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

[2021] SGHC 281

Suit No 221 of 2021 (Summons No 4350 of 2021)

Between

Rohrlach, Nicolas Robert Adam

… *Plaintiff*

And

(1) Qantas Airways Limited
(2) Virgin Australia Airlines Pty Ltd

… *Defendants*

ORAL JUDGMENT

[Contempt of Court] — [Civil contempt]
[Contempt of Court] — [Sentencing] — [Principles]

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Rohrlach, Nicolas Robert Adam
v
Qantas Airways Ltd and another

[2021] SGHC 281

General Division of the High Court — Suit No 221 of 2021 (Summons No 4350 of 2021)
Mavis Chionh Sze Chyi J
12 November 2021

3 December 2021 Judgment reserved.

Mavis Chionh Sze Chyi J:

1 The plaintiff is a former employee of the 1st defendant. The plaintiff's employment contract with the 1st defendant contains a six-month restraint of trade provision (the "Restraint of Trade Provision").[1]

2 On 6 November 2020, the plaintiff was offered a senior leadership role in Qantas Loyalty, which he accepted on 19 November 2020.[2] Prior to the start of his new role in early 2021, the plaintiff gave notice of his resignation on 18 December 2020. He conveyed his intention to join the 2nd defendant, Virgin

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1 Plaintiff's Written Submissions dated 4 November 2021 ("PWS") at para 59; Statement of Claim for HC/S 221/2021 ("SOC") at para 9 (*see* Clause 4 of the Restraint Deed Poll).

2 1st Defendant's Written Submissions dated 5 November 2021 ("DWS") at para 11.

Australia Airlines Pty Ltd ("Virgin Australia"), as the Chief Executive Officer ("CEO") of Velocity, Virgin Australia's customer loyalty program.[3]

3 On 1 March 2021, the plaintiff filed HC/S 221/2021 ("Suit 221"), seeking, *inter alia*, a declaration that the Restraint of Trade Provision has no legal effect and/or is void and unenforceable.[4]

Background

4 On 7 April 2021, the 1st defendant filed HC/SUM 1582/2021, seeking, *inter alia*, an injunction against the plaintiff.[5] On 29 April 2021, I ordered that until the final determination of Suit 221 or 17 September 2021 (inclusive) (whichever occurs earlier), the plaintiff would "be restrained from commencing work for, rendering services to, being employed by or being otherwise involved in any activity or business of, directly or indirectly, Virgin Australia Airlines Pty Ltd or its related bodies corporate (as the term is defined in the Corporations Act 2001)".[6] I will refer to this as the "injunction".

5 On 23 August 2021, the 1st defendant filed HC/SUM 3954/2021 for leave to apply for an order of committal against the plaintiff. I granted leave to the 1st defendant on 15 September 2021.[7]

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3 DWS at paras 12–13.

4 SOC at p 8, para (2).

5 1st Defendant's Bundle of Documents dated 5 November 2021 ("DBOD") at pp 4–5.

6 DBOD at pp 254–255.

7 DBOD at pp 663–664.

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6 On 16 September 2021, the 1st defendant filed HC/SUM 4350/2021 ("SUM 4350") seeking an order of committal against the plaintiff.[8] I heard SUM 4350 on 12 November 2021, and I now give my decision.

The law

7 I start with a brief summary of the law on contempt of court.

8 The general principles are not in dispute. The applicant who seeks to establish contempt of court has to prove its case beyond reasonable doubt (s 28 of the Administration of Justice (Protection) Act 2016 (Act 19 of 2016) ("APA")).

9 In deciding whether contempt has been committed, the court will first decide what exactly the order of court required the alleged contemnor to do (or to refrain from doing). In determining what the order of court required, the court will interpret the plain meaning of the language used, and it will resolve any ambiguity in favour of the person who had to comply with the order. Second, the court will determine whether the requirements of the order of court have been fulfilled. The complainant will need to show that in committing the act complained of or omitting to comply with an order of court, the alleged contemnor had the necessary *mens rea* (*PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 4 SLR 828 ("*PT Sandipala*") at [46]).

10 The threshold to establish the necessary *mens rea* is a low one. It is only necessary for the complainant to show that the relevant conduct of the alleged contemnor was intentional and that the alleged contemnor knew of all the facts

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8 DBOD at pp 666–668.

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which made such conduct a breach of the order – this includes knowledge of the existence of the order and its material terms. It is not necessary for the complainant to show that the alleged contemnor appreciated he was breaching the order: the motive or intention of the alleged contemnor and his reasons for disobedience are irrelevant to the issue of liability and are relevant only to the issue of mitigation. The liability is strict in the sense that all that is required to be proved is service of the order and the subsequent omission by the alleged contemnor to comply with the order (*PT Sandipala* at [47]–[48]).

11 As the breaches complained of in this case occurred outside Singapore and the plaintiff currently resides outside Singapore, I also note in the interests of completeness that under section 11(4) of the APA, the court has jurisdiction to try any contempt of court and to impose the full punishment under the APA, *inter alia*, where the person who commits contempt of court under section 4 of the APA is legally bound to obey or comply with the judgment, direction or an order of court or an undertaking given to a court, regardless of whether the disobedience or failure to comply occurred in Singapore or elsewhere. It is not disputed that the plaintiff is legally bound to obey and to comply with the injunction. Section 12(6) of the APA further provides that "[t]o avoid doubt, the court may, if the interests of justice so require, find a person guilty of contempt of court and impose the punishment under this section even though the person is absent".

