IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 29

Civil Appeal No 102 of 2019

Between

LVM Law Chambers LLC

… *Appellant*

And

(1) Wan Hoe Keet (Wen Haojie)
(2) Ho Sally

… *Respondents*

Summons No 119 of 2019

Between

(1) Wan Hoe Keet (Wen Haojie)
(2) Ho Sally

… *Applicants*

And

LVM Law Chambers LLC

… *Respondent*

In the matter of Originating Summons No 13 of 2019

In the Matter of paragraph 14 of the First Schedule to the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed)

And

In the Matter of Order 92 Rule 4 of the Rules of Court

Between

(1) Wan Hoe Keet (Wen Haojie)
(2) Ho Sally

… *Plaintiffs*

And

LVM Law Chambers LLC

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure] — [Injunctions]

TABLE OF CONTENTS

INTRODUCTION **1**

BACKGROUND FACTS **2**

THE DECISION BELOW **4**

THE ISSUES BEFORE THIS COURT **5**

THE APPLICABLE LEGAL PRINCIPLES **6**

OUR DECISION **15**

SOME PRACTICAL CONCLUDING OBSERVATIONS **17**

Version No 2: 27 Oct 2020 (22:41 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

LVM Law Chambers LLC
v
Wan Hoe Keet and another
and another matter

[2020] SGCA 29

Court of Appeal — Civil Appeal No 102 of 2019 and Summons No 119 of 2019
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Judith Prakash JA
23 January 2020

3 April 2020

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 Is a *law firm* which acted for a party (A) against another party (B) in *previous* proceedings permitted to act for another party (C) against that same party (B) in *subsequent* proceedings and, if so, under what circumstances is it permitted to act? This is the central issue in the present appeal. Whilst appearing deceptively simple, this issue is not always a straightforward one. However, it is certainly important from the perspectives of both principle as well as practical application.

2 In the court below, the High Court judge ("the Judge") held that the appellant law firm, LVM Law Chambers LLC ("the Appellant"), should *not* act

for the party in the subsequent proceedings (*ie*, C) and therefore issued an injunction against the Appellant from acting for that party. The Judge's reasons are to be found in *Wan Hoe Keet and another v LVM Law Chambers LLC* [2019] SGHC 103 ("the Judgment"). After considering the written as well as oral submissions by the parties, we allowed the appeal (albeit with one specific condition). We now give the detailed grounds for our decision. It would be appropriate to first set out the factual background before proceeding to set out the applicable legal principles and then applying them to the specific facts of the present case in order to explain why we allowed the appeal and also why we found that the imposition of a specific condition was nevertheless necessary in the circumstances. In particular, we held that whilst the Appellant could continue to act for the party concerned (C, in the above example), it could ***not*** *disclose the* ***terms*** *of the settlement agreement between the respondents in the present proceedings (B, in the above example) and the party in the* ***previous*** *proceedings (A, in the above example) to the party it was acting for in the present proceedings (C, in the above example), or to anyone else, save as required or permitted by law*.

Background facts

3 The present appeal arose out of the proceedings in Originating Summons No 13 of 2019 ("OS 13/2019"), which was an application by Mr Wan Hoe Keet ("Mr Wan") and Ms Sally Ho ("Ms Ho"), the respondents in this appeal ("the Respondents"), for an injunction to restrain the Appellant law firm from acting in Suit No 806 of 2018 ("Suit 806/2018").

4 By way of background, Suit 806/2018 is brought by Ms Chan Pik Sun ("Ms Chan") against the Respondents in relation to their alleged roles in a Ponzi scheme known as "SureWin4U". In summary, Ms Chan claims that she was

Version No 2: 27 Oct 2020 (22:41 hrs)

induced by the Respondents to invest in the scheme through a series of fraudulent or negligent misrepresentations. The Appellant is the law firm presently engaged by Ms Chan to act on her behalf in Suit 806/2018.

