Vandashima (Singapore) Pte Ltd and Another v Tiong Sing Lean and Another [2006] SGHC 132

Case Number : Suit 471/2005

Decision Date : 28 July 2006

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Gregory Vijayendran, Prakash Pillai and Richard Lam (Wong Partnership) for the first plaintiff; Zaheer K Merchant and Goh Aik Song (Madhavan Partnership) for the first defendant

Parties : Vandashima (Singapore) Pte Ltd; PT Vandashima Indonesia — Tiong Sing Lean; Kristoforus Hermawan

Contract – Remedies – Injunctions – Restraint of trade – Validity of restrictive covenants in contract of employment – Scope of injunction – Period of restraint – Geographical limit – Adequate for protection of interests

Employment Law – Contract of service – Breach – Employee's duty of confidentiality during and after employment – Burden of proof on employee wanting to use confidential information to show information within public domain

Employment Law – Contract of service – Termination with notice – Employer having right to waive any part of notice period – Not to be considered as termination

Employment Law – Employees' duties – Fiduciary duties – Breach

28 July 2006

Lai Siu Chiu J:

The background

1 This was a claim for breach of a contract of employment and breach of fiduciary duties as an employee at common law. At the conclusion of the trial, I awarded interlocutory judgment in favour of the first plaintiff against the first defendant with costs. I directed that damages for the first plaintiff be assessed by the Registrar and that the costs of such assessment be reserved to the Registrar. I further granted an injunction in favour of the first plaintiff to restrain the first defendant (until 25 August 2006) from working in Indonesia. Lastly, I dismissed with costs the first defendant's counterclaim against the first plaintiff. As the first defendant has appealed against my judgment (in Civil Appeal No 42 of 2006), I shall now set out my reasons.

The undisputed facts

2 The first plaintiff, Vandashima (Singapore) Pte Ltd, was incorporated in Singapore on 25 August 1983 and carries on an extensive business in the distribution of silicones, epoxy, adhesive, Teflon, semiconductor and telecommunication materials.

3 The second plaintiff, PT Vandashima Indonesia, is an Indonesian company and is also in the business of distributing silicones, epoxy, adhesive, Teflon, semiconductor and telecommunication materials. The first and second plaintiffs (collectively referred to hereinafter as "the plaintiffs") are related companies in that they have a common shareholder in Tan Huat Soon Stephen ("Tan") who holds all the issued shares of the first plaintiff and owns 90% of the shares in the second plaintiff. Tan is the managing director of both companies.

4 The first defendant, Tiong Sing Lean, was employed by the first plaintiff as an assistant general manager pursuant to a letter of employment dated 31 October 2001 ("the employment contract"). The first defendant tendered his resignation to the first plaintiff on 25 August 2004. Prior to his employment with the first plaintiff, the first defendant was with Unidux Electronics Limited ("Unidux"), a listed Singapore company, from 1997 to October 2001. He was the country manager of Unidux for Indonesia and was stationed in Jakarta between 1997 and 1999. Between 1999 and 2001, he visited Jakarta frequently. After he left the first plaintiff's services, the first defendant resumed employment with Unidux.

5 The second plaintiff employed the second defendant, Kristoforus Hermawan, as a sales manager until his resignation on 15 October 2004. In actual fact, it was the first defendant who employed the second defendant on the second plaintiff's behalf. Apparently (according to Tan), the defendants were former colleagues as, during the first defendant's employment with Unidux, the second defendant was working for PT Sinar Unidux Jaya, the Indonesian subsidiary of Unidux.

6 The second defendant is ordinarily resident in Indonesia and the writ herein was not served on him when trial commenced. I therefore directed counsel for the plaintiffs to discontinue the second plaintiff's claim against the second defendant on the basis that he could initiate a fresh action on the second plaintiff's behalf against the second defendant in due course. This action was accordingly discontinued against the second defendant on 9 March 2006. The trial was therefore confined to the first plaintiff's claim against the first defendant. I should point out too that the second plaintiff did not have the capacity to sue the first defendant in any event as the first defendant was never in its employment.

The pleadings

The claim

7 The first plaintiff sued the first defendant for breach of the express and/or implied terms of the employment contract. The employment contract contained clauses pertaining to confidential information and non-competition which the first plaintiff alleged the first defendant had breached. The first plaintiff further alleged that the employment contract contained implied terms that the first defendant had also breached.

8 The first plaintiff alleged that the first defendant (in collaboration with the second defendant) breached the express terms of the employment contract in the following manner:

(a) He conducted his own business under the name of PT Makmur Jaya Abadi ("PT Makmur") using confidential information relating to the Indonesian market acquired in the course of the second defendant's employment with the second plaintiff. Such confidential information included sales figures, marketing data and customers' lists. The first defendant supplied solder paste, flux and integrated circuit ("IC") components to existing customers of the second plaintiff.

(b) He siphoned off business from potential customers of the plaintiffs including Honoris (Pioneer) and JVC and business from existing customers (for GE Toshiba silicone greases).

(c) He conducted his own businesses and carried out share-trading transactions during the first plaintiff's office hours.

(d) He diverted business relating to aquarium silicone sealants from an existing

customer of the plaintiff, *viz*, PT Lima Tekno for his own benefit.

(e) Together with one Tan Yew Teong ("TYT") from a Singapore public company, Unidux, the first defendant prepared a business plan which was to enable Unidux to solicit potential customers of the plaintiffs using confidential information stolen from the plaintiffs.

9 The first plaintiff alleged that the first defendant breached, *inter alia*, the following fiduciary duties that were implied into the employment contract:

(a) a duty to act honestly and with reasonable diligence in the discharge of his duties;

(b) a duty to act in good faith and in the best interests of the first plaintiff;

(c) a duty not to act so as to place himself in a position in which his personal interests would or did conflict with those of the first plaintiff; and

(d) a duty to disclose his interest in any transactions involving the first plaintiff.

10 The first plaintiff claimed against the first defendant:

(a) damages for his breach of the employment contract;

(b) in the alternative, an account of profits; and

(c) an injunction to restrain the first defendant from using the confidential information of the plaintiffs or any part thereof for any purpose other than for the purpose for which it was supplied.

The defence and counterclaim

11 While he admitted there were express terms in the employment contract, the first defendant contended that the first plaintiff was not entitled to imply terms into the same. If there were implied terms in the employment contract, the first defendant denied he had breached them. The first defendant averred he had diligently and properly performed his obligations and discharged his duties to the best of his abilities at all material times in the course of his employment.

12 The first defendant contended that the alleged confidential information the first plaintiff referred to was not trade secrets and there was no element of confidentiality to them. He added that as someone who had built his career in the electronics industry, he had garnered extensive knowledge of the industry and it had become an inherent part of his skills. The first defendant averred that he was an employee of Unidux until late 2001, during which time he was stationed in Indonesia and dealt with Indonesian customers. As a result, his client base in Indonesia grew over the years.

