek, possess, use or disseminate any of SkyJacks' confidential information that may be conveyed to it by our client.

5. If our client offers to disclose, or in fact discloses, any of Skyjacks' confidential information to Battalions, Battalions will forthwith inform SkyJacks, setting out:

5.1 the date and time of the disclosure or the offer to disclose such confidential information;

5.2 the nature of the information offered or disclosed; and

5.3 the steps Battalions took thereafter in dealing with that information or the offer to disclose it.

6. Battalions undertakes that it shall not deploy or utilise our client to approach, solicit, do business or deal with any of the shared clients other than in the capacity as Lifting Machinery Inspector but we confirm that this undertaking does not preclude Battalions from continuing to conduct business with any of the shared clients provided that it does not utilise or involve our client for these purposes other than as Lifting Machinery Inspector.'

[24] It is evident from the terms of the tender that the Respondent takes no issue with the part of the agreement that seeks to protect confidential information and prevent the poaching of employees. In summary and paraphrased: Mr Ahmed tenders not to approach or solicit any of the Applicant's SkyJacks clients or do business with them; not to have any dealings with any shared clients; not to offer employment to any employee of the Applicant; and not to use or divulge the Applicant's confidential information. In my view, the only contentious issue which remains is Mr Ahmed's employment with Battalions (or any other direct competitor). He tendered almost all the relief sought by the Applicant, except to leave the employ of Battalions and some of his tendered undertakings are qualified as *"other than in his capacity as Lifting Mine Inspector",* clearly indicating an intention to remain employed by Battalions, notwithstanding the terms of the restraint of trade agreement.

[25] Ms Bosman for the Respondent submitted that the tender made by Mr Ahmed is all that is reasonably necessary to protect the Applicant's interests as it would effectively interdict him from soliciting the Applicant's clients, using or divulging confidential information and poaching the Applicant's employees. She submitted that the tender provides wide-ranging protection to the Applicant, more so as it is underwritten by Battalions, Mr Ahmed's new employer and will be made an order of Court. It is far more than just an undertaking and it is not necessary to go further than that to protect the Applicant's interests.

[26] Mr Whitcutt for the Applicant on the other hand submitted that although the undertaking includes the provinces within which the agreement applies and sets out the clients Mr Ahmed should not solicit or deal with, the undertaking is not enough to protect the Applicant's interests. This is so because Mr Ahmed

retains the right to do business and deal with the shared clients, albeit limited to his capacity as LMI. In doing so, he would not become mute and blind and not communicate with the clients, where he could still disclose confidential information of the Applicant, albeit unintentionally. This is a risk the Applicant is not prepared to take.

[27] Mr Whitcutt further submitted that the fact that the undertaking is underwritten by Mr Ahmed's new employer is of no assistance to the Applicant because Battalions would not necessarily know when confidential information is disclosed, as this could be done deliberately or unintentionally. It is very unlikely that such disclosure would happen with a prior announcement that what was about to be disclosed would constitute confidential information and that such disclosure would then be reported, as per the Second Respondent's undertaking.

[28] The following relief sought is what remains contentious:

> 'Interdicting and restraining the First Respondent for a period of 12 months from the date of this judgment in terms of clause 16 of the First Respondent's restraint of trade agreement and within the areas of Gauteng, Mpumalanga, Limpopo, the Free State and the Northwest provinces from either directly or indirectly:
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> > being interested, in any way, as a director, proprietor, partner, shareholder, financier, advisor, member or otherwise, granting financial assistance or financial loans to or being employed by the Second Respondent and / or any business or concern which competes or may compete, directly or indirectly, with the business or any part of the business undertaken by the Skyjacks' division of the Applicant ("Skyjacks") or which, in any way, provides services which are substantially the same or similar to those undertaken by Skyjacks…'

[29] In my view, the only contentious issue which remains is Mr Ahmed's employment with Battalions (or any other direct competitor). Put differently, the two main issues which remain for this Court to decide are first, whether Mr Ahmed's employment with Battalions is to be interdicted, as he tendered an

undertaking in respect of almost all the other relief sought by the Applicant and second, the period of the restraint.

[30] Whether the enforcement of the restraint of trade against the Respondent would be reasonable is dependent upon deciding the following questions set out in *Basson v Chilwan and Others*[3] *(Basson)*: (a) does the one party have an interest that deserves protection?; (b) if so, is that interest threatened by the other party?; (c) does such interest weigh qualitatively and quantitatively against the interest of the other party not to be economically inactive and unproductive?; and (d) whether there is an aspect of public policy having nothing to do with the relationship between the parties that requires that the restraint be maintained or rejected.

[31] The Courts have added a further enquiry, namely whether the restraint goes further than necessary to protect the relevant interest.[4]

The issues to be decided

[32] The point of departure is that restraint of trade agreements are valid. Whether a restraint of trade clause will be enforceable, is another question that requires an assessment of the reasonableness thereof.

[33] *In casu,* it is not disputed that the Respondent signed an agreement, that he had resigned from the Applicant's employ and that he had taken up employment at a competitor of the Applicant. This constitutes breach of contract in that Mr Ahmed is doing something expressly forbidden by the agreement and inconsistent with the obligations imposed by the agreement. The Applicant seeks an interdict to prohibit such a breach and is in reality asking for specific performance in the negative form of non-performance of the forbidden or inconsistent act to ensure performance of the contract. For the Respondent to escape enforcement of the agreement, it is incumbent on him to establish that the agreement is unreasonable in that it does not protect a proprietary interest.