5 Suit 806/2018 is not the first instance in which the Appellant has acted against the Respondents in relation to their alleged roles in SureWin4U. Prior to the commencement of Suit 806/2018, the Respondents were the defendants in a similar action in Suit No 315 of 2016 ("Suit 315/2016") in which the Appellant acted for the plaintiff, Dr Lee Hwee Yeow ("Dr Lee"). The proceedings in Suit 315/2016 were resolved on the first day of trial, 20 October 2017, following negotiations conducted by the parties' solicitors outside of court, with a settlement agreement being signed later that day ("the Settlement Agreement"). The Settlement Agreement, to which the Appellant was *not* expressly made a party, included a confidentiality clause which reads as follows:

> The circumstances of the Claims, all materials prepared in respect of [Suit 315/2016] (including but not limited to documents which have been filed on E-litigation) and/or disclosed in [Suit 315/2016], and any settlement between parties [*ie*, Dr Lee, Mr Wan and Ms Ho] (including the terms of settlement)) shall be kept strictly confidential between parties, unless disclosure is (1) required by law, (2) by written consent between parties, (3) sanctioned by the High Court of Singapore, and (4) for enforcement of this Settlement Agreement.

6 The Respondents did not initially oppose the Appellant representing Ms Chan in Suit 806/2018. After Suit 806/2018 was commenced on 15 August 2018, the Respondents filed Summons No 4524 of 2018 on 1 October 2018 to require Ms Chan to produce certain documents for inspection pursuant to O 24 r 11 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). This was followed on 2 October 2018 by Summons No 4562 of 2018, an application for security for costs. No objection was taken to the Appellant's acting in either application, nor

Version No 2: 27 Oct 2020 (22:41 hrs)

was any raised at the hearing of both summonses on 19 November 2018. Indeed, it appeared that the first time the Respondents demonstrated any misgivings was in a letter sent on 29 November 2018 inviting the Appellant to cease its representation of Ms Chan in Suit 806/2018.

7 Following the Appellant's refusal to discharge itself, OS 13/2019 was filed on 4 January 2019 by the Respondents for an injunction restraining the Appellant from: (a) acting for Ms Chan in Suit 806/2018; and (b) representing or advising Ms Chan or any other party in connection with matters raised in Suit 806/2018. The Respondents took the position that the Appellant owed them obligations of confidence by virtue of having participated in the Suit 315/2016 settlement negotiations, and that there was a real risk that it would misuse or disclose confidential information if not restrained from acting.

The decision below

8 The Judge granted the Respondents the sought for injunction. The Judge framed two issues for determination: (a) whether there was a conflict of interests in the Appellant acting for Ms Chan in Suit 806/2018 after having acted for Dr Lee in Suit 315/2016; and (b) if so, whether the Respondents had shown a threat of misuse sufficient to justify an injunction against the Appellant from acting for Ms Chan (see the Judgment at [4]).

9 In finding for the Respondents on both issues, the Judge found that the facts of the case were similar to the decision of the New South Wales Court of Appeal in *Worth Recycling Pty Ltd v Waste Recycling and Processing Pty Ltd* [2009] NSWCA 354 ("*Worth Recycling (CA)*"). The Judge agreed with the submission of the Respondents' counsel that, apart from the amount and terms

Version No 2: 27 Oct 2020 (22:41 hrs)

of a settlement, the nature and process by which a settlement sum is reached are also important and confidential (see the Judgment at [7]).

10 On the facts, it did not matter that there was no explicit imposition of an obligation of confidence on the appellant by the Settlement Agreement. The Judge, citing the Singapore High Court decision of *Invenpro (M) Sdn Bhd v JCS Automation Pte Ltd and another* [2014] 2 SLR 1045 at [129], held that an equitable duty of confidence would be owed to the Respondents if the circumstances were such that a reasonable solicitor would have known that the information in question was given in confidence. Dr Lee had promised the Respondents that he would not disclose any confidential information obtained in the course of settlement negotiations except where contractually provided. Such negotiations were conducted by the Appellant on this understanding, and this imposed an equitable duty of confidence not to divulge or use confidential information obtained except where allowed by the Settlement Agreement (see the Judgment at [9]). The Appellant was thus bound by the Settlement Agreement which its client, Dr Lee, had signed with the Respondents.