13 The first defendant denied that he conducted his own side businesses and share investment transactions during office hours. He pleaded that even if he did purchase shares, they were one-off transactions of not more than five counters, throughout his period of employment with the first plaintiff. He asserted that he had no knowledge of nor was he involved in the business of PT Makmur. He contended that the sales figures, marketing data, customer lists and other information relating to the Indonesian market were of trivial character and were easily accessible as private and public sources of information and could not be regarded by any reasonable person or in law as "confidential information". The first defendant averred that PT Lima Tekno was not an existing customer of the plaintiffs during his employment with the first plaintiff.

14 The first defendant claimed that the first plaintiff wrongfully terminated his employment without the requisite one month's notice as required under the employment contract. As he had tendered his resignation on 28 July 2004, his last day of service with the first plaintiff should have been 28 August 2004. However, the first plaintiff wrongfully terminated his employment on 25 August 2004 without the requisite one month's notice. Therefore he was entitled to one month's salary in lieu of one month's notice.

15 The first defendant further claimed that the first plaintiff had not paid his pro-rated salary for the month of August 2004. He alleged that he was entitled to an additional seven days' pay in lieu of his accrued leave for the year 2004. The first defendant counterclaimed $13,886 against the first plaintiff.

Reply and defence to the counterclaim

16 In its defence to the counterclaim, the first plaintiff averred that the company had waived the first defendant's obligation to complete serving his notice period until 28 August 2004 and allowed the first defendant to leave the employment of the first plaintiff on 25 August 2004. In any event, the first plaintiff averred it was entitled to terminate the first defendant's employment summarily for his breaches of the employment contract and breach of his fiduciary duties owed to the first plaintiff.

17 The first plaintiff pleaded that the first defendant was entitled to pro-rated salary for the period 1 August 2004 to 25 August 2004 and payment in lieu of four days' pro-rated accrued leave in 2004, totalling $5,199. It contended it was entitled to set off the sum of $5,199 and the counterclaim of $13,886 against its claim for damages.

The first plaintiff's case

18 The first plaintiff claimed that the employment contract was dated 6 November 2001, that being the date when the first defendant countersigned the first plaintiff's letter of 31 October 2001 to signify his acceptance. The first defendant on the other hand claimed that the date should be 31 October 2001. As nothing turns on the date of the employment contract itself, it was not necessary for me to make any finding on its operative date.

19 What was more important were the terms of the employment contract, in particular the following clauses:

> 16. OTHER EMPLOYMENT
>
> It is a condition of employment with our Company to the employee that you shall be forbidden to undertake any other form of employment whilst in our employ. This shall also be construed to include rendering your service gratis to any other commercial organisation.
>
> 17. CONFIDENTIAL INFORMATION
>
> During the course of your employment with our Company, the Company may furnish you with confidential information and trade secrets concerning the Company's business affairs which consists, although not limited to, Customer Lists, Pricing and Marketing Data, Accounts and Financial Data, Merchandising Plans including the Listings and Source Codes of the Company's business affairs (the "Confidential Information").
>
> Except where you are directed or instructed by the Company, you shall not whether during the

term of your Employment or anytime thereafter disclose or divulge to any persons including the Confidential Information.

Upon termination of your employment with the Company for any reasons whatsoever you shall return to the Company all documents, papers and/or data in your possession or under your control which is related to the Company and [its] business and affairs.

The obligation of confidentiality arising from this clause shall continue to apply after the termination of this Agreement without limit in point of time but shall cease to apply to information or knowledge which may come into the *public domain*.

18. NON COMPETITION

Upon the termination of your employment with the Company herein or for any reasons whatsoever and for a period commencing on the said termination and expiring two (2) years after the date of the said termination, you shall not have any interest in, engage, directly or indirectly, in any business or enterprise of employment which is directly competitive with the Company.

The Employee herein agrees and declares that the non compete terms of this Agreement are fair and reasonable in the light of all the facts and circumstances of the relationship between the Parties in the event the Courts shall decline to enforce the provisions of the preceding paragraphs and or any of the said paragraphs, that paragraph shall be deemed to be modified to restrict the Employee's competition with the Company to the maximum extent, in time and geographical area, which the Courts shall find enforceable[.]

[emphasis added]

The plaintiff's confidential information

20 In his affidavit of evidence-in-chief ("Tan's affidavit" or "the affidavit"), Tan had deposed:

As the Assistant General Manager of Vandashima, the 1st Defendant had full access to the sales figures, marketing data, customer lists and other information belonging to Vandashima Singapore and Vandashima Indonesia. Such information belonging to Vandashima is sensitive market information pertaining to the business operated by Vandashima and is thus confidential. The confidential information that the 1st Defendant has access to relate to specifics of Vandashima's clients, including the specific product types, usage requirements and prices.

21 The first defendant's case was that during the two years he was stationed in Indonesia whilst employed by Unidux, he had established a customer base and contacts, which were largely or almost all developed by him personally. There was therefore no confidentiality or trade secrecy to any information he may have acquired while working for the first plaintiff. He claimed that the electronics industry business was conducted on a transparent basis where prices and information were freely and readily available. In any event, the constant and ongoing trading of electronics components within the electronics industry made prices general and very elastic. Customers' requirements constantly changed and there was no confidentiality and secrecy attached to their products or their prices. Customers could be freely contacted and information on their suppliers and purchase prices were not confidential.

22 The first plaintiff's technology and product development manager, Chu Vui Liong ("Chu"), disagreed with the first defendant's contention. Chu (PW3) deposed in his affidavit of evidence-in-

chief:

> 9 … different customers from different industries have very specific requirements depending on desired application. These different customers have varying demands for different types and grades of silicone products … Prices for specific product types and grades are thus opaque and not freely available to persons who are not experienced within the industry.
>
> …
>
> 11 Whilst the 1st Defendant's allegation that component prices are allegedly fairly transparent within the electronics industry, this does not hold true for the *silicones industry*. Unlike the electronics industry, there are only six major suppliers of silicones products around the world, three of which are GE entities. … These suppliers each have designated distributors and coupled with the fact that most silicone products are consumables, there is a negligible or virtually non-existent secondary market. As such, the prices of silicone products are secret compared to electronic components, which are freely available from both distributors and secondary market sources. Given the wide availability of electrical components, their product pricing is highly competitive and thus fairly transparent within the electronics market.
>
> …
>
> 15 The confidential information stolen by the 1st Defendant contains sensitive information belonging to the Plaintiffs worth approximately US$5 million in market value. This confidential information represents information pertaining to existing/ potential customers and the potential market for silicone products in *Indonesia*.
>
> …
>
> 20 Thus, the confidential information stolen by the Defendants will enable them to know specifically what products are required by these potential customers and the relative pricing of the products. Armed with this confidential information, the Defendants will be able to conduct business with the Plaintiffs' potential customers and earn secret profits by undercutting the Plaintiffs in price.
>
> [emphasis added]

23 Chu in his affidavit[note: 1] also said:

> The plaintiffs conduct a business in the silicones industry, not the electronics industry as alleged by the first defendant. Unlike the electronics market, market forces in the silicones industry dictate that prices are opaque and are not freely available information. As such, pricing information and product requirements are clearly confidential information.