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The first alleged breach

12 I now turn to the first alleged breach.

The parties' submissions

13 The 1st defendant submits that the plaintiff had introduced one Mr David Magdic ("Magdic"), the Head of People Experience at Virgin Australia, to Ms Barb Hyman ("Hyman"), the CEO of PredictiveHire, which is a Melbourne-based AI recruitment startup;[9] and that in so doing, the plaintiff was involved in helping Virgin Australia with its recruitment process as the latter sought to scale back up following its acquisition by Bain Capital in 2020.[10]

14 On 25 May 2021, the plaintiff first sent a WhatsApp message to Magdic at 1:53pm (Sydney time), stating:[11]

> Also can you tell me your virgin email address? I will connect you to an ex-colleague of mine who does awesome stuff in AI recruitment.

That same day, at 2:46pm (Sydney time), the plaintiff sent an email to Magdic's Virgin Australia email address, copying Hyman. The email title was "Predictive Hire introduction", and the contents were as follows:[12]

> Hi David,
>
> As I quickly mentioned, I wanted to introduce you to Barb Hyman. She's the CEO of Predictive Hire, a Melbourne-based AI recruitment startup. They are doing awesome things around using AI in recruitment, particularly in positions like Cabin crew. Takes the bias out of it, more efficient especially for volume recruitment and also apparently better for the

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9 DWS at para 20.

10 DBOD at p 183, paras 10–11 (Statement Pursuant to Rules of Court O 52 r 2(2)).

11 DBOD at pp 194, 250 (see message dated 25/5/21, 13:53:34).

12 DBOD at pp 259–260.

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> candidate (as they think its fairer and get feedback too!). Qantas actually uses them for Cabin crew recruitment I think. But I'll let Barb explain that for herself.

Subsequently, Hyman replied at 4:14pm (Sydney time) as follows:

> Nick- thanks so much for the intro …
>
> David, it looks like you are Melbourne based.
>
> Why don't I pop in and we can see if our tech can be of help to you and the team especially as you scale back up.
>
> …

15 The 1st defendant argues that, on a plain reading of the written correspondence, the plaintiff's introduction of PredictiveHire to Virgin Australia was to assist the latter with its recruitment process. This was in the context of Virgin Australia seeking to "scale back up" following its acquisition by Bain Capital in 2020. The plaintiff's conduct constitutes being otherwise involved in any activity or business of, directly or indirectly, Virgin Australia.[13]

16 The plaintiff argues that sending this email did not constitute a breach of the injunction. The plaintiff did not help and was not involved in helping Virgin Australia with its recruitment process. Rather, the plaintiff was endeavouring to help his personal friend, Hyman, and assist her in relation to a matter concerning her own business by introducing her to someone he knew who worked at Virgin Australia.[14] The plaintiff did not involve himself in further discussions with Magdic and Hyman, did not influence any of Virgin Australia's decisions in whether to engage Hyman's business, and had also said

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13 DWS at paras 25–26.

14 PWS at para 21.

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in his introductory email that it was for Hyman to explain her business to Virgin Australia for herself.[15]

My decision

17 I am satisfied that the first alleged breach of the injunction is made out. My reasons are as follows.

18 First, the plaintiff has said that he had no intention of breaching the injunction: all he wanted to do was to connect his "very long-time friend and former colleague" to Magdic,[16] and he "genuinely believed" that this did not amount to a breach of the injunction.[17] However, as the 1st defendant submits (and I agree), the plaintiff's motive or intention is irrelevant to establishing the necessary *mens rea* for contempt. It is only necessary for the 1st defendant to prove that the plaintiff intentionally sent that email: the 1st defendant does not need to show that the plaintiff had *appreciated* he was breaching the court order, nor does it need to show what the plaintiff's motive was in sending the email (*PT Sandipala* at [48]).[18] It is clear from the plaintiff's own affidavit evidence that this email was sent intentionally.[19]

19 Second, I find that sending this email amounted to the plaintiff being involved in the business or activity, directly, of Virgin Australia. The plaintiff said in his affidavit that he had known Hyman since about 2004, that Hyman had joined PredictiveHire as CEO in February 2018, that Hyman had

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15 PWS at paras 22–23.

16 DBOD at p 677, para 18.

17 DBOD at p 673, para 8.

18 DWS at paras 27–28, 31.

19 DBOD at p 675, para 13.

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reconnected with him on 18 January 2021 because she had seen an article in the Australian Financial Review about him joining Virgin Australia, and that before that, they had not spoken for 10 years.[20] A few months later, on 23 May 2021, Hyman asked the plaintiff to introduce her to Magdic.[21] The plaintiff's email to Magdic on 25 May 2021 informed the latter that PredictiveHire was "doing awesome things around using AI in recruitment, *particularly in positions like Cabin crew*" [emphasis added], described the advantages of the technology offered by PredictiveHire (which included more efficiency "especially for volume recruitment"), and even went on to note that Qantas, his former employer, "actually uses them for Cabin crew recruitment I think".

20 Looking at the evidence as a whole leads me to the following findings. First, the plaintiff and Hyman reconnected because she found out that he was joining Virgin Australia.[22] The context in which they reconnected was thus not a social or personal one, but was based on the plaintiff's business connection to Virgin Australia. Second, the plaintiff was well aware that he was introducing Hyman (the CEO of an "AI recruitment startup") to Magdic (the Head of People Experience at Virgin Australia), so that Hyman could promote Predictive Hire's AI recruitment services to Virgin Australia. Indeed, prior to linking the two up on email, the plaintiff had set the stage by explaining to Magdic that he wanted to connect Magdic to an "ex-colleague…who does awesome stuff in AI recruitment". Third, in introducing Hyman to Magdic, the plaintiff himself apprised Magdic of Hyman's PredictiveHire technology; the advantages it offered an employer in the recruitment process, "particularly in positions like Cabin crew" and "for volume recruitment"; and the fact that "Qantas actually

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20 DBOD at p 674, paras 9–11.