[3] *Basson supra* at 767G - H.
[4] See: *Jonsson Workwear (Pty) Ltd v Williamson and Another* [2013] ZALCD 24; (2014) 35 ILJ 712 (LC) (*Jonsson*) at para 44; *Medtronic (Africa) (Pty) Ltd v Van Wyk and Another* [2016] ZALCJHB 71; (2016) 37 ILJ 1165 (LC) at para 15; *Esquire System Technology (Pty) Ltd t/a Esquire Technologies v Cronjé and Another* [2010] ZALC 198; (2011) 32 ILJ 601 (LC) at paras 50 – 51.

[34] As already alluded to and in view of the comprehensive undertaking provided, these aspects will be considered in respect of the question of whether Mr Ahmed's continued employment with Battalions will threaten a protectable proprietary interest of the Applicant. The first consideration is whether there is an interest that requires protection.

Protectable interest

[35] In *Continuous Oxygen Suppliers (Pty) Ltd t/a Vital Aire v Meintjes and Another*[5]*,* the Court, in considering the question of whether there was indeed a protectable interest, held that:

> 'As I pointed out in *Esquire Technologies*, a restraint is valid if there is a proprietary interest which justifies protection. Those interests are usually in the nature of trade secrets, know-how, pricing or customer connections. Therefore, a restraint would be an enforceable restriction on the activities of an employee who (for example) had access to the company's customers and could use his/her relations with the company's customers to the advantage of a competitor and to the detriment of the company.'

[36] Insofar as the first leg of the test in *Basson* is concerned, it is well established that the proprietary interests that can be protected by a restraint agreement are essentially of two kinds, namely –

i. all confidential matter which is useful for the carrying on of the business and which could therefore be used by a competitor, if disclosed to him, to gain a relative competitive advantage. Such confidential material is sometimes compendiously referred to as *"trade secrets"*; and

ii. the relationships with customers, potential customers, suppliers and others that go to make up what is compendiously referred to as the "*trade connection*" of the business, being an important aspect of its incorporeal property known as goodwill.[6]

[5] [2011] ZALCJHB 150; (2012) 33 ILJ 629 (LC) at para 34.
[6] See: *Sibex Engineering Services (Pty) Ltd v Van Wyk and Another* 1991 (2) SA 482 (T) at 502D/E - F.

[37] Whether information constitutes a trade secret is a factual question. For information to be confidential it must be –

i. capable of application in trade or industry, that is, it must be useful and not be public knowledge and property;

ii. known only to a restricted number of people or a closed circle; and

iii. of economic value to the person seeking to protect it.[7]

[38] As to customer connection, the need of an employer to protect its trade connections arises where the employee has access to customers and is in a position to build up a particular relationship with a customer so that when she or he leaves the employer's service, she or he could easily induce the customers to follow her or him to a new business.

[39] In *New Justfun Group (Pty) Ltd v Turner and Others*[8] (*New Justfun*), the Court enforced the restraint of trade and held, with reference to customer connections, that *"it is sufficient for the applicant to show that the customer contact exists and that they can be exploited by the former employee"*[9] and, with reference to confidential information that:

> '[14] … [T]he respondent must establish that he or she had no access to that information or that he or she had never acquired any significant personal knowledge of, for instance, the applicant's customers while in the applicant's employ. All that an applicant need show is that there is secret information to which the respondent had access and which in theory the respondent could transmit to the new employer should he or she desire to do so…
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> …
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> [20] … [I]t remains ultimately for [the respondent] to establish that she had no access to confidential information and that she never acquired any

[7] See: *Townsend Productions (Pty) Ltd v Leech and Others* 2001 (4) SA 33 (C) (*Townsend*) at 53J - 54B; *Mossgas (Pty) Ltd v Sasol Technology (Pty) Ltd* [1999] 3 All SA 321 (W) at 333F.
[8] [2014] ZALCJHB 177; *(*2018) 39 ILJ 2721 (LC).
[9] Ibid at para 13.

> significant personal knowledge of, or influence over, the applicant's customers.'[10]

[40] Does the Applicant have a protectable proprietary interest that will be threatened by the Respondent's employment with Battalions? The interests the Applicant seeks to protect are its customer relationships and confidential information. I will deal with those in turn.

[41] It must be emphasised that the Applicant does not have to show that Mr Ahmed solicited its clients, only that he could, and it does not have to show that he has used its confidential information, only that Mr Ahmed was exposed to it and could use it. In general, it suffices if it is shown that trade connections through customer contact exist and can be exploited if the former employee is employed by a competitor or competes with the business of his or her former employer.

[42] The onus is on Mr Ahmed to prove that he had no access to confidential information and that he never acquired any significant personal knowledge of or influence over the Applicant's customers whilst in its employ.

Customer relationships

[43] It is trite that not every contact between an employee and the employer's customers constitutes or forms the basis of a protectable interest in the form of customer connection.

[44] In *Rawlins and Another v Caravantruck (Pty) Ltd*[11] *(Rawlins),* it was held that the need for an employer to protect its trade connections arises where the employee has access to customers and is in a position to build up a particular relationship with the customers and could easily induce the customers to follow him or her to a new business. Once that conclusion has been reached and it is demonstrated that the prospective new employer is a competitor of the applicant, the risk of harm to the applicant if its former employee would take up employment becomes apparent. It was held that:

[10] Ibid at paras 14 and 20.
[11] [1992] ZASCA 204; 1993 (1) SA 537 (A) at 541C - D.