When he took the stand, Chu clarified[note: 2] that the first plaintiff sold silicone products to the electronics and non-electronics industries; the confidential information that the first defendant used related to silicone usage in the electronics field.

24 In Tan's affidavit, he had deposed:[note: 3]

> Using the confidential information pertaining to the silicones market in *Indonesia*, [Indidux] was able to market its alleged "potential" to various customers and suppliers. [emphasis added]

Conducting business under PT Makmur

25 The plaintiffs alleged that the first and second defendants conducted their own business under the umbrella of PT Makmur using confidential information acquired by the second defendant while he was employed as the second plaintiff's sales manager. Such business included supplying solder paste, flux and IC components to existing clients derived from the second plaintiff's customer network. I shall elaborate on this allegation in greater detail in my findings.

The defendants collaborated to solicit and siphon business from potential customers of the plaintiffs

26 The first plaintiff also alleged that the first and second defendants collaborated to solicit business from potential customers of the plaintiffs which included Honoris (Pioneer) and JVC as well as from the plaintiffs' existing customers for GE Toshiba silicone greases.

Diverted business from PT Lima Tekno

27 The first plaintiff claimed that the first defendant diverted business from the plaintiffs for his own benefit, in relation to aquarium silicone sealants from PT Lima Tekno, which was an existing customer of the plaintiffs.

PT Indidux Karya Abadi ("Indidux")

28 It was also the first plaintiff's case that the first defendant arranged to set up his own company in Indonesia in direct competition with the plaintiffs. The first defendant had disclosed such confidential information to TYT of Unidux for the purpose of soliciting investment for his new company. He and the second defendant thereafter incorporated Indidux for the purpose of establishing and carrying on a business with the confidential information, business opportunities, contracts, suppliers and customers of the plaintiffs.

Conducting side businesses and share transactions during office hours

29 The first plaintiff had engaged a computer consultant Dennis Lee Sing Ling ("Lee") on 1 August 2004 to survey the electronic communications between the various companies in the Vandashima group.

30 Prior to his resignation in July 2004, the first defendant had reported to Irene Tay (finance and administrative manager of the first plaintiff) that his laptop had been corrupted by a virus which resulted in all the information stored in his laptop being deleted. Unbeknownst to the first defendant, Lee (PW2) was able to retrieve the first defendant's deleted data. The first plaintiff discovered therefrom that the first defendant had engaged in various and diverse businesses which included the sale of bird nests, car alarms, computer parts, teak wood products and frozen seafood, all of which were conducted during the office hours of the first plaintiff.

31 A further complaint (which was not pleaded) against the first defendant and which was detailed in Tan's affidavit concerned the circumstances surrounding his departure from the first plaintiff's services. Tan alleged that the first defendant tendered his resignation on 27 July 2004 without giving any reason. At about the same time, the first plaintiff's business in Southern China was mysteriously and suddenly disrupted – several of its customers terminated their business relationship with the company for no apparent reason. Tan then discovered that the first defendant had authorised reimbursement of expenses incurred by Edward Ching ("Ching"), the first plaintiff's former chief representative and country manager in Shenzhen, even after Ching had left the first plaintiff's

services. It was also reported to Tan that the first defendant claimed the expenses on behalf of Ching.

The first defendant's case

Breach of confidence and non-competition

32 In his affidavit of evidence-in-chief, the first defendant had deposed:[note: 4]

> As a result of my being based in Indonesia during those years and the nature of my work, I dealt with many Indonesian customers and my client base in Indonesia grew. I personally amassed substantial information and knowledge within the electronics industry in Indonesia such as production volume, products and sources from which companies were purchasing, their consumption quantity and target price, their business outlook and purchasing policies, their sub-contractors and suppliers and their needs and desires for potential business support.

The first defendant claimed he had extensive knowledge of the electronics industry and he had no intention of using the confidential information alleged by the first plaintiff for the reason that the information was not confidential. The information was market information that was widely known to and easily obtainable in the electronics industry.

33 In support of the above contention, the first defendant produced extracts from an online publication called Nikkei Electronics Asia, from the yearbook of world electronics data and other electronic publications.

Conducting his own businesses and trading in shares

34 The first defendant's written testimony stated:[note: 5]

> Because of the fact that I had spent some years in Indonesia, I occasionally received queries from personal acquaintances on products which are available in Indonesia. In this regard I merely assisted in putting them in touch with the relevant people … In any event, the queries never resulted in any business transactions between the said acquaintances and I and/or the addressees of the inquiries and I.

The first defendant deposed that the products for which he received inquiries were unrelated to the first plaintiff's business. As for share trading, the first defendant claimed that the first plaintiff had grossly exaggerated the allegation. He was neither a stockbroker nor financial adviser. The share transactions he conducted were so minimal they hardly constituted breach in the manner implied by the first plaintiff.

PT Lima Tekno

35 The first defendant contended that while PT Lima Tekno had made enquiries of the plaintiffs for the purposes of doing business, nothing materialised as the plaintiffs were not able to meet the specifications required by PT Lima Tekno. The first plaintiff however pointed out that the first defendant had obtained a quotation from Mohm Chemical (one of the first plaintiff's suppliers) that met the specification requirements of PT Lima Tekno but the first defendant failed to complete the deal with PT Lima Tekno.

PT Makmur

36 As for PT Makmur, the first defendant deposed:[note: 6]

> [T]here is no such company. In my pleadings, specifically the Defence and Counterclaim filed on 1 September 2005, I had pleaded that I have never heard of such a company. However, after having sight of the 1st [plaintiff's] documents discovered pursuant to the List of Documents dated 14 November 2005, I now recall that there was an email inquiry made using the company name of PT Makmur Jaya Abadi. This inquiry was a personal inquiry and had nothing to do with the Plaintiffs' products.

Indidux

37 The first defendant did not deny registering Indidux. However he claimed that in setting up this company (in November 2004) he did not intend to nor did he directly compete with the plaintiffs in any manner. He explained that after he left the first plaintiff's services, he realised it would be difficult to secure another job within the electronics industry with another employer. He therefore decided to set up his own company as he had extensive experience and many contacts in the electronics industry that he could tap on. He and the second defendant intended to use Indidux as a buying house. This meant that Indidux had no say on the kind of products it procured for its customers. Unfortunately, its business did not take off as Indidux could not find customers who needed its services. Neither did it secure distribution rights. The first defendant said he intended to deregister Indidux eventually. It was impossible for Indidux to have traded in the manner alleged by the first plaintiff.