21 DBOD at p 674, para 12.

22 DWS at para 28(b).

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uses them for Cabin crew recruitment".[23] The plaintiff's comment that PredictiveHire's technology offered more efficiency "especially for volume recruitment" was picked up on by Hyman who then suggested to Magdic in her follow-up email that she could "pop in" on Magdic to "see if our tech can be of help to you and the team especially as you scale back up". In short, therefore, in sending his email of 25 May 2021, the plaintiff had involved himself in helping Virgin Australia with its recruitment process as Virgin Australia sought to scale back up following its acquisition by Bain Capital. This clearly amounted to involving himself in the activity or business, directly, of Virgin Australia.

21 In his affidavit, the plaintiff tried to downplay the significance of his actions: he said he did not benefit at all from introducing Hyman and Magdic, and that his intention was simply to do Hyman a "small favour", "in relation to a matter concerning her own and not [Virgin Australia's] business".[24] First, whether or not the plaintiff benefitted from sending this email is irrelevant to whether he breached the terms of the injunction. Second, I find it highly contrived to suggest that connecting Hyman with Magdic was a matter that *only* concerned PredictiveHire's business – and not Virgin Australia's. Any discussion between Virgin Australia and PredictiveHire on the potential usefulness of the latter's AI recruitment services to the former would plainly concern *both* businesses.

The second alleged breach

22 I now turn to the second alleged breach.

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23 DWS at para 29.

24 DBOD at p 675, para 14.

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The parties' submissions

23 The 1st defendant submits that around June 2021, the plaintiff was involved in discussions within Virgin Australia's leadership and plans by Virgin Australia to recruit one Rebecca Baart ("Baart"), an ex-employee of Qantas Loyalty then working at a company called Healias, and/or to obtain further information from her which could be used for the recruitment of individuals for the benefit of Velocity's business.[25]

24 On 25 June 2021, one Charles Lawson ("Lawson"), a representative of Bain Capital (the owner of Virgin Australia since 2020), sent Hrdlicka (the CEO of Virgin Australia) an email stating that he had spoken to Baart, who was looking to move on from Healias and who had been thinking about "what could be done to make Velocity great". He added that Baart had "an excellent great rolodex of talented folks who have moved on from Qantas Loyalty, and is keen to help [Virgin Australia]." On that basis, Lawson suggested that Hrdlicka introduce Baart to the plaintiff and "suggest they catch up".[26]

25 On 27 June 2021, Hrdlicka forwarded Lawson's email to the plaintiff and Ms Lisa Burquest ("Burquest"), who is the Chief People Officer at Virgin Australia, requesting that they meet up with Baart.[27] Hrdlicka wrote:

> Hi both. You should meet Bec in the next little while. She is on mat leave, left QFF to join Healias and is apparently not enjoying it. She is a rock star and has the added bonus of understanding a loyalty business. For now would be a get to know you but would be great for both of you in the event that we need talent in the Velocity biz…. Obviously for Nick this can only be a social engagement getting to know talent in the market. Her contact details are in the email below.

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25 DBOD at p 185, para 17 (Statement Pursuant to Rules of Court O 52 r 2(2)).

26 DBOD at p 265.

27 DBOD at p 265.

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On the same day, the plaintiff replied to Hrdlicka as follows:

> Got it Jayne – will get onto meeting her, virtually for now!
>
> Lisa – if you like I can talk first and then intro after?

A few days later, on 2 July 2021, the plaintiff had a web meeting with Baart, which he describes as a "social catch-up".[28]

26 The 1st defendant argues that based on Virgin Australia's 9 June 2021 announcement, it is clear that Hrdlicka, Burquest, and the plaintiff were all members of Virgin Australia's Executive Leadership Team ("ELT").[29] Given the high-level appointments of its participants and the context of the email exchange, there could be no doubt that the email exchange was really for the purposes of advancing Virgin Australia's business and recruitment strategy, rather than arranging a purely social catch-up.[30] Second, it was precisely because the plaintiff was the incoming CEO of Velocity that he was involved in discussions with other members of Virgin Australia's ELT on the possibility of recruiting Baart for the Velocity business, and/or obtaining further information from Baart which could assist with recruitment for Velocity.[31] Third, Hrdlicka's statement that, for the plaintiff, this could only be a "social engagement getting to know talent in the market", showed that all the participants in the email exchange were aware of the injunction.[32] Lastly, there was a clear degree of planning by the plaintiff with regard to the coordination of Virgin Australia's approach to Baart. In the plaintiff's email reply to Hrdlicka and Burquest, he

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28 DBOD at p 680, para 29.

29 DBOD at pp 644–645.

30 DWS at paras 40–41.

31 DWS at para 42.

32 DWS at para 44.

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specifically proposed to Burquest that he should meet with Baart first before introducing her to Burquest.[33] If his meeting with Baart was really an innocuous social catch-up, he would not have needed to coordinate the order and timing of his and Burquest's respective approaches to her.[34]

27 The plaintiff submits that he was not involved in any discussion or plans to recruit Baart. The plaintiff says that he had simply agreed to meet a former colleague socially, and he did not think there was anything wrong with that as long as they did not discuss Virgin Australia.[35] Further, during his meeting with Baart, they had mainly spoken about their backgrounds, people they knew in common and what they did when they were not working. When Baart said she might be interested in a part-time role with Virgin Australia, the plaintiff informed her to take it up with Virgin Australia separately as he did not intend to involve himself with any activity or business of Virgin Australia.[36] The plaintiff said he never obtained any information that could be used to recruit individuals for the benefit of Velocity's business, nor did he discuss his conversation with Baart with anyone at Virgin Australia.[37]

My decision

28 I am satisfied that the second alleged breach is made out. My reasons are as follows.

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33 DWS at para 46.