> 'Whether the criteria referred to are satisfied is essentially a question of fact in each case, and in many, one of degree. Much will depend on the duties of the employee; his personality; the frequency and duration of contact between him and the customers; where such contact takes place; what knowledge he gains of their requirements and business; the general nature of their relationship (including whether an attachment is formed between them, the extent to which customers relyon the employee and how personal their association is); how competitive the rival businesses are; in the case of a salesman, the type of product being sold; and whether there is evidence that customers were lost after the employee left…'[12]

[45] It must be shown that the trade connections through customer contact exist and that it can be exploited if the former employee were employed by a competitor. The employee, on the other hand, disputing the reasonableness of the restraint agreement, must establish that he or she did not acquire significant personal knowledge of or influence over the employer's customers, while in its employ.

[46] The Applicant thus must make out a case that firstly customer contact existed and secondly, that the Respondent is able to exploit that. The Respondent, on the other hand, must establish that he never acquired any significant personal knowledge of or influence over the Applicant's customers whilst in the Applicant's employ.[13]

[47] The Respondent was employed by SkyJacks since 2005 and he held various positions. The Applicant's case is that Mr Ahmed has been working in the SkyJacks division for more than 18 years and throughout his employment and due to the nature of his job titles, he has formed close and personal connections with various of the Applicant's clients. Relevant for purposes of this application are the positions of contracts manager held from September 2016 until September 2022 and workshop manager from May 2023 until June 2024.

[48] Mr Ahmed on the other hand disputed that his employment with SkyJacks was uninterrupted for 18 years. He explained that there was a break in his

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[12] Ibid at 541G - I.
[13] *Rawlins supra* at 542F - 543A; *Branco and Another t/a Mr Cool v Gale* 1996 (1) SA 163 (E) at 178G - H.

employment between September 2022 and May 2023 when he left the Applicant's employ and went to work with his brother-in-law in his security business. When he left the Applicant in September 2022, he no longer had access to any information which might be considered confidential and he no longer dealt with the Applicant's clients. He returned with effect from 1 May 2023 in a completely different role of workshop manager.

[49] He submitted that when he re-joined the Applicant in May 2023, his position and duties differed significantly from the various positions which he occupied prior to the termination of his employment in September 2022 and therefore his historical duties and responsibilities have little or no bearing on this application.

[50] The Applicant's case is that it renders subcontracting services to engineering and construction companies such as Babcock and Actom – longstanding clients of the Applicant with whom the Respondent frequently engaged over the 18 years he worked at SkyJacks. The Respondent conceded that he engaged with Babcock and Actom over a period of 16 years, prior to his departure in September 2022 and that since 2013, he engaged with Mr Johan Koen at Babcock. However, since May 2023 and in his capacity as workshop manager, he did not visit Babcock's representatives on-site and he dealt with Mr Koen only via email on limited occasions.

[51] The Applicant submitted that as contracts manager, the Respondent dealt directly with client sales on a daily basis, and he visited the client sites on a regular basis. He was only away for a period of eight months and he dealt with the same customers in his capacity as workshop manager. He cannot claim to have had limited interaction with clients in his capacity as workshop manager as his relationships with the Applicant's clients continued from when he held the position of contracts manager and he was able to cultivate those relationships he had formed in his position as workshop manager.

[52] The Applicant submitted that the industry in which they compete is highly competitive and the key to securing its clients, is the forging, preserving and maintaining of ongoing relationships with its clients. Mr Ahmed played an integral role in the development of client connections and the building of the

Applicant's business. Mr Ahmed acted as the interface between the Applicant and its clients, the clients would personally call upon Mr Ahmed for assistance and as such, he developed close working relationships with the main contractors. Mr Ahmed denied that he developed client connections which were integral to building the Applicant's business or that he played a crucial role in obtaining or maintaining new or existing projects with the Applicant's clients. He insisted that the contact he had with the Applicant's clients when he was employed as contracts manager ceased in September 2022 when he resigned and when he was subsequently re-employed, he had limited contact with clients.

[53] As alluded to, the Applicant thus must show that firstly, customer contact existed and secondly, that the Respondent is able to exploit that. In my view, the Applicant showed that customer contact existed.

[54] The Respondent tries to paint a picture that the fact that he left the Applicant's employ for the period September 2022 until April 2023 renders his historical duties and responsibilities irrelevant and that he had little or limited contact with Babcock and Actom during his tenure as workshop manager and therefore, there is no protectable interest in respect of customer connections.

[55] In my view, this cannot be. The fact that the Respondent had limited contact with clients during May 2023 and June 2024 and that there was a hiatus in his employment for a few months, does not diminish the historical and cultivated relationships he had formed over a period of 16 years. On his own version, he engaged with Mr Koen from 2013 until he left in September 2022. This is a significant period. Relationships and connections formed over a period of 16 years do not evaporate or disappear on account of a short hiatus.