11 The Judge was also satisfied that there was a sufficient threat of misuse to justify the grant of an injunction. The Respondents would be disadvantaged by the knowledge gained by the Appellant from its participation in the Suit 315/2016 settlement negotiations due to the possibility of an accidental or subconscious breach of the obligation of confidence (see the Judgment at [10]–[11]).

The issues before this court

12 There were two interrelated issues which arose for our consideration:

Version No 2: 27 Oct 2020 (22:41 hrs)

(a) First, what are the applicable legal principles in deciding whether a lawyer or law firm should be restrained from acting for a plaintiff against the same counterparty in a previous set of proceedings resolved by means of a settlement or mediation?

(b) Second, applying these legal principles to the facts of the case, should the Appellant be restrained from acting for Ms Chan in Suit 806/2018?

The applicable legal principles

13 It is clear that if *the lawyer* has ***contractually agreed*** to be bound by a duty of confidentiality, then that agreement will operate accordingly and whether or not he can act for a subsequent party against the same counterparty in a previous set of proceedings will depend on the precise scope of the duty embodied in the contract itself. However, this was *not* the situation in this appeal as the Appellant never entered into such an agreement, although one did exist between the *parties* to the previous proceedings (see [5] above). Indeed, this particular point *distinguishes* this case from that of the New Zealand Court of Appeal in *Carter Holt Harvey Forests Ltd v Sunnex Logging Ltd* [2001] 3 NZLR 343 ("*Carter Holt*"), where the lawyers in question had signed confidentiality agreements in their personal capacity prior to taking part in the mediation. We also note that in this last-mentioned case, the confidentiality agreements which the lawyers signed were "sufficiently wide to encompass everything which occurred as part of the mediation process" (see *Carter Holt* at [23]).

14 However, even if (as is the situation in this appeal) the lawyer concerned has not entered into a contractual agreement of confidentiality, that is not necessarily an end to the matter. In *limited* circumstances, an ***equitable duty of***

Version No 2: 27 Oct 2020 (22:41 hrs)

confidence *may* be imposed by the court, such that it may be inappropriate for the lawyer (or law firm) concerned to act for a party against the same counterparty in a previous set of proceedings. What, then, might these circumstances be?

15 In our view, a good starting-point would be the test for breach of confidence laid down by Megarry J in the seminal English High Court decision in *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 (which has been cited and applied by the Singapore courts (see, *eg*, the decision of this court in *ANB v ANC and another and another matter* [2015] 5 SLR 522 at [17])) – albeit *modified* slightly having regard to the nature of the precise issue before this court and the relevant case law which will be considered briefly below. In this connection, we also gratefully draw (in part) from the learned judgment of Gummow J in the Australian Federal Court decision of *Smith Kline & French Laboratories (Aust) Limited v Secretary, Department of Community Services and Health* (1990) 22 FCR 73 (at 87). Put simply, the counterparty in the previous set of proceedings must establish that:

(a) the information concerned must have the necessary quality of confidence about it;

(b) that information must have been received by the lawyer (or law firm) concerned in circumstances importing an obligation of confidence; and

(c) there is a real and sensible possibility of the information being misused.

16 The requirement in (a) above is both logical as well as in accordance with common sense. If, for example, the information concerned is common or

Version No 2: 27 Oct 2020 (22:41 hrs)

public knowledge, then there *cannot possibly* arise a duty of *confidence*, equitable or otherwise, in the first place.

