IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 230

Suit 2275/1995, RA 174/1997

Between

Asia Business Forum Pte Ltd

… Plaintiff

And

Christina Kan Yoke Yong

… Defendant

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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Asia Business Forum Pte Ltd v Christina Kan Yoke Yong

[1997] SGHC 230

Suit 2275/1995, RA 174/1997
Judith Prakash J
02 September 1997

1 **Judgment:**

2 **GROUNDS OF DECISION**

3 1. According to their statement of claim, the plaintiffs carry on the business of organising professional conferences and seminars and also promote and market conferences and seminars in Singapore and elsewhere. The defendant was employed by the plaintiffs between 4 August 1994 and 9 November 1995 when she resigned of her own volition.

4 2. After leaving the plaintiffs, the defendant entered the employment of AIC Conferences Pte Ltd ('AIC') as a conference manager. The plaintiffs allege that AIC is engaged in the same business as the plaintiffs and is one of their competitors. They also allege that in entering AIC's employ, the defendant breached one of the provisions of her employment contract ie one that provided that she would not work for any of their competitors within six months of leaving the plaintiffs' employ. The plaintiffs have claimed an injunction to restrain the defendant from continuing her employment with AIC within the said period of six months, damages for breach of the restrictive trade covenant,

and an injunction to restrain the defendant whether by herself or otherwise from using the plaintiffs' confidential information. The defendant has denied the plaintiffs' entitlement to the reliefs claimed.

5 3. The action proceeded in the normal course and earlier this year, the plaintiffs made discovery of the documents in their possession relevant to their claim. Subsequently, by notice for further directions dated 16 May 1997, they applied for the following orders:

6 (a) that the defendant's solicitors provide a written undertaking not to disclose to any representative or employee of AIC (other than the defendant) or any of the plaintiffs' other business competitors the contents of the plaintiffs' bundles of documents and further that they would not give photocopies of these documents to any representative or employee of AIC including the defendant and/or the plaintiffs' business competitors; and

7 (b) that the defendant herself provide a written undertaking that she would not disclose to AIC and/or any of the plaintiffs' other business competitors the contents of any bundles of documents given to her solicitors and that she would not use the contents of the documents in these bundles in carrying out her duties at AIC.

8 4. The application was heard before the learned Assistant Registrar on 2 and 4 June 1997. By that time the plaintiffs had compiled three bundles of documents. They conceded that the documents in volume I were not confidential and that they were only seeking protection for the documents in volumes II and III. After hearing arguments, the following orders were made:

Version No 1: 29 Oct 2026 (23:45 hrs)

9 (1) Without prejudice to the generality of the usual implied undertaking, the defendant and her solicitors shall not disclose to AIC Conferences Pte Ltd and/ or any of the plaintiffs' other business competitors the contents of any of the documents contained in bundles II and III of the plaintiffs' bundles of documents for any collateral or ulterior purpose other than the proper conduct of her case;

10 (2) The defendant and her solicitors shall not make copies of the documents contained in bundles II and III of the plaintiffs' bundles of documents except on the following conditions:

11 (a) a record shall be kept of each copy of a document made by the defendant and/or her solicitors and the purpose for which that copy was made;

12 (b) any copies made shall be for the proper conduct of the defendant's case and not for any collateral or ulterior purpose;

13 (c) all copies made shall be accounted for by the defendant and her solicitors at the conclusion of the trial and returned to the plaintiffs for destruction;

14 (d) a list of the copies made and the purposes for which the copies were made shall also be tendered by the defendant's solicitors to the plaintiffs' solicitors at the conclusion of the trial together with the returned copies;

15 (3) The additional costs incurred by the defendant and/or her solicitors in complying with paragraph 2 of the order shall be the defendant's in any event.