34 DWS at para 47.

35 PWS at paras 39(c) and 40.

36 PWS at para 41.

37 PWS at paras 42–43.

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29 First, it should be noted that the plaintiff's meeting with Baart came about following an email sent by Lawson (a representative of Bain Capital, the owner of Virgin Australia) to Hrdlicka (the CEO of Virgin Australia). Lawson's email highlighted Baart's "excellent" contacts, her plans to leave her then employer, and the thinking she had been doing about "what could be done to make Velocity great". This was followed by the proposal that Baart should be introduced to the plaintiff (the incoming CEO of Velocity) and to Burquest (Virgin Australia's Chief People Officer). Lawson's email to Hrdlicka was thus plainly sent in the context of Virgin Australia's business. The suggestion Lawson made in that context, for the plaintiff to "catch up" with Baart, plainly contemplated that any engagement by the plaintiff of Baart would not be for a purely social purpose, but would be to facilitate Virgin Australia's further engagement of Baart for the purpose of recruiting her and/or other "talented folks" for Velocity's business. I do not think it can be disputed that the plaintiff would have been aware of the context in which it was being suggested that he meet with Baart, since Lawson's email was forwarded to him by Hrdlicka, who added her observation that Baart was a "rock star" who had "the added bonus of understanding a loyalty business".

30 I have considered whether it may be argued that the plaintiff was only asked to "catch up" with Baart, whereas it was Burquest who was tasked with checking whether Baart had "any interesting leads for roles" that Virgin Australia was "looking to fill right now"; in other words, that Burquest's role was related to Virgin Australia's business, whereas the plaintiff's was not. I do not accept any such characterisation of the plaintiff's role. The plaintiff did not know Baart prior to being asked to meet her. There was simply no reason for him to be involved in the email exchange and to be asked to "catch up" with Baart, *apart* from his role as the incoming CEO of Virgin Australia's loyalty

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business, and Baart's usefulness to that business as a potential hire and/or a source of information about other talent in the market.

31 In fact, in Hrdlicka's email of 27 June 2021 to the plaintiff and Burquest, Hrdlicka expressly pointed out that meeting Baart "would be great for both [the plaintiff and Burquest] in the event that we need talent in the Velocity biz". Clearly, Hrdlicka was asking the plaintiff and Burquest to meet with Baart either because Baart herself was a potential recruit for the Velocity business, and/or because Baart could inform them about potential talent for the Velocity business. I add that whilst Hrdlicka added that "[o]bviously for [the plaintiff] this can only be a social engagement", this statement was qualified by her express observation that meeting with Baart would help the plaintiff in "getting to know talent in the market" – an observation which showed that the meeting would not simply be for the purpose of a social "catch up". Getting to know talent in the market would be fundamental for the business of Virgin Australia, and even more so for the plaintiff as the incoming CEO of Velocity.[38] I should also add that I agree with the 1st defendant that Hrdlicka's comment that "[o]bviously for [the plaintiff] this can only be a social engagement" demonstrated that the parties to the email exchange were aware of the terms of the injunction that the plaintiff was subject to.

32 I also accept the 1st defendant's submission that there was a "clear degree of planning" by the plaintiff with regard to the coordination of Virgin Australia's approach to Baart.[39] If, as the plaintiff says, his meeting with Baart was merely an innocuous social engagement with no connection whatsoever to the business of Virgin Australia, there would have been no need for him to

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38 DBOD at p 265.

39 DWS at para 46.

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coordinate the meeting with Burquest, the Chief People Officer of Virgin Australia.[40]

33 Finally, I note that the plaintiff has insisted that his meeting with Baart steered clear of topics relating to Virgin Australia. According to the plaintiff, when Baart mentioned she might be interested in a part-time role with Virgin Australia, the plaintiff informed her that he was not working at Virgin Australia and was not sure what roles might be available should Baart leave Healias.[41] I also note, however, that on the plaintiff's own evidence, he had then followed up by telling Baart that if she was interested in exploring such opportunities, she should contact Burquest directly and take up those matters separately with Virgin Australia.[42] The plaintiff thus *specifically* directed Baart to Burquest, the other recipient of Hrdlicka's email of 27 June 2021; and he followed the specific sequence he himself had proposed to Burquest in his response to Hrdlicka's email, *ie* that he should "talk first" to Baart "and then intro after".[43] In other words, the plaintiff carried out Hrdlicka's request in the 27 June 2021 email for him to "[get] to know talent in the market", the "talent" in question being the "rock star" Baart herself; and by getting to know Baart, he established a professional connection that would allow Burquest (the Chief People Officer of Virgin Australia) to follow up with Baart later on, either to recruit her directly or to obtain information from her about other talent which the Velocity business might benefit from hiring.

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40 DWS at para 47.

41 DBOD at p 680, para 29.

42 DBOD at p 680, para 29.

43 DBOD at p 265.

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34 I reiterate that the plaintiff did not know Baart socially prior to being asked by Hrdlicka to meet her. As I said earlier at [30], there was no reason for him to meet Baart, absent the context of Virgin Australia's business and activity; and I reject his claims that his meeting with Baart was merely a "social catch-up".[44]

The third alleged breach

35 I now turn to the third alleged breach.

The parties' submissions

36 The 1st defendant submits that around 9 June 2021, Virgin Australia stated in a news release published on its website that the plaintiff was a member of Virgin Australia's ELT, and that one of the roles of the ELT is to oversee the business transformation of Virgin Australia.[45] According to the 1st defendant, the news release is compelling evidence that the plaintiff was a member of the ELT as at 9 June 2021 – which would constitute a clear breach of the injunction.[46] Consistent with this announcement, this was why the plaintiff was in discussion with other members of Virgin Australia's ELT (such as Hrdlicka and Burquest) in June 2021 on how to build up Velocity.[47]

37 The plaintiff, for his part, asserts that he was not a member of the ELT until after 17 September 2021.[48] The plaintiff also asserts that the news release

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44 DBOD at pp 680–681, paras 29–31.

