IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 106

Suit No 376 of 2019
(Summons No 759 of 2024)

Between

1. True Yoga Pte Ltd
2. True Fitness (STC) Pte Ltd
3. True Fitness Pte Ltd

… *Plaintiffs*

And

Patrick John Wee Ewe Seng

… *Defendant*

JUDGMENT

[Civil Procedure — Discovery of documents — Specific discovery]
[Abuse of Process — *Riddick* principle — Whether leave should be granted to lift the *Riddick* undertaking]

Version No 1: 25 Apr 2024 (12:00 hrs)

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True Yoga Pte Ltd and others
v
Wee Ewe Seng Patrick John

[2024] SGHC 106

General Division of the High Court — Suit No 376 of 2019 (Summons No 759 of 2024)
Choo Han Teck J
15 April 2024

25 April 2024 Judgment reserved.

Choo Han Teck J:

1 The plaintiffs are Singapore-incorporated companies engaged in the business of operating a chain of fitness centres, gymnasiums, and related services in Singapore. They are part of a group of companies known as the "True Group". The defendant was the former Chief Executive Officer of the True Group entities in Singapore, from 1 October 2004. He was removed on 9 May 2018 for his unsatisfactory performance as the Group CEO. He is currently the director of the three plaintiffs. In HC/S 376/2019, the plaintiffs had commenced an action against him for breach of his employment contract with the first plaintiff and breach of fiduciary duties owed to the plaintiffs.

2 In HC/SUM 759/2024, the plaintiffs are applying for leave to lift their *Riddick* undertaking in respect of six documents ("the Six Documents") disclosed in the present proceedings for the purpose of allowing the plaintiffs'

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parent companies to use these Six Documents in the Hong Kong proceedings, HCA 1469/2019. That is the defendant's suit against the plaintiff's parent companies ("the PPCs") in relation to their purchase of the defendant's shares in the True Group. On 18 October 2023, the Hong Kong Court allowed a specific discovery application filed by the PPCs, requiring the defendant to disclose correspondence and documents in relation to the "Thai Guarantee". These are correspondence between the defendant, Mr Alvin Chen (True Group's then-Chief Finance Officer), Salem Ibrahim LLC (the second and third plaintiffs' then-lawyers involved in the negotiations of the "Thai Guarantee"), Central Department Store Limited ("CDSL", the beneficiary of the "Thai Guarantee") and/or Rajah & Tann Singapore LLP (CDSL's lawyers).

3 The "Thai Guarantee" was a guarantee provided by the second and third plaintiffs to CDSL in respect of a certain loan facility made available previously by CDSL to other related entities. As part of the sale of the defendant's shares in the True Group entities to the PPCs, the defendant was to procure the release of this "Thai Guarantee" by CDSL within 90 days of the completion date of the sale and purchase agreement.

4 The Six Documents were disclosed by the defendant pursuant to my order in HC/SUM 1122/2021, granted on 19 March 2021, for specific discovery, under which the defendant was to disclose "all documents from sources he has of his work emails, save for any document containing legal advice or accounting advice". This specific discovery order was made after the defendant had initially disclosed 29 documents in general discovery and said on affidavit that he had "lost access to [his] emails when [his employment] was terminated by the [p]laintiffs and as a result, [he did] not have access to any further emails besides the documents that have already been disclosed [in general discovery]." Upon my specific discovery order, the defendant then disclosed thousands of emails,

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which included the Six Documents. These Six Documents were not relied on by either party at the liability tranche of the trial.

5 Before the Hong Kong Court in HCA 1469/2019, the defendant explained that he does not have most of his work emails prior to June 2018 as his previous laptop and its drive were damaged. The Six Documents are emails pre-dating June 2018. Thus, he could not disclose what he no longer has, and just because he had "manage[d] to disclose the 6 protected emails in 2019 does not mean [he] had possession, custody or power of those emails in September 2023". On that basis, the defendant claims that he has complied with his discovery obligations in HCA 1469/2019.

6 In the present case, it is undisputed that the Six Documents have been disclosed under compulsion pursuant to my order in HC/SUM 1122/2021, and that the defendant is entitled to the protection of the court against the use of the documents otherwise than in that action, pursuant to the *Riddick* principle. The issue before me is whether leave ought to be granted to lift the plaintiffs' *Riddick* undertaking.

7 Instructed counsel for the plaintiffs, Mr Jordan Tan, submits that the Six Documents fall within the scope of the Hong Kong Court's order for specific discovery, but they have not been disclosed by the defendant in those proceedings. Thus, the plaintiffs seek the Court's leave to lift the *Riddick* undertaking in respect of these documents, for use in the HK proceedings.