16 5. The defendant was not satisfied with that order and appealed to a judge in chambers. At the hearing of the appeal, the plaintiffs' solicitors

Version No 1: 29 Oct 2026 (23:45 hrs)

conceded that certain of the documents in volumes II and III were not confidential documents in that they had either entered the public domain or had been produced by others including AIC. I allowed the appeal to the extent of the documents in respect of which this concession was made and certain additional documents. However, I dismissed the appeal in respect of the rest of the documents. The defendant has filed a further appeal to the Court of Appeal.

17 6. The defendant took two approaches in relation to the appeal. The first was to argue that the traditional protection which the court accords documents which are produced in the course of discovery ie that the recipient of the same receives them on the basis of an implied undertaking not to use the documents for any collateral or ulterior purposes, was sufficient protection to the plaintiffs in this case. Whilst recognising that the court does have power to give additional protection to such documents, Mr Tan, counsel for the defendant, pointed out that it was only in exceptional circumstances that such protection would be extended. He submitted that no such exceptional circumstances existed in this case.

18 7. The second line taken was that information must be a trade secret or required the same protection as a trade secret before the court will afford it protection. Mr Tan pointed out that in the leading English case in this area of law, *Faccenda Chicken v Fowler* [1986] 1 All ER 617, the court held that information relating to a business possessed by an employee would only be protected after the termination of such employment 'if it can be properly classed as a trade secret or as material which, while not properly to be described as a trade secret, is in all the circumstances of such a highly confidential nature as to require the same protection as a trade secret' (per Neill LJ at p 626). That dictum must, however, be read in the context that the court was dealing with a situation in which there was an alleged breach of the implied duty not to disclose such

Version No 1: 29 Oct 2026 (23:45 hrs)

information after the employment ended. It was not dealing with the alleged breach of an express undertaking to keep certain material confidential after employment ceased.

19 8. The defendant's position was that the information contained in the documents in volumes II and III was not confidential at any time. Mr Tan asserted that they did not contain trade secrets not did they contain information which was so confidential that it required the same protection as trade secrets. It was all either information in the public domain (which by definition was not confidential) or just mundane documents produced in the course of her work for the plaintiffs by the defendant which he submitted would not be considered by any reasonable person as confidential. In any event, he asserted the information in the documents fell into the category of the general skills and knowledge acquired by an employee in the course of her employment. It is common ground that information in this last category cannot be protected.

20 9. The present case was not one that was based on the breach of an implied duty not to disclose trade secrets after termination of employment. It was based on an agreement as to confidentiality of the plaintiffs' documents which was spelt out clearly in the defendant's employment contract. The pertinent clause read as follows:

21 'Because you will be privy to confidential information, including current and future conference topics and ideas, past conferences, contents of speakers and delegates lists compiled by the Company, promotion plans etc., you will agree that during your period of employment with the Company and thereafter, you will not disclose to anyone any information of a confidential nature relating to the Company, and that you will not copy, duplicate, reproduce, communicate, divulge or otherwise use for the benefit of yourself or any other person or legal

Version No 1: 29 Oct 2026 (23:45 hrs)

entity, any confidential information and trade secrets obtained during your employment with the Company. As a senior member of the staff, you will be expected to treat all Company information to which you are privy as strictly confidential.

22 To enable the Company to protect its rights and property and its confidential information, it is agreed that if your employment with the Company is terminated for whatsoever reason, you will not for a period of six (6) months after the termination date, engage in the business of promoting and marketing conferences or seminars in Singapore.

23 Part-time work or freelance work shall not be undertaken by you for another company or anyone without the prior approval and written consent of the management.'

24 10. Thus from the very beginning of her employment, the plaintiffs impressed upon the defendant the type of material that they considered to be confidential and made it clear that her duty of confidentiality would extend beyond the term of her employment. As the court in *Faccenda Chicken* pointed out, whether the employer impressed on the employee the confidentiality of the information is important because 'the attitude of the employer towards the information provides evidence which may assist in determining whether or not information can properly be regarded as being a trade secret' (at p 627).