45 DBOD at p 184, para 13 (Statement Pursuant to Rules of Court O 52 r 2(2)); DWS at para 52.

46 DWS at para 57; DBOD at pp 644–645 (the news release on 9 June 2021).

47 DWS at para 56.

48 PWS at para 26.

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relied on by the 1st defendant does not in fact state that he was, as of 9 June 2021, a current member of the ELT, nor does it state when he was appointed as a member of the ELT.[49]

My decision

38 I am not persuaded that the third alleged breach is made out. My reasons are as follows.

39 At the hearing on 12 November 2021, I had asked the 1st defendant's counsel to identify the acts which the plaintiff had carried out as a member of Virgin Australia's ELT. Counsel informed that the only specific act identified was that of the plaintiff meeting with Baart. Counsel also submitted that the press release was "indicative evidence" of the plaintiff performing his role as part of the ELT.

40 I am not persuaded by the 1st defendant's submissions. First, as I noted at the hearing, the press release itself is hearsay. This is unlike the first and second breaches, where the evidence consists of emails and messages indisputably sent and received by the plaintiff himself. I do not think this press release is enough, *on its own*, to conclude beyond reasonable doubt that the plaintiff "is and/or continues to be a member of the [ELT] of Virgin Australia from 29 April 2021 until 17 September 2021".[50]

41 More importantly, I agree with the plaintiff's submission that the news release does not actually state that he was, as of 9 June 2021, a *current* member

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49 PWS at para 29.

50 DBOD at p 184, para 15 (Statement Pursuant to Rules of Court O 52 r 2(2)); DWS at para 52.

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of the ELT, nor does it state when he was appointed to the ELT. It should be noted that the main focus of the news release was the appointment of one Dave Emerson ("Emerson") as Virgin Australia's Chief Commercial Officer; and it was clear from the contents of the news release that as at 9 June 2021, Emerson was not yet a member of the ELT, since it was expressly stated that he "*is currently* a Senior Partner" at Bain and Company and "*will join* [Virgin Australia's] Executive Leadership Team" [emphasis added].[51] In the circumstances, it seems to me reasonable to infer that although the news release named various persons as members of the ELT, some of these persons were not yet "current" members of the ELT as at the date of the news release but were instead prospective new members who would be joining the ELT in the future (or near future).

42 Leaving aside the news release, there was no specific act cited to show that the plaintiff had carried out any duties in his capacity as a member of the ELT "from 29 April 2021 until 17 September 2021" – apart from his email exchange with Hrdlicka on 27 June 2021 and his subsequent meeting with Baart in July 2021 (which already constitute the gravamen of the second alleged breach). It should also be pointed out that there is nothing in the email exchange of 27 June 2021 which stated or even suggested that the plaintiff was *already a "current member" of the ELT as at June 2021*. Certainly he did not need to be already a "current member" of the ELT in order to engage Baart as a potential hire for Velocity and/or source of information on talent elsewhere.

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[51] DBOD at pp 644–645.

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The plaintiff's other arguments

43 For completeness, I note that the plaintiff also argues that the court ought to dismiss the 1st defendant's application because the terms of the injunction are unclear and ambiguous.[52] The plaintiff submits that the terms of the injunction could be construed to mean that the plaintiff must not have even the remotest connection with Virgin Australia or its activities or business – according to the plaintiff, for example, he would not be able to use Virgin Airlines' services to fly from Japan to Australia, because flying on Virgin Airlines would amount to involvement in Virgin Australia's activities or business,[53] or he would not be able to attend a public event sponsored by Virgin Australia, *etc*. Second, according to the plaintiff, the plain meaning of the injunction is that it applies to classes and categories of conduct which are not caught by the Restraint of Trade Provision, and goes far beyond the 1st defendant's own case for why the injunction was sought and obtained.[54] Third, the injunction was obtained "solely" to protect the 1st defendant's confidential information,[55] but the 1st defendant is now relying on the injunction to, *inter alia*, impose a "bare and blatant" restriction that protects no legitimate interest[56] and has nothing to do with the Restraint of Trade Provision or the protection of the 1st defendant's confidential information.[57] Lastly, the plaintiff argues that because the terms of the injunction are "ambiguous", the court ought to resolve the ambiguities in the injunction in favour of the plaintiff.[58] Since none of the

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52 PWS at para 45.

53 PWS at para 51.

54 PWS at paras 58–60.

55 PWS at para 66.

56 PWS at para 69(e).

57 PWS at para 70.

58 PWS at para 72.

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alleged breaches involved the plaintiff undermining the protection of the 1st defendant's confidential information, it means the plaintiff had not breached the injunction.[59]

44 I find no merit in the plaintiff's argument that the terms of the injunction are ambiguous or that they can potentially be understood to cover things that have not the remotest connection with the business or activities of Virgin Australia. This is not a case for any genuine doubt about what the court's purpose in granting the injunction was (*Aurol Anthony Sabastian v Sembcorp Marine Ltd* [2013] 2 SLR 246 ("*Aurol (CA)*") at [74]). This is not at all a case like *Aurol (CA),* where it was unclear whether the Assistant Registrar – in granting an interim sealing order in respect of "Mr Wong Weng Sun's 5th supporting affidavit dated 26 November 2010" – intended to seal the 5th affidavit which was actually dated 3 December 2010, or the 4th affidavit which was dated 26 November 2010 (at [77]). In the present case, the phrase "involved in any activity or business of, directly or indirectly, Virgin Australia Airlines Pty Ltd or its related bodies corporate" is preceded and qualified by the words "or being otherwise", which in turn references the preceding phrase "commencing work for, rendering services to, being employed by". It would have been clear that the references to involvement "in any activity or business of, directly or indirectly" had to be read in the context of the preceding restrictions, and that these references would not – indeed, could not – include things which had not the remotest connection with Virgin Australia's business or activities (*eg*, taking a Virgin Airlines flight to get from Japan to Australia).