38 The first defendant pointed out that the first plaintiff only specialised in a small range of products in the electronics industry, *viz*, distribution of silicones, epoxy, adhesives, Teflon, semiconductor and telecommunication materials. Indidux on the other hand (if its business had taken off) would have serviced the trading and distribution of various products (depending on its customers' demands) and provided logistics support for delivery in Indonesia of overseas products.

Siphoning off business from potential customers of the first plaintiff

39 The first defendant maintained that this allegation by the first plaintiff was "not possible", the reason being that it implied that there was a place or company to which the business was being solicited or siphoned to – there was no such company or place. In any event, during his time with the first plaintiff, the company had no transactions with Matsushita Electronics Works Ltd or PT Sanyo Tuner, two of the companies from whom he supposedly solicited or siphoned business from. As for PT Hasta Prima Industri, he could not recall the first plaintiff having had such a customer.

40 As for his alleged failure to disallow the expenses claimed by Ching (see [30] above) after Ching's resignation, the first defendant explained[note: 7] that the expenses related to charges incurred on Ching's mobile phone during his employment. There was a deposit ($1,000 to $2,000) with the mobile telephone company which the first defendant was tasked to recover. As Ching had left the first plaintiff's services in mid-month, the first plaintiff should only have paid his mobile phone charges for the relevant period, not the entire month. Due to his oversight, the first defendant authorised reimbursement to Ching of the total charges for the month. The overpayment made by the first plaintiff was about $80 which sum the first defendant offered to refund to the first plaintiff but his offer was declined by Tan. Consequently, the first defendant could not understand why Tan was reviving the issue again.

The issues

41 The following were the issues I determined:

(a) Did the first defendant breach his fiduciary duties as an employee to the first plaintiff?

(b) Did the first defendant make use of confidential information belonging to the first plaintiff?

(c) Should an injunction be granted against the first defendant for breaching the confidentiality clause in the employment contract and, if so, the extent thereof.

Based on the evidence adduced from the five witnesses who testified (four for the first plaintiff and the first defendant himself), I found for the first plaintiff on all three issues.

The decision

42 I will dispose of the counterclaim first before I deal with the first plaintiff's claim. In the affidavit evidence of Irene Tay ("Tay"), she said:[note: 8]

> The 1st [plaintiff] denies that the 1st Defendant is entitled to claim one month's salary in lieu of notice given that he had already tendered his resignation on 27 July 2004 …

When Tay (PW4) testified (on 7 March 2006), she explained how the first plaintiff arrived at its computation of $5,199 due to the first defendant for pro-rated salary and pro-rated pay in lieu of leave for the period 1 to 25 August 2004. Tay explained why the counterclaim sum of $13,886 was incorrect. As her testimony was not challenged by counsel for the first defendant, I accept the first plaintiff's figure as being the correct amount due to the first defendant before set off.

43 Tan's affidavit stated:[note: 9]

> Given that the 1st Defendant's notice period was due to expire on 27 August 2004, I therefore waived the 1st Defendant's obligation to complete serving his notice period on 25 August 2004 and requested that the 1st Defendant leave the 1st [plaintiff's] employment.

It was well within the rights of the first plaintiff to waive any part of the notice period and allow the first defendant to leave its services earlier than 27 August 2004.

44 Counsel for the first defendant had argued that the first defendant's services were terminated instead. His argument was misconceived. The first defendant was serving out his notice period at the material time. The notice period was due to expire on 27 August 2004. He was two days short of the expiry date when Tan allowed him to leave on 25 August 2004. Tan testified[note: 10] that he told the first defendant, "Look, you can leave immediately." Tan's command of English was poor. Even if he did say (as the first defendant alleged) "I have no choice but to terminate you"[note: 11], this would not alter the position at law that the first defendant was then serving out his notice period after his resignation. As such, there was no question of wrongful termination of his services by the first plaintiff.

45 Secondly, the first defendant could not have had a claim for wrongful termination in any event because I found that the first plaintiff could have dismissed him summarily under cl 19 of the employment contract. Clause 19 states:

> The Company reserves the right to dismiss the employee without notice of discipline to the employee in the event of the employee's dishonesty, insubordination or breaking of any rules or regulations made by the Company.

The first defendant's conduct in making use of the first plaintiff's customer list and other information known only to its employees to siphon off business for himself and the second defendant was nothing short of dishonest.

Whether the first defendant breached his terms of employment

46 In his affidavit of evidence-in-chief, the first defendant had himself described the first plaintiff as being "in the business of trading and distribution of electronics-related products in the Indonesian market, mainly silicone and mould release and cleaning agents". He also admitted that he was "the assistant general manager of the company, and the number 2 man of [the first plaintiff] at that time".[note: 12] The first defendant was vested with full authority to manage the ASEAN and Southern China business operations of the first plaintiff. In his defence,[note: 13] the first defendant went further to claim that he oversaw the management of the regional office with respect to sales and operations in the ASEAN and South China region. The first plaintiff had also pleaded (in the reply to the defence and counterclaim) that the first defendant's authority included the authority to negotiate prices with suppliers and customers, to control logistic operations, to sign company cheques and approve claims and expenses by staff and to determine employment of staff. There was no dispute therefore on the extent of the first defendant's authority and responsibility nor on the nature of the first plaintiff's trading activities.

47 Although he vigorously denied the allegation, I found that the first defendant did pass on to third parties and to the second defendant, information that was known only to employees of the first plaintiff.

48 In Tan's affidavit, he had deposed:[note: 14]

> The business with Honoris was confirmed in the 2nd Defendant's email to the 1st Defendant dated 9 May 2003.
>
> …
>
> On 19 May 2003, the 2nd Defendant sent the 1st Defendant a further email informing him that he has identified another customer for Tamura Solder Flux, Hasta Prima.
>
> …
>
> [T]he 1st and 2nd Defendant were secretly soliciting existing customers of Vandashima Singapore without their knowledge …

49 The first plaintiff's solicitor had also referred the first defendant to an e-mail dated 9 May 2003 from the second defendant to the first defendant. When counsel for the first plaintiff suggested that the e-mail was "in substance, a proposal from Kris for both you and he to either borrow a company or incorporate one to run the business of supplying Tamura solder paste to Honoris", the first defendant agreed that "[i]f the business was viable and the potentials are met, we would have quit the company [Vandashima (Singapore)]" and "*set up a company running Tamura solder paste*" [emphasis added].[note: 15]

50 There was little doubt that the first defendant tried to take Honoris's business away from the first plaintiff. Tan had in his affidavit[note: 16] stated: "On 19 May 2003, the 2nd Defendant sent the 1st Defendant a further email informing him that he has identified another customer for Tamura Solder Flux, Hasta Prima." The "another customer" was Honoris. The first defendant justified his action on the basis that Tamura solder flux was a new product. In my view, there was nothing wrong with the first plaintiff venturing into a new product, especially as it was part of the first defendant's responsibilities to source new business for the company.