25 11. As Mr Gill, counsel for the plaintiffs, submitted, the court cannot assess the confidential nature of any particular documents in a vacuum. It has to have regard to the practices of the industry in which those documents were produced. In this particular instance, it was significant that AIC, the defendant's present employers, included in their contract with her a confidentiality clause

Version No 1: 29 Oct 2026 (23:45 hrs)

which was very similar to that which the plaintiffs imposed on their employees, although AIC took care to specify the documents covered whereas the plaintiffs relied on more general descriptions. Among the items which AIC regarded as confidential were 'possible conference topics under consideration by AIC, AIC's development and evaluation of ideas for conferences and conference topics, plans for topics to be presented at conferences, the scheduling and planned marketing of conferences ... the business dealings of AIC with associations sponsoring conferences, the profitability of particular conferences, [and] the contents of speakers and delegate lists compiled by AIC'.

26 12. Mr Gill went through the documents in volumes II and III and it appeared to me that many of these documents fell within the classes of confidential documents described in the plaintiffs' confidentiality clause and even more of them fell within the more expansive definition of confidential documents found in AIC's clause. There were, however, some documents which were, to my mind, obviously not confidential. These were documents within the public domain like newspaper clippings and conference brochures produced by competitors including a document produced by AIC itself. It was not my task to determine conclusively the confidential nature of the documents for which protection was sought and I did not do so. However, I considered that the plaintiffs had put up a strong case for the majority of the documents to be afforded, pending the outcome of the action, the protection accorded to confidential documents.

27 13. On the question of confidentiality of the documents, I was also impressed by the affidavit of evidence-in-chief of Ms Yeap Ban Hwa, the managing director of the plaintiffs. From paragraphs 36 to 53 of the affidavit, she set out, in relation to the plaintiffs' business process, the reasons why various

Version No 1: 29 Oct 2026 (23:45 hrs)

documents were of value to the plaintiffs' business and had to be treated as confidential.

28 14. I was also persuaded by Mr Gill's argument that in a interlocutory application of this nature, it was important to consider not only the likelihood of the documents being determined confidential at the end of the day but also whether there was a risk of misuse of the documents which was sufficient for the court to give them additional protection. In paragraph 8.125 of their book *Discovery*, Matthews and Malek state:

29 'Notwithstanding the implied undertaking given by every party to litigation in relation to discovery, the Court may sometimes exact an express undertaking, either duplicating the implied undertaking, or even sometimes going further. The express duplication of the implied undertaking is usually required where the person concerned is not a party but, for example, an officer of a corporate party, or an employee expert. An express undertaking may also be required where there is a risk of misuse of documents. This has the advantage of bringing home to such persons (who are not usually lawyers) the terms of the obligations by which they are bound, and warning third parties who might otherwise be tempted to try to obtain information from them of the dangers of their doing so. Where the express undertakings go further than the implied undertaking, then this must be justified by reference to the circumstances of each case.'

30 15. The present case concerned an employee who had allegedly breached an express term of her employment contract by going to work for a competitor of her previous employer within six months of termination of her employment. It was clear from the documents before me that AIC was in the same line of business as the plaintiffs and that the defendant had been employed

Version No 1: 29 Oct 2026 (23:45 hrs)

by AIC to do essentially what she had done while working for the plaintiffs. In these circumstances and without casting aspersions on either the defendant or AIC, I considered that there was a risk that information belonging to the plaintiffs could be misused or could be available for misuse unless the copying and use of such information was severely restricted. The restrictions imposed by the learned Assistant Registrar were, to my mind, justified for the purpose of bringing home to the defendant and AIC the dangers that they might otherwise, however unwittingly, run.

31 16. For all of the above reasons, I dismissed the appeal except in respect of those documents that clearly had no claim at all to be secret or confidential.

32 JUDITH PRAKASH

33 JUDGE

34 This does not merit reporting

Judith Prakash J

Paramjit S Gill (Harry Elias & Partners) for the plaintiffs
Tan Soon Meng (Allen & Gledhill) for the defendant

Version No 1: 29 Oct 2026 (23:45 hrs)