17 The requirement in (b) above is closely related to that in (a). Much would depend upon the precise facts and circumstances of the previous proceedings. One example of the circumstances in (b) relates to the settlement context (which was in fact the situation in the present case) – in particular, where it is shown that the *terms* of the settlement are considered by both *parties* in the previous proceedings to be confidential as between them (see also the New South Wales Supreme Court decision of *James John Mitchell v Pattern Holdings Pty Ltd* [2000] NSWSC 1015 ("*Mitchell*") at [39], where the *lawyer* concerned made the same assumption; reference may also be made to the Supreme Court of Victoria decision of *Ian West Indoor and Outdoor Services Pty Ltd v Australian Posters Pty Ltd* [2011] VSC 287 ("*Ian West*") at [21] and [23]). As we explained to both counsel during oral submissions before us, such circumstances would then proscribe the *lawyers* from disclosing the terms of the settlement in the absence of waiver by the relevant parties. As a starting point, it is uncontroversial that a lawyer owes his client a duty of confidence in respect of any information which he acquires in the course of his work for that client (see *Taylor v Blacklow* (1836) 3 Bing (NC) 235). This obligation is also codified in r 6 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015). It follows as a matter of course that where the client is itself bound by a confidentiality obligation under a settlement agreement from prior proceedings, any information obtained by the lawyer falling within the terms of the confidentiality agreement would be impressed with an obligation of confidence. In such a situation, the lawyer cannot even request that the client grant permission to use that information as the client cannot do so without being in breach of its confidentiality obligations; indeed, any disclosure of information

Version No 2: 27 Oct 2020 (22:41 hrs)

covered by the terms of the client's confidentiality obligation would be a breach of the respective lawyer's duty to his or her client in relation to those prior proceedings. The precise contours of the obligation of confidence on the part of the lawyer to keep such information confidential would, of course, depend on the terms of the confidentiality agreement signed by the client.

18 What, then, about *other* details in a settlement context? For instance, the lawyer or law firm would have knowledge of the process of arriving at those terms, and the stance taken by the counterparty from the start to the end of negotiations. As has been alluded to in the preceding paragraph, the first port of call in such an inquiry would have to be the terms of the settlement agreement itself. This, of course, does not mean that the terms of the settlement agreement would be dispositive of the ambit of the confidentiality obligation. We accept that there might be cases where it might be inferred from the surrounding context that information outside the terms of the settlement agreement is nevertheless subject to an obligation of confidence. Again, much would depend on the precise nature and circumstances. However, it will be for the party seeking the relevant relief to show that the information in question is confidential in nature and that the lawyer is subject to an obligation in equity to uphold its confidentiality. Such a contention cannot rest on mere assertions or vague generalisations (see, *eg*, the Supreme Court of Brisbane decision of *Williamson v Schmidt* [1998] 2 Qd R 317 ("*Williamson*") at 338 (and see, in contrast from a factual perspective, *Worth Recycling (CA)* at [27]–[31] and the decision at first instance in the same case by the Supreme Court of New South Wales, *Worth Recycling Pty Ltd v Waste Recycling and Processing Pty Ltd* [2009] NSWSC 356 ("*Worth Recycling*"), at [16])); we will return to this particular point below when we elaborate upon the issue of burden of proof and also (and more specifically) the Judge's decision with regard to such other

Version No 2: 27 Oct 2020 (22:41 hrs)

information in the context of the present case (*ie*, information other than the actual terms of the Settlement Agreement). There is yet another context where the courts appear to adopt a generally strict view in so far as they generally tend to hold that an obligation of confidence has arisen – and this is (perhaps not surprisingly) in the context of *mediation*. In this last-mentioned regard, reference may be made to *Carter Holt* as well as to *Worth Recycling CA* and *Worth Recycling*, which related precisely to such a context.

19 Once it is shown that a lawyer possesses information impressed with an obligation of confidence from the previous set of proceedings, then there is case law suggesting that the court might prevent the lawyer concerned from acting for the party in the subsequent proceedings on the basis that there might even be (depending, of course, on the precise facts and circumstances) an *unconscious or subconscious* misuse of the confidential information concerned (see, *eg*, the Supreme Court of Victoria decision of *Tricontinental Corporation Ltd v Holding Redlich (a firm)* (Unreported, 22 December 1994) ("*Tricontinental*"); the Supreme Court of Victoria decision of *Grimwade v Meagher and others* [1995] 1 VR 446 ("*Grimwade*") at 454; *Carter Holt* at [26]; the Central London County Court decision of *Adex International (Ireland) Limited v IBM United Kingdom Limited* (Unreported, 17 November 2000); *Ian West* at [42]; and *Worth Recycling* at [36]) – which leads us to the next requirement centring on whether there is a real and sensible possibility of the confidential information being misused in the subsequent proceedings.