51 In an e-mail dated 19 May 2003[note: 17] from the second defendant to the first defendant, the former said:

> I had identified another customer that using Tamura Flux.
>
> …
>
> 2) Hasta Prima (this company using YG 6260 also … *can't let boss know* … since the buyer very close to me and we must give her *under table*).
>
> …
>
> I will see her (Hasta Prima) secret to get list of Material that they are import from overseas and study the opportunity.
>
> [emphasis added]

52 The first defendant clarified that the "boss" being referred to was Tan.[note: 18] When counsel for the first plaintiff put to the first defendant that as the company's assistant general manager he could have sourced for Tamura solder paste business as a new business for the first plaintiff, the first defendant disagreed – he said "It's not my duty to do that." even though he had deposed in his affidavit of evidence-in-chief[note: 19] that:

> ... I travelled frequently to the Plaintiffs' offices in the region to visit new and existing clients and also to meet with potential customers and suppliers.

During cross-examination,[note: 20] the first defendant further confirmed that his duties as the first plaintiff's assistant general manager included sourcing for additional and interested customers.

53 Tan's affidavit further stated:

> 44. One other example of the 1st and 2nd Defendants diverting business opportunities for their own benefit may be seen from their dealings with one Sumiindo Wire System ("Sumiindo"). In a chain of emails between the 1st and 2nd Defendants from 29 May 2003 to 4 June 2003, the 2nd Defendant informed the 1st Defendant that Sumiindo did not wish to use GE Toshiba products and was enquiring about Dow Corning Toray ("DC Toray") products instead. Vandashima Singapore is an authorised distributor of GE Toshiba products.
>
> 45. The emails further show that, with this knowledge, the 1st Defendant directed the 2nd Defendant to contact DC Toray … to request for a quote as it was "not convenient" for the 1st Defendant to contact DC Toray. The 1st Defendant further stated that they may consider

handling the business themselves if the profit margins were good.

…

47. The emails show that instead of attempting to secure Sumiindo as a customer for Vandashima, the 1st Defendant directed the business opportunity to DC Toray, a manufacturer of competitive products, so that the 2nd Defendant and he [the first defendant] may profit from the same.

54 The first plaintiff was a GE Toshiba distributor which product a potential customer, Sumiindo Wire System, did not want to use. Contrary to the first defendant's interpretation, this information was not readily available to the public. In the e-mail dated 4 June 2003 referred to by Tan[note: 21] relating to the Sumiindo Wire System and the DC Toray brand, the first defendant said to the second defendant:

> It is not convenient for me to contact him [Roy Cheong of Tat Lee Engineering], you can request a quote from him and if the margin are [*sic*] good, we can consider to handle by ourselves.

The first defendant clarified that "we" referred to the defendants. He was obviously doing or attempting to do his own sideline businesses, in conflict with his duties to the first plaintiff. This was a breach of cll 16 and 17 of the employment contract, as well as the first defendant's fiduciary duties to the first plaintiff.

55 Information pertaining to the first plaintiff's sales, pricing, *etc* can hardly be said to be within the public domain. It directly affected the business and sales of the first plaintiff. If, as the first defendant claimed, all such information was within the public domain and came within the exception in cl 17 of the employment contract (see [19] above), the burden of proof was on him which he failed to discharge.

56 If as the first plaintiff testified, he had disclosed opportunities for footwear in Indonesia to Stephen Tan,[note: 22] he should have been able to prove it. He could not. Instead, under cross-examination the first defendant would conveniently say: "My notebook is with the plaintiff. All documents are with the plaintiff. I cannot show you anything.",[note: 23] whenever he was asked for proof of his statements. Unfortunately for the first defendant, the relevant documents in his notebook had been retrieved by Lee, through electronic forensic and surveillance processes. Lee was able to retrieve items that the first defendant had deleted but found no information that came within the public domain or could be described as any kind of business opportunities. The first defendant was untruthful in his testimony. He even denied that he had told Tay his notebook had been corrupted although (faced with the evidence) he did admit that he had deleted his e-mails.

57 I would add that the first defendant's solicitor did not challenge Lee's testimony nor put it to Lee that he had deliberately failed to produce or had selectively disclosed documents retrieved from the first defendant's deleted files.

Breach of the non-competition clause

58 The first defendant relied on the information he had gathered from his and the second defendant's employment with the first plaintiff to lay down the groundwork to start his own company (Indidux) in Indonesia. In this regard, the first plaintiff had produced an e-mail from the first defendant to TYT dated 17 August 2004[note: 24] which revealed that the first defendant was "thinking of setting up company in Indonesia to distribute materials like Toray-Dow Corning Silicone,

Shinetsu Silicone, Sony Chemical Adhesives & Tapes, 3M tapes, etc".

59 In the first defendant's affidavit of evidence in chief,[note: 25] he referred to "Indidux's Business Proposal" ("the business proposal") which he said "did not take off as we were unable to procure any customers who needed the services provided by PT Indidux". The business proposal was addressed to TYT and copied to the second defendant.

60 The relevant portions of the business proposal read:

> 1) There are 3 major players for the supply of Silicone rank in order. Toray-Dow Corning (DC), GE Toshiba (Getos) and Shinetsu. Current, we [know] most of the customers in Indonesia buying this product. We could either parallel import Getos material (We can source direct from Getos HK) or approach DC (will need your help to negotiate this) for distribution rights in Indonesia. We can secure the business very fast right from the start and it is worth about US$1 million per year with average margin of 20%.
>
> 2) At the same time, 1 Japanese company in Jakarta is making aquarium for export in Japan and purchase about US$25K of silicone sealant per month. We have the source in M'sia and margin is about 25% but need to resolve the material specification issues.
>
> 3) Current many customers are using many other kinds of sub-material for production such as Loctite, Sony Bond, 3 Bond, Kanto Kansei, Chemitech, etc. If we can get the source direct from Japan, we should be able to sell to the *existing customers* without spec-in, just price.
>
> [emphasis added]

61 The evidence belied the first defendant's claim that the business proposal did not take off. In regard to item 2, evidence had been adduced by the first plaintiff that its customer, PT Lima Tekno, inquired of the possibility of obtaining aquarium silicone sealants from the company. The first defendant failed to follow up with the quotation obtained from Mohm Chemical which would have met the specification requirements of PT Lima Tekno. If the business proposal did not take off, it was not because of want of trying on the part of the first defendant, who made overtures to the first plaintiff's customers and suppliers alike. The first defendant exploited potential and existing customer relationships of the first plaintiff to solicit secret businesses from them for himself and or the second defendant.