[56] The Applicant submitted that within mere months of Mr Ahmed's resignation from the Applicant and taking up employment with a trade rival, it lost a contract worth R3 million to Battalions. The customer (Babcock for the Lethabo Power Station) was one with whom Mr Ahmed had developed strong connections over many years and whose needs and requirements he fully understood. He was fully aware of the commercial terms negotiated between Waco and Babcock.

The work to be undertaken was work not previously conducted by Battalions. The customer informed the Applicant that the contract had been awarded to Battalions because the pricing was more favourable. Mr Ahmed says that this is entirely coincidental and unrelated to his employment by Battalions – an averment the Applicant has difficulty accepting.

[57] As the Applicant and Battalions have overlapping clients, there is a real risk that Mr Ahmed may exploit the customer contacts in favour of Battalions. The facts placed before this Court show that the Respondent was able to forge and build up relationships with the Applicant's customers and that there is a real possibility that he is able to leverage these relationships to the Applicant's unfair detriment.

[58] Mr Ahmed could not make out a case that he never acquired any significant personal knowledge of or influence over the Applicant's customers whilst in the Applicant's employ. Instead, his version focussed on the fact that he had resigned in September 2022, an issue that was fully dealt with *supra.*

Confidential information

[59] The Applicant claims that it has a protectable interest in the form of confidential information.

[60] In *Experian SA (Pty) Ltd v Haynes and Another*[14]*,* the issue of confidential information was considered and the Court held that:

> 'It is trite that the law enjoins confidential information with protection. Whether information constitutes a trade secret is a factual question. For information to be confidential it must be capable of application in the trade or industry, that is, it must be useful and not be public knowledge and property; known only to a restricted number of people or a closed circle; and be of economic value to the person seeking to protect it...'

[61] In *Jonsson Workwear (Pty) Ltd v Williamson and Another*[15], the Court found that:

[14] *Experian supra* at para 19.
[15] *Jonsson supra* at 49.

> 'What thus must now be done, as part of the value judgment to be exercised in this matter, is to determine whether there is a case made out on the proper accepted facts as to whether the information the first respondent had access to whilst employed with the applicant would fall within the parameters of what could be classified as confidential information in terms of the above authorities, and also whether this information would be of benefit to the second respondent as employer of the first respondent.'

[62] In *Townsend Productions (Pty) Ltd v Leech and Others*[16], the elements that qualify information as confidential were stated as:

> 'In order to qualify as confidential information, the information concerned must comply with three requirements:
>
> > "First of all, and this is really self-evident, the information must not only relate to, but also be capable of application in, trade or industry. Secondly, the information must be secret or confidential. The information must accordingly – objectively determined – only be available, and thus known, to a restricted number of people or to a closed circle; or, as it is usually expressed by the Courts, the information "must be something which is not public property or public knowledge". Thirdly, the information must, likewise objectively viewed, be of economic (business) value to the plaintiff".'

[63] In the agreement, the Respondent acknowledged and agreed that in the course of his employment, he would acquire knowledge of the Applicant's trade secrets, that such knowledge and information was of great value to the Applicant and its competitors and the Respondent agreed that such shall not be made available or be used by any person outside of the Applicant or for the advancement of his own personal interests or the interest of any competitor.

[64] Where an ex-employer seeks to enforce against its ex-employee a protectable interest recorded in a restraint, the ex-employer does not have to show that the

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[16] *Townsend* at 53 - 54 I also see: Van Heerden, Neethling, '*Unlawful Competition*' at p 225; see also *Alum-Phos (Proprietary) Limited v Spatz and Another* [1997] 1All SA 616 (W) at 623g - 624a; *Motion Transfer & Precision Roll Grinding CC v Carsten and Another* [1998] 4 All SA 168 (N) at 175d - j; *Aranda Textile Mills (Pty) Ltd v Hurn and Another* [2000] 4 All SA 183 (E) at 190i - 191d.

ex-employee has in fact utilised information confidential to it – merely that the ex-employee could do so.

[65] The Applicant's case is that during his employment, the Respondent was part of the SkyJacks division management team and as such, he was exposed to the Applicant's confidential pricing between 2023 and 2024 and prior in the period 2016 to 2022 when he held the position of contracts manager. Further, as part of his duties as workshop manager, Mr Ahmed was required to work closely with the sales team and he was privy to all the Applicant's confidential information concerning its clients, their needs and prices at which services were rendered to clients. By virtue of his employment by the Applicant, Mr Ahmed has detailed knowledge of the Applicant's pricing structures, which is confidential information as it is capable of application in the trade and industry and it will be of economic value and considerable use to a competitor, knowing what prices to charge to match, if not better, the Applicant's prices. The information is only known to a restricted number of persons in the Applicant's employ, and it does not constitute public property or knowledge.

[66] In his opposing affidavit, the Respondent denied that he was privy to significant confidential information such as clients and pricing information. He stated that during his period as workshop manager, he had limited exposure to the Applicant's confidential information, including client's needs and pricing. The limited information he had access to is of no use to a competitor and what is more is that the Applicant's pricing structure changes on an annual basis in July of each year, and thus, the limited knowledge and exposure he had to the Applicant's pricing is now redundant and out of date.

[67] The Applicant filed a replying affidavit, stating that it would be filing a confidential affidavit which will demonstrate that he was indeed exposed to the Applicant's 'job costings' in 2024, despite the Respondent's contentions that he was not exposed to the Applicant's suspended platform pricing and insofar as he was exposed, that such information has become redundant.