8 Counsel for the defendant, Mr Cumara Kamalacumar, submits that leave should not be granted because the plaintiffs are not party to the Hong Kong proceedings, and the Hong Kong proceedings are not related proceedings to the present suit. Mr Tan argues that the test for leave to be granted does not require

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the plaintiffs to be parties to the Hong Kong proceedings nor that it must be related proceedings.

9 Both counsel rely on *Ong Jane Rebecca v Lim Lie Hoa and other appeals and other matters* [2021] 2 SLR 584. The Court of Appeal held that there are three broad categories of documents involving the *Riddick* principle:

(a) Documents that are not covered by the *Riddick* undertaking and can be used without the leave of court (the "first category");

(b) Documents that are covered by the *Riddick* undertaking and can be used without the leave of court (the "second category"); and

(c) Documents that are covered by the *Riddick* undertaking and cannot be used without the leave of court (the "third category").

10 It is undisputed that the present case involves the third category of documents. In relation to that category, the Court of Appeal stated (at [99(c)]) that:

> the party relying on the protected document or information to commence or sustain related proceedings must seek the court's leave for the undertaking to be lifted.

On a plain reading, it appears that the party that is seeking leave to rely on the protected document(s) must also be the party to commence or sustain related proceedings.

11 However, I am of the view that the identity of the parties and the nature of proceedings, by themselves, do not dispose of the inquiry at hand. Instead, as the Court of Appeal held (at [136], citing *Lim Suk Ling Priscilla v Amber Compounding Pharmacy Pte Ltd* [2020] 2 SLR 912), these are factors in

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determining whether the *Riddick* undertaking should be lifted in relation to the third category of documents. Thus, where the identity of the parties is the same, and proceedings are related, these may work in favour of lifting the undertaking. There are other factors to be considered. Indeed, preventing an abuse of process by parties, and thereby preserving the integrity of the court's processes, is an important factor.

12 In the present case, the plaintiffs allege that the defendant did not disclose certain documents that fall within the scope of the Hong Kong Court's order. In my view, it is justifiable to use the Six Documents for the sole purpose of allowing the Hong Kong Court to determine whether there had indeed been a breach of its court order by the defendant. This would allow the Hong Kong Court to preserve the integrity of its processes. Ultimately, it is for the Hong Kong Court to determine whether the defendant was truthful in meeting its discovery obligations, upon having sight of the Six Documents.

13 I am also of the view that there is no injustice or prejudice to the defendant in allowing the Six Documents to be used solely for the purpose of determining if there had been a breach of the Hong Kong Court order. If the Hong Kong Court determines that there had been no breach (which is the defendant's case), then these documents would simply be of no relevance to the substantive determination of the dispute there.

14 The defendant says that he would be prejudiced as some of the Six Documents contain privileged material between his solicitors and him, and some fell outside the scope of my order in HC/SUM 1122/2021. Thus, they ought not to have been disclosed in HC/SUM 1122/2021. I am unable to accept these arguments. It is self-serving for the defendant to raise these arguments belatedly three years after my order in HC/SUM 1122/2021. In any event, I

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observe that the Hong Kong Court had already contemplated the issue of privilege before granting the specific discovery order, as seen from the express terms of the order referring to documents between the defendant and his lawyers "advising on the settlement and/or release of the Thai Guarantee".

15 Finally, Mr Cumara submits that the *Riddick* undertaking had already been breached as the Six Documents, disclosed to the plaintiffs in the Singapore suit, were made known to the PPCs in the Hong Kong suit. He argues that "a party who has obtained access to his adversary's documents under compulsion has no right to communicate them to any stranger to the suit." In my view, the PPCs are not strangers to the plaintiffs' suit, given their vested interest in their subsidiary companies. Further, the PPC's mere knowledge of the Six Documents, without more, is not a breach of the plaintiffs' *Riddick* undertaking.

16 Therefore, I allow the plaintiffs' application, for the sole purpose of allowing the Hong Kong Court to determine whether there had been a breach of its court order in HCA 1469/2019. Costs here and below are reserved to the trial judge.

- Sgd -
Choo Han Teck
Judge of the High Court

Jordan Tan, Victor Leong, and Lim Jun Heng (Audent Chambers LLC) (instructed) for the plaintiffs;
Daniel Soo Ziyang and Cumara Kamalacumar (Selvam LLC) for the defendant.

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