IN THE KWAZULU-NATAL HIGH COURT, DURBAN
REPUBLIC OF SOUTH AFRICA CASE NO. 10995/2012
In the matter between:

CORROCOAT SA (PTY) LTD APPLICANT

and

RICHARD SCOTT LAVENTAL RESPONDENT

J U D G M E N T (draft 1)
Date Delivered :

S R MULLINS, A J:

[1] Mr Richard Lavental was previously employed by the applicant. He resigned by letter dated 9 July 2012 and left the applicant's employ at the end of that month.

[2] In this application (which was launched in October 2012), the applicant seeks an order in the form of a final interdict in the following terms:

"a) That the respondent be and is hereby interdicted for a period of eight months, effective from the date of this order, from contacting, in any manner, any of the applicant's customers, or any of the contact persons or employees of such customers, listed in Annexure "A" hereto, for the purpose of securing any business from such customers;

b) That the respondent be and is hereby restrained from making use of any confidential information, acquired whilst the respondent was in the employ of the applicant, relating to the business of the customers identified in Annexure "A" hereto;

c) That the respondent be directed to pay the costs of the application on the scale as between attorney and client."

[3] The list, Annexure "A" reflects some 23 alleged customers.

[4] The application was formulated on the basis that what would be sought, when the matter first came before court on 30 October 2012, was a rule

*nisi*with interim relief. In the result interim relief was not granted and the matter came before me for the purpose of the grant or refusal of final relief on Friday 15 March 2013. By that time the respondent had delivered his answering affidavit and the applicant had delivered its replying affidavit. Mr Combrinck, who appeared on behalf of the applicant, conceded that any relief would be final in effect, given that it could not extend beyond June 2013.

[5] The background to the litigation is, in summary, the following.

[6] The applicant is a company which forms part of a larger international group. It specialises in heavy duty industrial coatings and linings and apparently applies a comprehensive range “specialist glass flake epoxies, vinyl and polyester GRP linings and coatings, thick film urethane linings, rubber linings and fluoropolymer linings”. Over the past three decades, the applicant has built up an impressive client list (many of which clients are listed on Annexure “A” to be proposed interdict order)and is recognised as one of the top coating concerns in South Africa.

[7] The respondent was employed in December 1997 as a supervisor, but was subsequently promoted to “Site Manager”. The applicant claims that, in consequence of his employment and his senior position as Site Manager, the respondent was privy to wide ranging confidential information, not only with regard to applicant’s business, its costing structures and products, but also with regard to the particular needs of its various customers.

[8] The respondent had, on his resignation from the employ of the applicant, taken up employment with a concern, “REMA”, which is a competitor of the applicant in the field of rubber linings.

[9] Notwithstanding that the respondent is apparently based inMpumalanga working as a site manager project there, the applicant is concerned that has managed to use both knowledge which he would have acquired in the course of his employment with the applicant and also personal relationships which we

will have built up with employees of customers of the applicant to assist his new employer to compete with the applicant.

[10] The applicant

[11] The respondent's employment, with effect from 1 December 1997, was in terms of a written contract. Relevant provisions as are relied upon by the applicant in this case were those quoted below. I quote them verbatim, without correction.

[9] Firstly there is Clause 12 of the employment contract headed "*Secrecy*" and reading "*TheEmployee will not, either during or at the termination of employment divulge or communicate to any other person(s) secrets of the Company or any other information received or obtained in relation to the Company's interests*"

[10] Secondly the applicant relies on an agreement contained a Schedule "A" and forming part of the employment contract. Clause A.1 provided that the employee would not take up any other employment whilst employed by the applicant. Clause A.2, which is relied upon by the applicant, reads as follows:

"A.2 a) The Employee acknowledges that the Employer carries on business, inter alia concerned with treating of engineering equipment items and such like with a resin and glass flake filler compound for the purpose of protecting such items against erosion and corrosion, and the reconditioning and repair of such items using the same process (e.g. Fluiglide).

b) The Employee acknowledges that during the course of this employment he will acquire knowledge of a confidential nature the Employer's customers, suppliers, franchisors and licensors; also its trade secrets, compounds and processes, technical information and know-how.

c) The Employee further undertakes, after the termination of his employment for any reason whatsoever, not to be employed, or concerned whether directly or indirectly, in a similar business to which conducted by the Employer, or a business which competes with or is likely to compete with the Employer's business.

d) The Employee agrees that this restraint shall operate for a period of 24 months after the date of termination of his employment. Further, the restraint shall apply within the radius 1200 kilometers from the place at which the Employer's business is conducted, or if the

Employee is employed or works at a branch of such business, within the same radius of such branch.

e) The Employee agrees that each of the restraints are separate and Independentof each other; further that such restraints are reasonable as to subject matter, are (sic) and period.

Clause A.2 must be read subject to A.3(which plainly applies only to A.2 and not A.1) and provides

"This restraint DOES NOT applies to sand blasting, industrial painting, nor rubber lining."

[11] Finally the applicant relies on a further schedule "B" to the Employment Contract, which commences with the opening paragraph reading:

"Your employment with this Company gives excess to information and procurement of information considered to be of a secret nature in respect that it is considered useful to a competitive Company and may also be used for private gain."

and goes on to provide, *inter alia,* andexcluding provisions not directly relevant:

"You shall not therefore during the continuance of employment with this Company or at any time thereafter divulge to any person whomsoever any trade secret or manufacturing process or any confidential information concerning the business or finances of the Company or any of its subsidiaries or any of its dealings, transactions or affairs which may come to your knowledge during the course of your employment, further you shall use your best endeavours to prevent publication or disclosure of any such information."

[12]

APPEARANCES:

APPLICANTS COUNSEL:	Mr P Combrink
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	Instructed by
RESPONDENTS COUNSEL:	Mr D Crampton

(0827717274)

Instructed by

Date of hearing: 15 March 2013.

Date of judgment delivered : March 2013.