62 Counsel for the first plaintiff cited *Advantest Corporate Office (Singapore) Pte Ltd v SL Link Co Ltd* [2005] SGHC 75 where Lai Kew Chai J held at [40] that a non-competition clause "only restricts or prevents the defendants from doing business which is in competition with Advantest. It is not a blanket restriction". Lai J had there agreed with "the plaintiffs' assertion that if any breach of confidentiality continues, the plaintiffs would suffer irreparable damage. The defendants must be prevented from using the first plaintiff's confidential information to compete with Advantest" (at [44]). I adopted and applied the *dictum* to this case.

Whether the first defendant breached the implied terms of trust and confidence in his employment contract

63 I disregarded Tan's testimony on the first defendant's alleged failure to monitor the activities of the Southern China office and to check Ching's claim for expenses; the allegation was not part of the first plaintiff's pleaded case. However, even without that allegation, the first plaintiff had adequately proved its case against the first defendant.

64 Counsel for the first plaintiff had referred the court to *Butterworths Handbook of Singapore Employment Law* (Butterworths Asia, 3rd Ed, 1997) at p 74 which said:

> An employee has an implied duty of good faith and fidelity, that is, he is expected to do his work with honesty and integrity and is expected to avoid situations where his interests conflict with those of his employer's.

65 The textbook went on to add (at pp 76 to 78):

> [D]uring the course of employment, an employee must not make use of trade secrets or confidential information for his own benefit.
>
> …
>
> In determining whether information is highly confidential in this regard, the following factors, though not exhaustive, are relevant:
>
> (a) Whether the employee in question was employed in a capacity where confidential information was habitually handled.
>
> (b) Whether the employer impressed upon the employee the confidentiality of the information.
>
> (c) Whether the relevant information can be easily isolated from other information which the employee was free to use or disclose.
>
> (d) Whether the release of the information can reasonably be expected to be injurious to the employer or be advantageous to his rival.
>
> (e) Whether the information was public knowledge.
>
> (f) Whether the practice and usage of the industry in question considered the information as confidential.

66 Counsel for the first plaintiff also relied on the UK appellate court's decision in *Faccenda Chicken Ltd v Fowler* [1987] 1 Ch 117 which was followed by our Court of Appeal in *Tang Siew Choy v Certact Pte Ltd* [1993] 3 SLR 44. Both authorities held that in so far as the employer's information can be properly classified as a trade secret or is highly confidential in nature, an employee who has left the employment can be restrained from disclosing or using it.

Whether the first defendant breached his fiduciary duties owed to the first plaintiff

67 The first plaintiff rightly pointed out that the first defendant remained under a duty not to compete with the company after he left its services by virtue of the non-competition and/or restraint of trade clause in his employment contract.

68 Reliance was placed on *Comax Secure Business Services Ltd v Wilson* (21 June 2001) (Queen's Bench Division) which in turn referred to *Bristol and West Building Society v Mothew* [1998] 1 Ch 1 where the court held (at 18):

> A fiduciary is someone who has undertaken to act for or on behalf of another in a particular

> matter in circumstances which give rise to a relationship of trust and confidence … A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal.

The first defendant conducted business under a non-existent Indonesian company name PT Makmur and thereafter incorporated an Indonesian company Indidux which he used to divert business from the first plaintiff's existing and potential customers. Both companies were in active competition with the first plaintiff's; in fact, they sold the same silicone-related products. As for PT Lima Tekno, it was a definite business opportunity for the first plaintiff which went to waste because the first defendant did not actively pursue the transaction or seal the deal.

69 As for the veracity of the witnesses, the first defendant was evasive and contradictory in the witness box and his answers under cross-examination were often unsatisfactory. One instance I could recall was the first defendant's initial answer on whether he produced any customer list, he said: "All this data has become obsolete – sorry, not obsolete. All these data has been updated". However, later he said "but that's not because it's outdated. I simply didn't give a copy".[note: 26]

70 Another instance of the first defendant's unreliable testimony concerned PT Makmur. In his defence,[note: 27] he had disclaimed any knowledge or involvement with this company. He did a *volte face* when he saw in discovery that the first plaintiff had retrieved from the deleted files of his notebook his exchange of e-mail with his brother, Joe Tiong (see [93] below). The first defendant then agreed with counsel for the first plaintiff that his defence was untrue.

71 In contrast, the first plaintiff's witnesses were more reliable. Although Tan had a tendency to ramble in the witness stand and his poor command of the English language sometimes resulted in his evidence being less than coherent, he was forthright in his testimony; he was never evasive.

Was the first defendant employed for his client base?

72 It was the first defendant's case that he was employed for his client base. Pressed by counsel for the first plaintiff for evidence to support this assertion, the first defendant referred to Tan's affidavit which contained an e-mail dated 4 October 2004 from the second defendant to TYT and the first defendant, the relevant portion of which reads:

> The attached file is actually 99.99% of current actual silicone rubber biz opportunity in Indonesia. Even Vandashima doesn't have this complete report.

73 In cross-examination, however, the first defendant conceded that that there were no documents to show his customer base from his Unidux days. Neither could he produce any customer list or customer database which he had when he joined the first plaintiff.[note: 28] The first defendant accepted that the first plaintiff's business included the supply of silicone rubber.[note: 29]

Diverting business from existing and potential customers of the plaintiffs

74 It was adduced in evidence that PT Matsushita Gobel was interested in ordering Loctite from the first plaintiff. The first plaintiff produced e-mails dated 21 November 2003, 23 February 2004 and 2 March 2004 exchanged between F Sekiya from its Tokyo representative office and Chu. The first plaintiff had asked the Tokyo representative office for quotations of Loctite 3619 and had obtained a positive reply. It proved that the first plaintiff could have gone into the business and the first defendant could have clinched the contract from PT Matsushita Gobel for the first plaintiff. This was

not denied by the first defendant in cross-examination.[note: 30] He further agreed that as the assistant general manager of the first plaintiff, he would have been able to source for Loctite 3619 to supply to Matsushita Electrical Works.

75 Although his duties as the first plaintiff's assistant general manager included bringing in additional business and additional customers, when he was confronted with Loctite, the first defendant said: "… the first plaintiff does not deal in this product. That's not my job". The first defendant had overlooked his earlier admission under cross-examination that his duties included sourcing for additional and interested customers (see [52] above).