[68] The Applicant indeed filed a confidential affidavit wherein it was alleged that the Respondent was exposed to the Applicant's 'Job Costings' in 2024. The

Applicant attached proof to the confidential affidavit that the SkyJacks job costing was emailed from the SkyJacks accountant to a number of individuals serving as part of the management and leadership of SkyJacks, including the Applicant. It is evident from the confidential affidavit that the SkyJacks' accounts department emailed the SkyJacks job costings on a monthly basis and that it was sent to the Respondent, which exposed him to the confidential financial details of *inter alia* SkyJacks cost pricing, profit margins, employees' wages etcetera.

[69] The Applicant stated that Battalions' suspended platform business is still relatively new and that the information, as detailed in the confidential affidavit, will be of great assistance to Battalions, being a direct competitor of the Applicant.

[70] The Respondent filed an answer to the confidential affidavit and he admitted that he was exposed to the Applicant's job costings in 2024. He however explained that although he was copied on emails circulating the spreadsheets with confidential pricing, he *"seldom looked at or engaged with them save when I was asked to address a specific query. Given this extremely limited engagement that I had with this confidential information it is impossible that I could have committed it to memory or be in a position to provide it to the second respondent".* Mr Ahmed explained that if he was not asked to provide a specific cost item, he would often not even open the spreadsheet and he would disregard it entirely as he had no reason to access the information and he was not required to use it in his role as workshop manager.

[71] In summary, Mr Ahmed admitted that the emails referred to in the replying and confidential affidavits were sent to him, but his case is that he did not consider the information contained in the job costing spreadsheet, save in extremely limited circumstances to deal with specific queries.

[72] In *New Justfun,* the Court held with reference to confidential information that the employee must establish that he or she had no access to such information or never acquired any significant personal knowledge of same while in the applicant's employ. All that the applicant need show is that there is secret

information to which the employee had access and which in theory he or she could transmit to the new employer should he or she desire to do so.

[73] Confidential information is a protectable interest and should be protected if it could be used to the benefit of a competitor and to the detriment of the applicant.

[74] In my view, the confidential information the Applicant seeks to protect, meets all the requirements in that it is capable of application in the industry, it will be useful to a competitor, it is not public knowledge or property and is of economic value to the Applicant.

[75] *In casu,* the question is whether the Respondent could use his knowledge of the Applicant's confidential information, acquired in the context of his employment relationship with the Applicant, to the advantage of Battalions or another competitor and to the Applicant's detriment.

[76] Applying the relevant principles, it remains ultimately for the Respondent to show that he had no access to confidential information. In my view, the Respondent is unable to show that he had no access to the Applicant's confidential information. In fact, he admitted that the confidential job costings were sent to him and as such, he had access to it. Rather, the Respondent attempted to downplay the importance or value of the information he had access to by alleging that he would often not even open the spreadsheet, he would disregard it entirely as he had no reason to access the information, he was not required to use it in his role as workshop manager and that he did not consider the information contained in the job costing spreadsheet, save in extremely limited circumstances to deal with specific queries.

[77] This is of no assistance to the Respondent as in *BHT Water Treatment (Pty) Ltd v Leslie and Another*[17]*,* the Court held that the ex-employee cannot defeat the restraint by saying that he does not remember the confidential information to which it is common cause that he has had access. The Court held that:

[17] 1993 (1) SA 47 (W) at 58C.

> 'In my view, all that the applicant can do is to show that there is secret information to which the respondent had access, and which in theory the first respondent could transmit to the second respondent should he desire to do so. The very purpose of the restraint agreement was that the applicant did not wish to have to rely on the *bona fides* or lack of retained knowledge on the part of the first respondent, of the secret formulae. In my view, it cannot be unreasonable for the applicant in these circumstances to enforce the bargain it has exacted to protect itself. Indeed, the very ratio underlying the bargain was that the applicant should not have to content itself with crossing its fingers and hoping that the first respondent would act honourably or abide by the undertakings that he has given.
>
> In my view, an ex-employee bound by a restraint, the purpose of which is to protect the existing confidential information of his former employer, cannot defeat an application to enforce such a restraint by giving an undertaking that he will not divulge the information if he is allowed, contrary to the restraint, to enter the employment of a competitor of the applicant. Nor, in my view, can the ex-employee defeat the restraint by saying that he does not remember the confidential information to which it is common cause that he has had access. This would be the more so where the ex-employee, as is the case here, has already breached the terms of the restraint by entering the service of a competitor.'[18]

[78] The Courts have accepted that where an employee obtained confidential information within the context of an employment relationship, it renders such information protectable.

[79] Overall, the Respondent did not dispute that he had access to the Applicant's confidential information. The Applicant has a clear right to protect its proprietary interests in its confidential information.

[80] The test for exposure to confidential information is whether the ex-employee was exposed to such information or had access thereto during the course of his or her employment and which, in theory, he or she could transmit to the new employer should he or she desire to do so. The test is not whether the employee

[18] Ibid at 57J – 58D.

used, read, copied or remembered the confidential information and the defence that the information was ignored, disregarded or not relevant, finds no application once it is established that the ex-employee was indeed exposed to confidential information.

[81] The Applicant had obtained the confidentiality undertakings from the Respondent to protect itself from the danger of the Respondent communicating its confidential information for the benefit of a direct competitor, after entering such a rival's employ.