45 Quite apart from the lack of ambiguity in the terms of the injunction, it is clear that the plaintiff himself has never been in any danger of being confused

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59 PWS at paras 73, 75, 77 and 79.

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or misguided about what he was enjoined from doing. From the explanations proffered in the plaintiff's affidavit to justify his actions *vis-à-vis* Hyman and Baart, it is clear that the plaintiff was (and is) well aware of the difference between conduct that would amount to a breach of the injunction and conduct that would not. Thus, for example, in relation to the Baart incident, he took pains to try to downplay the significance of Hrdlicka's 27 June 2021 email, insisted that his meeting with Baart was purely a social catch-up, and sought to emphasise in some detail his efforts to avoid all mention of Virgin Australia during the meeting. I add that the 1st defendant's application for the injunction was heard *inter partes* on 29 April 2021, with the plaintiff being represented by counsel. It was not suggested by the plaintiff at the hearing that the terms of the injunction as prayed for were unclear or ambiguous, or that he did not understand what they required him to do or to refrain from doing, or that they went beyond what was necessary to protect the 1st defendant's legitimate interests. Nor, in the six months since, has the plaintiff attempted to vary or set aside the injunction on the basis that its terms are unclear or ambiguous or that they go beyond what was necessary to protect the 1st defendant's legitimate interests. To raise such an argument now is really to attempt a much belated collateral attack on the court's orders. I find these arguments to be without merit, and I reject them accordingly.

46 Having found that the plaintiff committed two of the three alleged breaches, I find that he has breached the terms of the injunction by involving himself in the business and activity, directly, of Virgin Australia.

47 I now turn to the appropriate sentence to be imposed.

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The appropriate sentence

48 Section 12(1)(*a*) of the APA provides that where the power to punish for contempt is exercised by the General Division of the High Court (as in the present case), a person who commits contempt of court shall be liable to be punished with a fine not exceeding $100,000 or with imprisonment for a term not exceeding three years or with both. I note that s 12(5) of the APA states that despite subsection (1), the court may discharge the person who has committed contempt or remit the punishment, on his or her purging of the contempt, submission to the order or direction of the court, or on apology being made to the satisfaction of the court.

The parties' submissions

49 The 1st defendant argues that the appropriate sentence in the present case is an imprisonment term of five days.[60] Citing the decision of the Court of Appeal (the "CA") in *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 ("*Mok Kah Hong*") at [104], the 1st defendant submits, first, that it has been irreversibly prejudiced by the plaintiff's breaches of the injunction.[61] Second, the plaintiff did not act under pressure.[62] Third, the plaintiff's actions were deliberate and intentional.[63] Fourth, his repeated and surreptitious breaches of the injunction evince a high degree of culpability on his part.[64] Fifth, the plaintiff

60 DWS at para 77.

61 DWS at paras 72 and 76(a).

62 DWS at para 76(b).

63 DWS at para 76(c).

64 DWS at paras 71 and 76(d).

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has shown no true contrition and has only sought to deny or explain away his conduct.[65]

50 The plaintiff, for his part, argues that even if the court finds he has breached the injunction, an order for a fine or committal is unwarranted.[66] Instead, the court should not order any punishment against the plaintiff and should dismiss the 1st defendant's application.[67] First, according to the plaintiff, he was fully transparent in disclosing documents pursuant to the 1st defendant's discovery request, and honestly believed he had complied with the injunction.[68] Second, the plaintiff says that any breach he committed of the injunction was "only technical" and did not undermine the object and spirit of the injunction, which was to protect the 1st defendant's confidential information – the plaintiff had not deliberately concealed or tried to cleverly manoeuvre around the injunction,[69] and he did not misuse the 1st defendant's confidential information in any of the acts constituting the alleged breaches.[70] Third, any breach of the injunction by the plaintiff was (according to him) "casual, accidental and unintentional",[71] and the plaintiff did not intend to disobey the injunction.[72] Fourth, any breach of the injunction is not so sufficiently serious as to warrant punishment – the 1st defendant has not adduced any facts to show that it has

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65 DWS at para 76(e).

66 PWS at para 82.

67 PWS at para 86.

68 PWS at paras 87 and 89.

69 PWS at para 93.

70 PWS at paras 94–95.

71 PWS at para 98.

72 PWS at para 101.

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been prejudiced due to the plaintiff's conduct.[73] Lastly, the plaintiff is a first-time offender and has extended his unreserved apology to the court.[74]

Sentencing principles

51 I now summarise the general principles on sentencing for contempt of court, based on the caselaw.

52 In *PT Sandipala*, George Wei J referred to the CA's judgment in *Mok Kah Hong*, and noted that the factors relevant to sentencing include (but are not limited to): whether the applicant has been prejudiced, whether the contempt is capable of being remedied, the extent to which the contemnor acted under pressure, whether the breach was deliberate or unintentional, the degree of culpability, whether the contemnor was placed in breach of the order by reason of the conduct of others, whether the contemnor appreciated the seriousness of the deliberate breach, and whether the contemnor co-operated (at [69]). Wei J also held that, in determining the appropriate sanction, the court should consider whether the contemnor has taken steps since the breach to purge the contempt (at [77]).

