A/S Dan-Bunkering Ltd *v* Tan Chee Hiong Alan
[2012] SGHC 145

Case Number : Suit No 413 of 2012 (Summons No 2110 of 2012)

Decision Date : 18 July 2012

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Danny Ong Tun Wei and Lau Kah Hee (Rajah & Tann LLP) for the plaintiff; Joy Tan, Yuwen Teo-McDonnell and Sim Mei Ling (WongPartnership LLP) for the defendant.

Parties : A/S Dan-Bunkering Ltd — Tan Chee Hiong Alan

Injunctions

18 July 2012

Choo Han Teck J:

1 The defendant was employed as a marketing executive by the plaintiff on 2 January 2006. He was subsequently appointed a "Bunkering Executive" on 1 May 2009 in the plaintiff's Shanghai office. The plaintiff is a bunker trading company from Denmark and has related businesses such as the transport of bunker supplies. According to its counsel Mr Danny Ong ("Mr Ong"), there are "two giants in the bunker trading industry, the [p]laintiff and Chemoil." The defendant became, as Mr Ong described, "a top performer in the industry" and he signed a contract with the plaintiff on 19 June 2009 in which he agreed, among other terms, that he would not join a competing business or solicit customers and business associates of the plaintiff for one year should he cease to be employed by the plaintiff ("the restrictive covenant clause"). The defendant tried to re-negotiate that term down to six months but was unsuccessful. He resigned on 6 February 2012 and was placed on "garden leave" until his last day of work, calculated to be 31 March 2012. By the restrictive covenant clause, the defendant would only be able to join a competitor on 1 April 2013. He informed the plaintiff that he had signed a contract with Chemoil and would start work after March 2012. On 30 March 2012, the plaintiff obtained an *ex parte* injunction from Steven Chong J prohibiting the defendant from so doing. The defendant applied to discharge that injunction before me on 8 June 2012. I gave leave to file reply submissions by 15 June 2012. On 6 July 2012, I allowed the defendant's application and set aside the *ex parte* injunction. Mr Ong applied for leave to appeal and I dismissed his application for leave.

2 Mr Ong submitted that the defendant was an important employee who was paid about $200,000 a year. He was also in possession of sensitive corporate information, namely the contact information of clients and business associates of the plaintiff. He was a "rising star" in the plaintiff's Shanghai office and was the relationship manager for 81 customers of which three dealt exclusively for the plaintiff and not any of the plaintiff's competitors, and seven of the 81 were key customers in terms of revenue. 56 of these accounts were "developed" by the defendant for the plaintiff. The defendant was said to have possession of confidential information including the plaintiff's "Critical & Observation List" which purportedly contained confidential information about the plaintiff's customers. Citing irreparable damage to the plaintiff if the injunction was discharged, and the plaintiff's ability to pay damages to the defendant on the other hand, Mr Ong urged this court to maintain the injunction against the defendant. It is easy to claim irreparable harm and applicants almost invariably do so. In

this case, the plaintiff may lose some business to Chemoil but that in my view is not irreparable harm. If it were, injunctions will become the norm and not the exception. We sometimes forget that injunctions before trial are meant to be granted sparingly, with caution and on strong grounds.

3 Mr Ong also argued that if the injunction was discharged then the trial would be pointless. This was an ironic claim in that it would be the injunction that would have rendered the trial pointless. All that the plaintiff wanted in this action was to stop the defendant from working for Chemoil until 1 April 2013. If the injunction was not discharged by the time the trial begins the plaintiff would have exacted what it had wanted in this suit. Whereas, if the defendant was found to be in breach of contract, the plaintiff would still have to prove that the breach resulted in loss and damage to it. I agree with Mr Ong that the assessment of damages in a case like this may not be easy, but that was not a sufficient reason in itself. Difficulty alone is no hindrance. It is only one of the factors to be considered in the balancing of convenience. In that exercise, the court will as far as possible lean in favour of ensuring that a promise is kept. A breach of a commercial promise, however, can have unclear edges which blurs not only one's legal rights but also his moral gaze. Clear vision usually returns only after all the evidence and full arguments have been presented to the court. Thus its judgment on breach and its consequences is best left to trial.

4 Further, counsel for the defendant, Miss Joy Tan ("Miss Tan") argued that the restrictive clause does not apply as strictly and narrowly as the plaintiff had contended. Although Mr Ong disagreed, I am of the view that this issue is best settled at trial. This application was only an interlocutory application. If the plaintiff had intended to have the matter determined finally it ought to have applied for a trial on a preliminary issue but it did not. For the reasons above I discharged the interlocutory injunction.

5 Mr Ong then applied for leave to appeal. He submitted that there is a great interest in the industry for a ruling on the law and it thus would benefit from the pronouncement from the Court of Appeal. Miss Tan submitted that there was no new general principle that required consideration. I agree with Miss Tan. Sometimes great drama might be produced from a limited script – but this was not such a case. I exercised my discretion on the specific facts of this case. It does not follow, of course, that every such application, even from parties in the same industry, will have the same result at the interlocutory stage. The principles of law are the same as in any application for any interlocutory injunction and much also depends on the facts. The plaintiff is at liberty to raise any general principle of law at the trial or before the Court of Appeal. Leave was accordingly refused.