[82] The Applicant should not have to content itself with crossing its fingers and hoping that Mr Ahmed would act honourably or abide by the undertakings that he has given. It does not lie in the mouth of the ex-employee who has breached a restraint agreement to say to the ex-employer *"trust me: I will not breach the restraint further than I have already been proved to have done"*.[19]

[83] The Applicant's confidential information is protectable, as it could be used to the benefit of a competitor and potentially exploited. The risk that the Respondent will disclose confidential information, is one the Applicant is not required to run.

[84] The Applicant is entitled to protection in this regard.

Reasonableness

[85] As alluded to *supra,* the Applicant has a protectable interest, which is being prejudiced by Mr Ahmed's breach of his restraint of trade undertaking by taking up employment with a direct competitor of the Applicant.

[86] The third consideration in *Basson,* is the weighing of interests. The question is how does the Applicant's interest weigh up qualitatively and quantitatively against Mr Ahmed's interests to be economically active and productive. This consideration goes hand in hand with a consideration of the public interest that

[19] See: *IIR South Africa BV (Incorporated in the Netherlands) t/a Institute for International Research v Tarita and Others* 2004 (4) SA 156 (W) at 166H-167C; *IIR South Africa BV (Incorporated in the Netherlands) t/a Institute for International Research v Hall (aka Baghas) and Another* 2004 (4) SA 174 (W) at para 13.2.

requires parties to comply with their contractual obligations and that allows all persons be productive and be permitted to engage in trade and commerce or professions.

[87] If the restraint is reasonable, it will be enforceable. In *Reddy v Siemens Telecommunications (Pty) Ltd*[20] the Supreme Court of Appeal upheld a 12-month restraint against an employee who had joined a competitor (Ericsson). The Court restated the following principles:

> '[15] A Court must make a value judgment with two principal policy considerations in mind in determining the reasonableness of a restraint. The first is that the public interest requires that parties should comply with their contractual obligations, a notion expressed by the maxim *pacta servanda sunt*. The second is that all persons should in the interests of society be productive and be permitted to engage in trade and commerce or the professions. Both considerations reflect not only common-law but also constitutional values. Contractual autonomy is part of freedom informing the constitutional value of dignity, and it is by entering into contracts that an individual takes part in economic life. …
>
> [16] In applying these two principal considerations the particular interests must be examined. A restraint would be unenforceable if it prevents a party after termination of his or her employment from partaking in trade or commerce without a corresponding interest of the other party deserving of protection. Such a restraint is not in the public interest.'

[88] In applying the two aforesaid principal considerations, the particular interest must be examined. A restraint would be unenforceable if it prevents a party, after termination of his or her employment, from partaking in trade or commerce without a corresponding interest of the other party deserving of protection.

[89] Whether a restraint of trade agreement is enforceable and whether the applicant in such an application is entitled to an interdict, and if so, to what extent, are questions to be carefully considered by this Court and it entails a

[20] *Reddy supra* at paras 15 – 16.

weighing up of interests. The weighing up of the parties' interests requires a consideration of what is reasonable in the context of a unique set of facts and of the parties' respective rights and the protection they deserve, within that specific and unique context.

[90] Applying the test in *Basson,* the question is whether the protectable interest is threatened by the other party. In other words, this Court has to determine, even where it is found that the Applicant has a protectable interest, whether or not the Respondent's employment with Battalions would infringe on such protectable interest. This is a factual question, considering the possible risks the Applicant would be exposed to if Mr Ahmed is allowed to remain employed by Battalions.

[91] The Respondent's case is that he commenced employment with Battalions on 10 June 2024 as an LMI and as such, he was required to inspect lifting equipment and machinery at regular intervals. He stated that his position and employment at Battalions pose no risk to the Applicant. He was certified as an LMI for the suspended platform industry by the Engineering Council of South Africa and a certificate to that effect was issued to him on 13 May 2011. He stated that there are only 12 or 13 LMI certified to operate in the suspended platform industry throughout the whole of South Africa and as such, his skills are scarce. He uses his skills and expertise as LMI in that industry and if the restraint is enforced, he would be unable to work in the said industry for a period of 12 months. According to the Respondent, his skills and expertise will be completely neutralised and he would be unable to pursue his trade and earn a living.

[92] It was submitted that the enforcement of Mr Ahmed's restraint agreement would be unreasonable and against public policy as it would prevent him from using his skills and practising his trade to earn a living in circumstances where the limited scope of his employment with Battalions as an LMI poses no threat to the business of the Applicant or its proprietary interests.

[93] In my view, considering the facts placed before this Court and the findings made *supra*, the enforcement of the restraint agreement will be reasonable.

[94] I accept that the Applicant has a protectable interest and that the Respondent remains free to be economically active, with due consideration of the terms of the agreement. The agreement is reasonable and enforceable to the extent that it protects the Applicant's customer connections and confidential information. Mr Ahmed can find a job and be economically active, within the confines of the terms of the restraint of trade, wherefore it remains possible for him to work and his statements that he would be without a job and unable to care for his family are not correct.

[95] Mr Ahmed worked for his brother-in-law's business in the security industry between September 2022 and May 2023. Upon his resignation in May 2024, Mr Ahmed indicated to the Applicant that he would again be taking up employment with his brother-in-law in the security industry. He never disclosed to the Applicant that he was joining a direct competitor, which the Applicant only found out in September 2024.