20 The requirement in (c) above is, in fact, what most parties have focussed on, as is evident from the relevant case law. This is not surprising as we are dealing with a situation where the law firm is sought to be prevented from acting for a different party in *subsequent* proceedings (albeit against the same counterparty as in the previous proceedings). A whole host of other

Version No 2: 27 Oct 2020 (22:41 hrs)

considerations come into play in this context, not least of all being the fact that it is an *adverse* party who is not a former client which seeks to enjoin a lawyer from acting. This distinguished the present case from the Privy Council decision of *Prince Jefri Bolkiah v KPMG (a firm)* [1999] 2 AC 222, where a former client (to whom the lawyer owed fiduciary duties) was the party applying for an injunction. In such a situation, an injunction would rightly be granted against the lawyer upon the demonstration of *any* risk of misuse of confidential information obtained from the former client.

21 In our judgment, this particular requirement entails that there must be evidence that there is a real and sensible possibility of the information concerned being misused in the subsequent proceedings (we pause to observe, parenthetically, that the "real and sensible possibility" test is one that is well-established in the case law (see, *eg*, what is considered to be the seminal decision of Hayne J in the Supreme Court of Victoria in *Farrow Mortgage Services Pty Ltd (in liq) v Mendall Properties Pty Ltd* [1995] 1 VR 1 at 5 (citing from the judgment of Ipp J in the Supreme Court of Western Australia decision of *Mallesons Stephen Jacques v KPMG Peat Marwick* (1990) 4 WAR 357 at 362–363); as well as *Tricontinental*; *Grimwade* at 454; *Mitchell* at [40]; *Ian West* at [48]; *Worth Recycling CA*, especially at [42]–[46]; and *Worth Recycling* at [36]–[38])). This test is one that stands in contrast to one that seeks exclusion of legal representation where the appearance of risk of misuse of the information concerned is "remote or merely fanciful" (see *Carter Holt* at [26]). We endorse the "real and sensible possibility" test, which must be applied on an objective basis (see also *Grimwade* at 455, where Mandie J refers to the perspective of "a fair-minded reasonably informed member of the public").

Version No 2: 27 Oct 2020 (22:41 hrs)

22 The "real and sensible possibility" test may be satisfied in a wide range of situations. At one end of the spectrum would lie cases where the risk of misuse is patently obvious, such as where there is clear evidence of an intention to use information contrary to the obligation of confidence. There might, however, be other instances where the test could be satisfied by circumstances falling short of this high threshold. The case law recognises two factors which ought to be taken into account, though we would caution that they should not be taken to be exhaustive. The first concerns the degree of similarity between the previous set of proceedings which were settled and the subsequent proceedings, such as by having similar issues and/or evidence. In this regard, a survey of the relevant case law reveals, generally, a *granular* approach by the courts towards the facts and circumstances of the case in order to ascertain whether there would be a real and sensible possibility of the information concerned being misused. This is necessarily a fact-intensive inquiry, and each case must turn upon its own facts. Where, for example, the issues and/or evidence in the previous and subsequent proceedings are so different that there would be no real and sensible possibility of the information being misused in the subsequent proceedings, the lawyer will be permitted to act for the party in the subsequent proceedings (see, *eg*, *Tricontinental*). After all, as Lee J observed in *Williamson* (at 337), "[i]t is well known that there may be many commercial reasons why one action was settled, and which have no possible relevance in any later litigation between different parties". The second is whether the client in the subsequent proceedings deliberately retained the lawyer due to his involvement in the previous set of proceedings. This was the case in *Worth Recycling*, where the Supreme Court of New South Wales found that there was evidence that the law firm in question had been retained due to the "happy" resolution of the previous set of proceedings (see *Worth Recycling* at [31]–[32]). *Worth Recycling* can be contrasted with *Ian West*, where the

Version No 2: 27 Oct 2020 (22:41 hrs)

lawyer acting in the subsequent proceedings had already been retained prior to his acting for the client in the previous set of proceedings. In such circumstances it could not be said that the lawyer's employment was secured in order to take advantage of his knowledge from the previous set of proceedings (see *Ian West* at [45]). Ultimately, the "real and sensible possibility" test is one which should be applied holistically; no one factor alone should be taken to be determinative.