76 The plaintiffs' documents contained an e-mail dated 9 October 2004[note: 31] from the second defendant to Eji Iizawa of Toray-Dow Corning which was copied to the first defendant and TYT and which read:

> This is Kris and *Jonathan* from PT [Indidux]. We believe that Mr Tan, our MD have already sent you a profile of out Indonesia company PT Sinar Unidux Jaya. PT [Indidux] is part of the Unidux group and was set up to concentrate on the sales of materials while PT Sinar Unidux concentrate on the electronics components and IPO [International Procurement Office] logistic business.
>
> …
>
> Also, *we* have some big opportunities on hand for aquarium sealant about 40K ctg to 50K ctg a month and other type of sealant.
>
> [emphasis added]

It was damning evidence against the first defendant and directly contradicted his claim that Indidux did not take off and did not do any business.

Diverting business from PT Lima Tekno

77 The first plaintiff had a potential customer in PT Lima Tekno that made aquariums for export to Japan; it made an enquiry for aquarium sealants. PT Lima Tekno's Tsujita had indicated that he would not mind purchasing from the first plaintiff if a local service was provided and PT Lima Tekno was willing to sign with the first plaintiff a contract based on a fixed price and quantity valid for one year, if the price and specifications were right.

78 In an e-mail dated 9 June 2004 from one Quek Mohm of Mohm Chemicals to the first defendant, Quek Mohm provided confidential information pertaining to Mohm Chemical's quotation for PT Lima Tekno's enquiry.

79 Apart from the above e-mail, there was another e-mail dated 23 August 2004[note: 32] from Melia Tjandra to the first defendant attaching "the current vsi biz with customer details." The first defendant clarified that Melia Tjandra was the second defendant. The first defendant had forwarded the e-mails dated 9 June 2004 and 23 August 2004 to his Yahoo e-mail address (tiongslj@yahoo.com.sg) on 23 August 2004. In cross-examination, the first defendant claimed he could not remember to whom he had forwarded the e-mail – it could have been directly to the customers or to the second defendant. The first defendant agreed that he made no mention of forwarding the specifications by Mohm Chemical to PT Lima Tekno or Kris in his affidavit of evidence-in-chief. Cross-examined, he changed his testimony and stated that he "forwarded this e-mail to all the necessary persons in charge of Vandashima … Mr Stephen Tan, Chu Vui Liong, Kris"[note: 33] but

produced no evidence in support thereof.

80 Tan's affidavit stated:[note: 34]

> 52. … the 1st Defendant proceeded to forward emails from the 2nd Defendant regarding an inquiry by a potential client, PT Lima Tekno, for aquarium sealant to himself on 23 August 2004.
>
> …
>
> 53. Pursuant to the request received from PT Lima Tekno, I assigned Chu Vui Liong to work with the 1st Defendant on securing the business.
>
> …
>
> 54. Further, the 1st Defendant also forwarded emails containing quotations and confidential information of Shin Etsu and their sales data for Acetoxy Silicone.

81 The first defendant claimed the proposed transaction with PT Lima Tekno did not materialise because the plaintiffs were not able to meet the required specifications. Again, his statement was unsupported by any evidence.

Queries from acquaintances on products available in Indonesia

82 I did not accept the first defendant's contention under cross-examination that he merely assisted in putting queries from personal acquaintances on Indonesian products in touch with third parties.[note: 35] The e-mails were not one-off inquiries but constituted a whole series of inquiries, none of which were connected with the first plaintiff's business.

83 At an early stage of his testimony, the first defendant said that he "merely assisted in putting them in touch with the relevant people". Subsequently however, he said that he took "a look and … follow[ed] up some of the enquiries" and "what [he means] by follow up is to make sure that these parties involved have the information and then that this informations [*sic*] are communicated properly to each parties".[note: 36]

84 In an e-mail dated 28 March 2003[note: 37] from one Stanley Ong to the first defendant, Stanley Ong asked the first defendant to "check and amend the attached quote [for project E-0156]". In another e-mail dated 10 March 2003[note: 38] from the second defendant (using the name Wan Edy) to the first defendant relating to Sand-Crabs, the second defendant mentioned to the first defendant that "We must check details before we make any move." Further, an e-mail dated 14 April 2003[note: 39] from the second defendant to the first defendant read:

> Please kindly send the car alarm samples to following add:
>
> …
>
> If possible, pls prepare a performa invoice with amount US$2.00/pc.
> Do not declare too expensive as they will charge us with TAX.
>
> Pls make sure that this alarm must come with speaker, module and 2 pcs of remote.

85 There was also an e-mail dated 30 April 2003[note: 40] from one Fukuhisa of Kyocera, a

principal supplier of the plaintiffs. Fukuhisa's aunt was looking for consumer electronic goods from China. The first defendant's role was to talk to his friends in China who dealt with consumer electronic goods and pass Fukuhisa the quotation. The e-mail stated:

> … is my auntie office.
>
> Target price is include you & me profit.

The e-mail showed the intention of Fukuhisa and the first defendant to share the profits from this sale.

86 There was also an e-mail dated 12 May 2003 from the first defendant to one Simon Ho (at simon@oceanzone.com.cn) which read:

> Pls kindly help to issue and fax a copy of quotation as attached using your company letter head.

87 The first defendant acted on Fukuhisa's e-mail and entered into a sideline business for digital video discs (DVDs) from which they were both supposed to profit. In court, the first defendant claimed he never agreed that that he would take the profit. However, he did not produce any e-mail or letter supporting his disclaimer or which proved he was helping Fukuhisa as an acquaintance.

88 I was certain that the first defendant played more than the role of a mere conduit or facilitator of these inquiries as he claimed. He was actively involved in the various transactions outlined above, motivated by profits he hoped to make. There was little doubt that the first defendant spent his time at the first plaintiff's office conducting through e-mails his own businesses ranging from car alarms to seafood to molex connectors. It was noteworthy that when the second defendant e-mailed the first defendant on such sideline businesses, the former used his hotmail account (*viz,* edy_wan@hotmail.com). It was the first defendant's own evidence that when the second defendant sent him e-mails from the latter's Vandashima Indonesia e-mail address, the second defendant did so as the first defendant's subordinate. When the second defendant sent e-mails to the first defendant from the second defendant's hotmail account, it was as a friend.

PT Makmur

89 An e-mail dated 26 February 2003 from the first defendant to his brother Joe Tiong read:

> Name of indonesia company attached. Pls help to get quote using this company name.

Questioned by the first plaintiff's solicitor on "this company name", the first defendant clarified that it was PT Makmur.

90 According to an e-mail dated 25 February 2003,[note: 41] the first defendant and his brother, Joe Tiong, created the fictitious company "PT Makmur Jaya Abadi". In an e-mail dated 26 February 2003, the first defendant told Joe Tiong to get quotations using this Indonesian company name. In another e-mail dated 27 February 2003, the first defendant used Joe Tiong to source for customers for him.

91 Evidently, the first defendant used his brother Joe Tiong and a fictitious company to do his own business during the office hours of the first plaintiff, using an e-mail address allocated by the first plaintiff.