[96] Mr Ahmed had left the Applicant's employ of his own accord and during his notice period, which expired on 6 June 2024, he created the impression that he was taking up employment with his brother-in-law in the security industry. A mere four days later he took up employment with a direct competitor in breach of the agreement. It is highly improbable that Mr Ahmed had no idea by 6 June 2024 that he was taking up employment with Battalions on 10 June 2024, one working day after he departed from the Applicant's employ.

[97] The last aspect that has to be considered is whether there is an aspect or another facet of public policy, having nothing to do with the relationship between the parties, which requires the restraint to be enforced or not.

[98] In my view, there is no aspect of public policy that militates against the enforcement of the restraint. The restraint is reasonable and therefore enforceable.

<u>The duration of the restraint</u>

[99] The other main issue to be decided by this Court is the duration of the restraint.

[100] The agreement provides for a restraint period of 12 months from the termination date, however clause 16 of Mr Ahmed's restraint of trade agreement provides that:

> 'Should the nature, effect, enforceability, interpretation or operation of the restraint become the subject of litigation or if the employee acts in breach of the restraint within the period of the restraint, the said 12-month period of the restraint will be deemed to commence only when such litigation is finally concluded and/or when the employee finally seizes to breach the restraint.'

[101] The Applicant seeks an order interdicting and restraining the Respondent 'for a period of 12 months from the date of this judgment', in terms of clause 16 of the agreement.

[102] Clause 16 of the agreement effectively provides that the 12-month period of the restraint of trade will be deemed to commence and be enforced for a period of 12 months from the time when the litigation between the parties is finally completed. Litigation is commenced in this Court, but it is not necessarily 'finally concluded' as both parties have the right to appeal to the Labour Appeal Court (LAC) and potentially the Constitutional Court and the litigation would potentially only be 'finally concluded' when the LAC or Constitutional Court hands down judgment.

[103] Ms Bosman for the Respondent submitted that the relief sought, based on clause 16 of Mr Ahmed's restraint of trade agreement would be unreasonable, unfair, and that it would be against public policy for the restraint to be enforced for a period of 12 months from the date on which the litigation between the parties is finally concluded.

[104] Ms Bosman further submitted that the intention of a restraint of trade is not to serve as a punishment which will be the effect of granting the relief which the Applicant seeks. Effectively, Mr Ahmed will be punished for challenging the reasonableness of the enforcement of his restraint of trade in circumstances where he is entitled to do so. The purpose of clause 16 of the agreement is clearly aimed at acting as a disincentive to prevent employees from challenging the enforcement of their restraints and, as such, it offends against the principles

entrenched in clause 34 of the Constitution[21]. In the circumstances, if this Court were to grant the Applicant the relief that it seeks, such relief should only endure until 6 June 2025.

[105] In my view there is merit in the Respondent's argument.

[106] In *Reeves and Another v Marfield Insurance Brokers CC and Another,*[22] the Appellate Division (AD) held that:

> 'The legitimate object of a restraint is to protect the employer's goodwill and customer connections (or trade secrets) and the restraint accordingly remains effective for a specified period (which must be reasonable) after the employment relationship has come to an end. The need for the protection exists therefore independently of the manner in which the contract of employment is terminated and even if this occurs in consequence of a breach by the employer.'

[107] In *Bonfiglioli SA (Pty) Ltd v Panaino*[23]*,* the LAC confirmed that a contract in restraint of trade is one that prevents an employee from exercising his or her trade, profession or calling, or engaging in the same business venture as the employer for a specified period, and within a specified area after leaving employment. The restraint agreement is therefore geared at protecting the employer's proprietary interest after the employee has left the employer's employment. The legitimate object of a restraint is to protect the employer's goodwill and customer connections or trade secrets and the restraint accordingly remains effective for a specified period (which must be reasonable) after the employment relationship has come to an end.

[108] In view of the authorities and the accepted purpose of a restraint of trade agreement, I accept that the need for the protection is triggered when an employee leaves the employer's employ and the object is to protect the employer for a specified period after the termination of employment. The

[21] Constitution of the Republic of South Africa, 1996.
[22] 1996 (3) SA 766 (A) at 772F - G.
[23] [2014] ZALAC 59; (2015) 36 ILJ 947 (LAC).

purpose is to protect the legitimate proprietary interests of an employer, even more so when an employee leaves to join a competitor.

[109] The proprietary interests that require protection reside in the employer's confidential information and customer connections. However, once an employee has left his or her employment, he or she no longer has access to the confidential information of his or her erstwhile employer nor is he or she exposed to the employer's customers. It is reasonable for the period of the restraint to commence running from the date on which the employee's employment terminates.

[110] In summary: the purpose of a restraint of trade is to protect the employer's proprietary interests and the protection it affords, commences from the date of termination of the employment relationship and becomes enforceable upon breach. To hold that the period of the restraint would commence only when litigation is finally concluded supposes that the protection it affords only commences from the date of a final judgment and that cannot be.

[111] The restraint of trade applies for a period of 12 months from the date of termination of Mr Ahmed's contract of employment.