23 We turn now to an important point alluded to earlier in this judgment – the *burden of proof*. In our view, this should be on the party seeking an injunction preventing the lawyer concerned from acting for the other party (see, *eg*, *Mitchell* at [40] and the English High Court decision of *Glencairn IP Holdings Limited v Product Specialities Inc* [2009] EWHC 1733 (IPEC) at [52]–[53]). Indeed, we have already observed that mere or vague assertions of confidentiality and/or evidence that do not demonstrate a real and sensible possibility of misuse of the information (even if otherwise confidential) would be insufficient to discharge this burden of proof (see [18] above). As Mandie J aptly observed in *Tricontinental* (at 9), "[i]t is a serious matter to prevent a party from retaining the legal representative of its choice, particularly upon the application not of a former client but of an adverse party". In a similar vein, Lee J observed in *Williamson* (at 338) that "[t]he right of an innocent third party to have a solicitor of his own choice should not be affected" where (in the context of that case) the other party has "failed to particularise any information or its materiality and how it would be likely to cause detriment, nor [has it] demonstrated any risk of disclosure". Indeed, the learned judge had earlier observed (at 330) that while he was "not prepared to hold that there is never a power in the Court to restrain a solicitor in a case … the occasion for its exercise must necessarily be very rare indeed and subject to strict proof". In *Grimwade*, Mandie J also referred (at 455) to "the right of the litigant to retain counsel of

Version No 2: 27 Oct 2020 (22:41 hrs)

his, her or its choice" as "an important right" and that "it [was] a serious matter to prevent a party from retaining such counsel, particularly upon the application not of a former client of that counsel but of an opposite or adverse party" (although, given what the learned judge thought (*ibid*) were "the unique circumstances of [that] case", the lawyer concerned was in fact restrained from acting or appearing for the clients concerned). And in the English Court of Appeal decision of *Virgin Media Communications Ltd and others v British Sky Broadcasting Group plc and another* [2008] 1 WLR 2854, Lord Phillips of Worth Matravers CJ, who delivered the judgment of the court, observed thus (at [20]): "We start with the proposition that it is desirable that a litigant should be free to instruct the lawyer of his choice."

24 We do note, however, that in *Carter Holt*, the court was of the view (at [26]) that whilst the burden of proof lay on the party seeking the exclusion of the other party's lawyer to demonstrate that there was "an appearance of risk, going beyond the remote or merely fanciful, of conscious or unconscious use or disclosure by the lawyer of something relevant to the current dispute of which the lawyer gained knowledge as a result of participation in an earlier mediation", upon that threshold being reached it would then be for the lawyer "to demonstrate that in fact no such risk exists or that, if it does, no damage, other than de minimis, could possibly result from use or disclosure". In our view, these observations merely relate to a shift in the *evidential burden*, and do not detract from the fact that the overall *legal* burden of proof lies on the party seeking an injunction preventing the lawyer concerned from acting for the other party (see generally the decision of this court in *Loo Chay Sit v Estate of Loo Chay Loo, deceased* [2010] 1 SLR 286, especially at [14]).

25 We now turn to explain how the abovementioned principles applied to the facts of our case.

Version No 2: 27 Oct 2020 (22:41 hrs)

Our decision

26 In oral submissions before this court, the Respondents relied heavily on *Carter Holt* as well as upon *Worth Recycling (CA)* and *Worth Recycling*.

27 As we have already alluded to above (at [13]), *Carter Holt* concerned a situation where the *lawyers* concerned were *contractually bound* by a confidentiality agreement and is therefore *quite different* from the present case.

28 We also note that *Carter Holt*, *Worth Recycling CA* as well as *Worth Recycling*, all concerned situations relating to mediation (see also above at [18]). That having been said, it is also true that parties' negotiations with a view to a settlement also happen on platforms that "effectively [take] the place of a mediation" (see *Ian West* at [25]). As we have emphasised more than once in this judgment, much would depend on the precise facts and circumstances of the case.