92 Based on the evidence, it was obvious that the first defendant poached existing and

potential customers of the first plaintiff using the know-how he acquired from his employment with the first plaintiff, for the benefit of his Indonesian "company".

Conducting share investment transactions during office hours

93 The first defendant pleaded in his defence that even if he did share trading during office hours, the transactions of share purchases were not more than five counters throughout the time he was in the first plaintiff's employment. However, based on the e-mails retrieved by Lee, the first defendant was caught executing five share transactions within an hour on just one day. Cross-examined, the first defendant sought to say that he traded five times over the three years of his employment[note: 42] with the first plaintiff. I rejected his evidence as being inherently untrue. It was more likely than not that the first defendant had traded in shares in more than five counters for the two years or less that he worked for the first plaintiff.

The injunction

94 The first plaintiff had prayed for a permanent injunction. Tan had testified that the territories to which the first defendant was restricted comprised Malaysia, Singapore, Indonesia and Southern China. Because of the first defendant's Indonesian connections and the first plaintiff's customer base in Indonesia, I limited the injunction I granted specifically to Indonesia. I directed the injunction against the first defendant to continue until 25 August 2006, as that would be two years from the time the first defendant resigned as the first plaintiff's assistant general manager *vis-à-vis* the Indonesian market. The injunction did not prohibit the first defendant from finding employment. Indeed, when he was questioned by the court, the first defendant replied that he was an information technology consultant, but failed to disclose he was in the employment of Unidux (which fact Tan revealed to the court).

95 The first plaintiff's solicitor had referred the court to *Heller Factoring (Singapore) Ltd v Ng Tong Yang* [1998] 3 SLR 299 where the restrictive covenant in the contract of employment between the plaintiff and the defendant provided as follows:

> You shall upon termination of your services with Heller, undertake not to seek employment with a company in Singapore which is also in the business of offering factoring services for a period of two years from date of termination.

96 At [18] in the above case, GP Selvam JC observed:

> [O]n the factual matrix of this case the true meaning and content of the restrictive covenant is to prevent the defendant being used by the competitors to draw away the plaintiffs'customers by misusing the information the defendant had acquired by reason of his employment with the plaintiffs. Additionally it is not in the public interest that the third parties should have access to information which the plaintiffs' customers supplied to the plaintiffs.

Although in that case the defendant commenced employment with the plaintiff's competitor while in the present case the first defendant started his own company, the common thread running in both cases is that the defendants were diverting business away from the plaintiffs using confidential information belonging to the plaintiffs.

97 GP Selvam JC succinctly set out (at [15]) the applicable principles to ascertain the validity of a restraint of trade clause. A restrictive covenant under which an employee agreed not to serve his employer's competitors would be valid and enforceable if:

(a) it was reasonable in the context of the business in relation to which the covenant was entered into and the relationship between the parties;

(b) the employer could show that the true purpose of the covenant was the protection of some business interest of the employer say, trade secrets, confidential information and goodwill;

(c) the employee had access to clients and confidential information; and

(d) the employer could show that the covenant was reasonable in the interests of the parties and in particular that it was designed for the protection of some proprietary interest owned by the employer for which the restraint was reasonably necessary.

98 On the issue of the scope of the injunction, GP Selvam JC stated at [21] and [22]:

Next, in terms of time five years in *Fellowes & Son v Fisher* was plainly excessive. The period of restraint should only be long enough for the danger of interference by the ex-employee to wear away. Having regard to the purpose of the restrictive covenant two years in my view was eminently reasonable.

Lastly as to the geographical limit, the area must be no more than adequate for the protection of the plaintiffs. This in effect means the area where the plaintiffs' customers are situate.

99 The learned judge's view is supported by Andrew Phang Boon Leong, *Chesire, Fifoot and Furmston's Law of Contract* (Butterworths Asia, 2nd Singapore & Malaysian Ed, 1998) at p 707:

A restraint is permissible if it is designed to prevent a misuse of trade secrets or business connexion, but it will be invalid if it affords any more than adequate protection to the covenantee. In deciding this question the court considers, inter alia, the nature and extent of the trade and of the servant's employment therein, but it pays special attention to the two factors of time and area. 'As the time of restriction lengthens or the space of its operation grows, the weight of the onus on the covenantee to justify it grows too.'

100 I adopted the principle in *Heller Factoring (Singapore) Ltd v Ng Tong Yang* ([95] *supra*) that a two-year restraint on the first defendant was adequate to protect the first plaintiff's interests. The geographical scope of the injunction should be limited to Indonesia as it was where the first plaintiff developed its business.

Conclusion

101 On the evidence, I was satisfied that the first defendant had misused the first plaintiff's confidential information for his own benefit and diverted the first plaintiff's customers to himself, the second defendant and third parties. On the other hand, I found that the first defendant had not made out his claim for wrongful dismissal. Hence his counterclaim against the first plaintiff was dismissed with costs.

[note: 1]At para 21.

[note: 2]At notes of evidence ("NE") at p 98 on 7 March 2006.

[note: 3]At para 64.

[note: 4]At para 3.

[note: 5]At para 26(c).

[note: 6]At para 26(a) of his affidavit of evidence-in-chief.

[note: 7]NE at pp 32–33 on 9 March 2006.

[note: 8]At para 8.

[note: 9]At para 18.

[note: 10]NE on 6 March 2006.

[note: 11]NE at p 37 on 9 March 2006.

[note: 12]NE at p 51 on 8 March 2006.

[note: 13]Para 14.

[note: 14]At paras 41 to 43.

[note: 15]NE at p 61 on 8 March 2006.

[note: 16]At para 42.

[note: 17]1AB-41.

[note: 18]NE at p 69 on 8 March 2006.

[note: 19]At para 11.

[note: 20]NE at p 23 on 8 March 2006.

[note: 21]1AB-45.

[note: 22]NE at p 2 on 9 March 2006.

[note: 23]NE at p 113 on 8 March 2006.

[note: 24]2AB-17.

[note: 25]At para 22.

[note: 26]NE at pp 139 and 142 on 8 March 2006.

[note: 27]See para 19(i).

[note: 28]NE at pp 139–140 on 8 March 2006.

[note: 29]NE at p 12 on 9 March 2006.

[note: 30]NE at pp 51–52 on 8 March 2006.

[note: 31]2AB-24.

[note: 32]1AB-60.

[note: 33]NE at p 118 on 8 March 2006.

[note: 34]At paras 52 to 54.

[note: 35]NE at p 92 on 8 March 2006.

[note: 36]NE at pp 83–84 on 8 March 2006.

[note: 37]1AB-17.

[note: 38]1AB-13.

[note: 39]1AB-27.

[note: 40]1AB-29.

[note: 41]1AB-8.

[note: 42]NE at p 36 on 9 March 2006.

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