Costs

[112] Mr Whitcutt for the Applicant submitted that cost should follow the result. He submitted that this application has had two separate hearings, which was caused by the Respondent's points *in limine* on jurisdiction and urgency. The points so taken were bad in law and the Respondent's persistence with the said points had the consequence that the parties were back in Court on 3 December 2024, soon after the first hearing. Mr Whitcutt submitted that if the relief sought in the notice of motion is granted, the Applicant seeks a cost order against the Respondent. If the Respondent's tender is accepted, the Respondent must still be ordered to pay the costs for the second hearing because of his insistence on pursuing the point on urgency, which was the sole cause for the second hearing.

[113] Ms Bosman for the Respondent submitted that the Respondent made a tender to mitigate the costs in terms of which each party was to pay its own costs. She submitted that the Applicant should be ordered to pay the costs incurred from the date after the tender was made. Ultimately Ms Bosman submitted that there should be no order as to cost.

[114] In *Zungu v Premier of the Province of KwaZulu-Natal and Others*[24], the Constitutional Court confirmed that the rule that costs follow the result does not apply in labour matters. The Court should seek to strike a fair balance between unduly discouraging parties from approaching the Labour Court to have their disputes dealt with and, on the other hand, allowing those parties to bring to this Court (or oppose) cases that should not have been brought to Court (or opposed) in the first place.

[115] However, the LAC has held[25] that when this Court exercises its jurisdiction under section 77(3) of the Basic Conditions of Employment Act[26], as it does in this instance, the rule established by section 162 of the Labour Relations Act[27] to the effect that costs do not follow the result and must be determined by reference to the requirements of the law and fairness, does not apply. The rule to be applied in proceedings such as the present is that costs follow the result, save in exceptional circumstances.

[116] *In casu,* there are no exceptional circumstances and there is no reason to deprive the Applicant of its costs. However, I am mindful of the fact that Mr Ahmed is an individual, but I cannot ignore the fact that he acted in breach of his restraint agreement when he took up employment with Battalions and that he was persistent in his refusal to abide by the terms of the agreement, which ultimately led to this urgent application. Mr Ahmed enjoyed the benefit of being employed by Battalions since June 2024 and he was not out of employment for the entire duration of the period of the restraint.

[24] [2018] ZACC 1;(2018) 39 ILJ 523 (CC) at para 24.
[25] See: *Baise v Mianzo Asset Management* [2019] ZALAC 42; (2019) 40 ILJ 1987 (LAC).
[26] Act 75 of 1997.
[27] Act 66 of 1995, as amended.

[117] I am also mindful of the fact that the Applicant was unable to convince this Court to enforce the restraint for a period of 12 months from date of this judgment and in that sense, Mr Ahmed was partially successful in opposing the application.

[118] In the present circumstances, the interests of justice require that Mr Ahmed pays at least a portion of the Applicant's costs. In my view, a sum equivalent to 20% of the Applicant's taxed costs, including the cost of one counsel, will best serve those interests.

[119] In the premises, I make the following order:

Order

1. The First Respondent is interdicted and restrained until 6 June 2025 and within the areas of Gauteng, Mpumalanga, Limpopo, the Free State and the Northwest provinces from either directly or indirectly:

1.1. being interested, in any way, as a director, proprietor, partner, shareholder, financier, advisor, member or otherwise, granting financial assistance or financial loans to or being employed by the Second Respondent and/or any business or concern which competes or may compete, directly or indirectly, with the business or any part of the business undertaken by the Skyjacks' division of the Applicant or which, in any way, provides services which are substantially the same or similar to those undertaken by Skyjacks as at 6 June 2024;

1.2 approaching and/or soliciting any of the Skyjacks' clients (as defined in paragraph 1.3 of the First Respondent's restraint of trade agreement), for the purpose of soliciting business, whether for himself or on behalf of the Second Respondent and/or any other party (whether he has an interest in such other party or not) and in addition thereto, shall not do business, whether as principal or employee with the Applicant's clients;

1.3. offering employment to or in any way assist or instigate employment being offered to any employee of Skyjacks who was an employee of Skyjacks in the preceding 12-month period prior to 6 June 2024; and

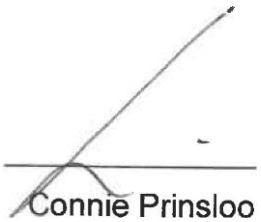
1.4. entering into any agreement, arrangement or understanding of whatsoever nature and howsoever arising with any employee of Skyjacks who was an employee of Skyjacks at any time during a 12 month period preceding 6 June 2024 which has the effect, whether directly or indirectly of enabling, enticing or encouraging such employee to undertake any interest, or be employed by the Second Respondent and/or in any business in competition Skyjacks which provides services which are the same or substantially similar to those of Skyjacks.

2. The First Respondent is interdicted and restrained from using Skyjacks' trade secrets and/or confidential information (as defined in paragraph 1.2 of the First Respondent's restraint of trade agreement), whether directly or indirectly, for his own benefit or for the benefit of the Second Respondent and/or any person or third party.

3. The confidential affidavit filed by the Applicant will not form part of the record;

4. The confidential affidavit filed in this application, together with all copies thereof, must be returned to the Applicant's attorneys of record within 7 days of the date of this judgment; and

5. The First Respondent is to pay the costs of the application, limited to 20% of the Applicant's taxed costs, to include the cost of one counsel, on a party and party scale.



Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Advocate C Whitcutt SC with Advocate S Swartz
Instructed by:	Fluxmans Attorneys
For the First Respondent:	Advocate P Bosman
Instructed by:	Fullard Mayer Morrison Inc Attorneys