53 In *PT Sandipala*, the two contemnors had breached three orders for the examination of judgment debtor ("EJD") by failing to appear at the EJD hearings or to answer the EJD questionnaires or to provide any documents or books relevant to their assets at the time of the breaches (at [50]–[51]). Wei J sentenced the two contemnors to seven days' imprisonment each (at [88]). In so doing, he took into account the fact that while both contemnors had eventually provided answers to the EJD questionnaires, these answers comprised bare

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73 PWS at para 102.

74 PWS at para 103.

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denials of assets and income with almost no information or details provided, which did little to mitigate, let alone purge, the contempt (at [77]). He also noted their lack of genuine remorse and failure to take real and substantial steps to address the breaches (at [83]). Wei J found that the breaches were serious and repeated, the delay caused was considerable, and the alleged contemnors remained unwilling to answer questions on their personal assets (at [85]). The contemnors' appeal to the CA was dismissed (with no written grounds of decision).

54 Wei J also referred to several other cases where the court had imposed a custodial term. I summarise these as follows.

55 In *Sembcorp Marine Ltd v Aurol Anthony Sabastian* [2013] 1 SLR 245 ("*Aurol Anthony*"), the High Court imposed a sentence of five days' imprisonment (at [89]). Following a review of the case law, the High Court noted that the following principles were relevant in sentencing: the attitude behind the contemptuous behaviour, the motive for committing the contemptuous act, whether a fine would have been an adequate deterrent, the reversibility of the breach, the standard of care expected of the individual, the nature of the contemptuous act, whether the contemnor was remorseful, and whether the contemnor had procured others to commit the contemptuous act (at [68]). The court found that the alleged contemnor, Mr Aurol ("Aurol"), had deliberately and cynically breached an interim sealing order (at [70]), and had been less than forthright throughout the hearings (at [72]). Aurol had forwarded the sealed documents to a journalist, one Mr Raj, whom Aurol knew had published unfavourable articles about the applicant in the past, and Aurol did not inform Mr Raj that the documents were sealed. The court found that Aurol had thereby enticed Mr Raj to publish an article based on the sealed documents (at [78], [81]). The court, however, held that a lengthy custodial sentence was

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not necessary or desirable as Aurol's breach was a "once and for all breach", no financial damage was caused to the applicant, and Aurol was not an officer of the court (at [86]–[88]).

56 For completeness, I note that Aurol's appeal was allowed by the CA in *Aurol (CA)*, on the ground that the terms of the interim sealing order were ambiguous (at [84], [96]), but the CA did not disagree with the sentencing principles articulated by the High Court.

57 In *Global Distressed Alpha Fund I Ltd Partnership v PT Bakrie Investindo* [2013] SGHC 105 ("*Global Distressed Alpha Fund*"), the High Court imposed a sentence of seven days' imprisonment (at [59]). In that case, the contemnor had failed to attend the EJD hearings on eight occasions (at [37]–[49]), and had been late in responding to the questionnaire on his assets (at [52]). The court noted that the contemnor's conduct had prevented the judgment creditor from taking substantive steps to realise the fruits of its litigation (at [55]), and the contemnor had evinced no remorse for his actions (at [57]). On checking, however, I note that there was an appeal from the High Court's decision in Civil Appeal No 41 of 2013, which was heard before the CA on 4 November 2013. The CA set aside the custodial sentence and imposed instead a fine of $25,000. No written grounds of decision were issued by the CA.

58 In *Tahir v Tay Kar Oon* [2016] 3 SLR 296, the High Court imposed a sentence of eight weeks' imprisonment (at [67]). The contemnor had breached orders requiring her to attend two scheduled court hearings and to provide answers to an EJD questionnaire (at [5]–[11]). The contemnor admitted liability at the committal proceedings (at [18]), and sentencing was adjourned three times to allow her time to purge the contempt (at [21], [26], [29]). At the final hearing, the applicant applied for leave to withdraw his committal application

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as he was satisfied that the contempt had been substantially purged (at [31]). The court found that the applicant had suffered real prejudice by virtue of the contempt, which was not capable of remedy (at [53]), and that the contemnor had made no genuine attempts to cooperate and comply with court orders (at [54]). The contemnor's concealment of additional breaches was persistent even when great leeway had been given to allow her to purge the contempt (at [66]).

59 On appeal, the CA in *Tay Kar Oon v Tahir* [2017] 2 SLR 342 set aside the imprisonment term and imposed a fine of $10,000 (or, in default, ten days' imprisonment) (at [63]). In so doing, the CA took into consideration the fact that the contemnor appeared to have substantially purged the contempt by complying with the various orders and directions (at [57]); the applicant had suffered little, if any, discernible prejudice from the contemnor's failure to comply with the directions (at [59]); and the contemnor suffered from major depressive disorder at the time of the various breaches, which appeared to have hampered her ability to deal with the various legal proceedings she was facing (at [60]).

60 In *OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2005] 3 SLR(R) 60, the High Court imposed a custodial sentence of six months on each of the contemnors (at [37]). The High Court found that the contemnors had failed to comply with clear and unambiguous orders of which they had notice, under a Mareva injunction granted by the court (at [2]–[3], [30]). They also absented themselves from court on both of the days fixed for cross-examination (at [31]–[32]). Lastly, the court found that the contemnors had not purged their contempt, and remained uncooperative, deliberate and contumacious in breaching the terms of the orders (at [36]).