29 We agreed with the Judge that the Appellant was bound to keep the terms of the Settlement Agreement confidential. Apart from this, however, we were not satisfied that the Respondents had discharged their burden in proving that any other matters relating to the settlement negotiations in Suit 315/2016 (such as the manner in which the terms of the Settlement Agreement were arrived at or the negotiating positions adopted by the parties) were confidential. There were only vague references to negotiations and a certain degree of "to-ing and fro-ing". Whilst counsel for the Respondents, Mr Adrian Wong ("Mr Wong"), referred to *Carter Holt* (at [27]) where it was observed that "it should not be required of a party seeking to ensure the protection of its confidential information that it must spell out particular matters of concern lest "[t]o ask it to do so might be to ask it to reveal the very matter it is seeking to

Version No 2: 27 Oct 2020 (22:41 hrs)

keep to itself", such an observation cannot be utilised as an excuse to furnish no concrete particulars at all. It bears reiterating that mere assertions or vague generalisations will not pass legal muster (see [18] above). That is why we were at pains to emphasise (at [22] above) that a *granular* approach towards the facts and circumstances of the case is imperative.

30 In the circumstances, it was clear, in our view, that the terms of the Settlement Agreement must be kept confidential and cannot be revealed even in the context of the present proceedings. The issue that then arose in the *present* proceedings was whether there was nevertheless a real and sensible possibility that the Appellant's ***knowledge*** of the terms of the Settlement Agreement could be misused. In so far as the Respondents argued that the Appellant could gain a tactical advantage (whether consciously, unconsciously or subconsciously) by applying knowledge gleaned from the settlement negotiations in Suit 315/2016 in discharge of its responsibilities as Ms Chan's solicitors (an argument that was, in fact, accepted by the Judge in the court below), the difficulty with this argument was that the Respondents failed to prove that such information was in fact subject to an obligation of confidence (see [29] above). Given this, we were of the view that the Respondents had not demonstrated that there was any real and sensible possibility of confidential information being misused which would justify the grant of an injunction against the Appellants from acting in Suit 806/2018, and that it would be sufficient to grant an order that the Appellant refrain from disclosing the terms of the Settlement Agreement.

31 For the reasons set out above, we therefore allowed the appeal and permitted the Appellant to continue to act for its client in Suit 806/2018 – save for the condition that whilst the Appellant could continue to act for Ms Chan, it could *not* disclose the *terms* of the Settlement Agreement between the Respondents and Mr Lee in Suit 315/2016 to Ms Chan, or to anyone else, save

Version No 2: 27 Oct 2020 (22:41 hrs)

as required or permitted by law. We also fixed the costs both here and below as well as for Summons No 119 of 2019 in the aggregate sum of $25,000, plus reasonable disbursements in respect of all the aforementioned matters, and ordered that there be the usual consequential orders.

Some practical concluding observations

32 It might make practical sense – and obviate potential difficulties such as those that materialised in the present case – for a counterparty to a settlement to obtain a *contractual* undertaking of confidentiality from the *lawyer* and/or *law firm* concerned. That having been said, the scope of the undertaking will necessarily be governed by the precise language used.

33 More specifically, we also observe that, during the course of oral submissions before us, counsel for the Respondents, Mr Wong, repeated an allegation made in the proceedings below that there had been a breach of the principle set out in the leading English Court of Appeal decision of *Riddick v Thames Board Mills Ltd* [1977] QB 881 on the part of the Appellant. This was, by its very nature, a serious allegation which, if seriously held, ought to be pursued by the Respondents separately.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal

Version No 2: 27 Oct 2020 (22:41 hrs)

Lok Vi Ming SC, Lee Sien Liang Joseph, Tang Jin Sheng, Tan Qin Lei and Muk Chen Yeen Jonathan (LVM Law Chambers LLC) for the appellant;
Wong Soon Peng Adrian, Ng Tee Tze Allen and Timothy Ng Sin Zhan (Rajah & Tann Singapore LLP) for the respondents.

Version No 2: 27 Oct 2020 (22:41 hrs)