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61 Lastly, *Mok Kah Hong* (which the High Court in *PT Sandipala* cited and followed) was a civil contempt matter arising from divorce proceedings. The husband in that case had a history of acting in flagrant disregard of judgments or orders made by various courts at all levels: his breaches included acting in disregard of an injunction against dissipating, disposing of and/or otherwise dealing with property as well as acting in disregard of orders to pay specified maintenance amounts to the wife (at [52]). Noting that "[a]lmost all the egregious factors which were employed by the courts to impose a stiff sentence on the contemnors" in previous cases could be found on the facts before it, and finding moreover that the husband's non-compliance was "both *deliberate* and *fraudulent*" [emphasis in original] (at [111]–[112]), the CA imposed a suspended sentence of eight months' imprisonment. As the husband failed to take advantage of the suspension period to effect compliance with the court order, he was subsequently taken into custody to serve the sentence (at [117]).

My decision

62 In the present case, as a matter of principle, I accept the 1st defendant's submission that the sentence to be imposed serves two functions: the first is a punitive function, *ie* the plaintiff is punished for disobeying a court order; the second is one of general deterrence, *ie* persons who might be inclined to disobey court orders are deterred from doing so by the knowledge of the potential sanctions.[75]

63 Applying the sentencing factors identified in *Mok Kah Hong* to the facts of this case, there is no evidence of the plaintiff in this case having acted under pressure. The plaintiff himself has not suggested he was acting under pressure.

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[75] DWS at para 68.

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There is also no evidence of the plaintiff having been placed in breach of the order by reason of the conduct of others; nor has he made such a suggestion. Further, given my findings at [18] and [33] in respect of the Hyman incident and the Baart incident, it is clear that the plaintiff's breaches were deliberate and intentional. In this connection, it is also clear that regrettably, the plaintiff appears not to appreciate the seriousness of the deliberate breach: the apology offered towards the end of his affidavit – while it purports to be "unreserved" – persists in characterising his own behaviour as inadvertent and unintentional.[76] In addition, considering that I have found two instances of a breach of the injunction, the plaintiff bears quite a high degree of culpability. In the circumstances, this is not a suitable case for imposing no punishment at all (as submitted by the plaintiff).

64 On the other hand, although the 1st defendant has described the plaintiff's breaches as having been committed "surreptitiously" and "away from the public eye",[77] it is not clear to me what the 1st defendant meant to convey by that remark. It is not suggested, for example, that the plaintiff's interactions with Hyman, Magdic, Hrdlicka and Baart were conducted in a clandestine or secret manner. Nor was this a case where the contemnor sought to conceal or obfuscate the documentary trail he was leaving. Ultimately, it seems to me all the 1st defendant meant was that it had not been aware of the plaintiff's breaches at the time they were committed and had come to know of them only afterwards. Whilst this would be relevant to the issue of reversibility of any harm or prejudice caused, I do not think it qualifies as "surreptitious" behaviour on the plaintiff's part.

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76 DBOD at p 682, para 35.

77 DWS at para 71.

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65 As to the issue of prejudice, although the 1st defendant's written submissions repeatedly asserted that it had been irreversibly prejudiced as a result of the plaintiff's conduct, it was unable precisely to identify what prejudice this was. Apart from a bare statement in Vesna Vinski's 4th affidavit[78] to the effect that the 1st defendant had been prejudiced, there was no evidence of the alleged prejudice in the affidavits and documentation before me. It was suggested in the 1st defendant's written submissions that any prejudice it suffered would be "difficult to *quantify*"[79] [emphasis added] – and that may indeed be so, but at the very least, the 1st defendant should have been able to identify and describe the type of prejudice in question: whether, for example, it was prejudice in the form of the loss of competitive advantage or the loss of a business opportunity. Absent any evidence, the court cannot be the one suggesting the sort of prejudice the 1st defendant may have suffered.

66 The 1st defendant has also submitted that a fine in this case will not be sufficient punishment for the plaintiff because he is a highly-paid executive who can afford to pay off a fine.[80] I think the fact that a contemnor has some financial means cannot *per se* lead to the conclusion that a fine will never be sufficient punishment. Whether a fine is sufficient punishment in any case will depend on the court's evaluation of the various sentencing factors in that case. I add that I do not agree that in principle, a fine can never amount to sufficient deterrence to other persons who might be minded to breach similar orders of court. Again, the court's decision as to what is required to satisfy the deterrent function of the sentence must be based on its assessment of the various factors before it.

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78 DBOD at p 199, para 27.

79 DWS at para 75.

80 DWS at para 79.

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67 Lastly, the 1st defendant also appears to suggest that the plaintiff's new employer (Virgin Australia) "can easily pay off the fine" on his behalf[81] – but there is no evidence to support any such suggestion, and I therefore do not give it any weight.

68 In *PT Sandipala*, the court pointed out that "committal to prison is usually a measure of last resort" (at [68]). In the light of the factors I have outlined above, and comparing the present case with the available sentencing precedents, I am of the view that a custodial sentence is not warranted in this case and that a high fine will suffice. Accordingly, I order that the plaintiff is to pay a fine of S$25,000 within two weeks from today, with a term of one week's imprisonment in default of payment.

Costs

69 I will hear parties on costs.

Mavis Chionh Sze Chyi
Judge of the High Court

Mohammed Reza s/o Mohammed Riaz, Clarence Ding Si-Liang and Darren Low Jun Jie (JWS Asia Law Corporation) for the plaintiff; Chan Tai-Hui Jason SC, Vincent Leow, Koh Zhen-Xi Benjamin and Tan Xue Yang (Chen Xueyang) (Allen & Gledhill LLP) for the 1st defendant.

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[81] DWS at para 80.

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