

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

[2026] SGHCR 40

Originating Claim No 762 of 2026 (Summons No 2702 of 2026)

Between

Boston Scientific Asia Pacific
Pte Ltd

... Claimant

And

(1) Elliot Lee
(2) Johnson & Johnson
International (Singapore) Pte
Ltd

... Defendants

JUDGMENT

[Civil Procedure — Interim injunctions — Restraint of trade]

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	3
THE PARTIES	3
MR LEE’S EMPLOYMENT WITH BSC.....	5
EVENTS LEADING UP TO THE COMMENCEMENT OF OC 762 AND SUM 2702.....	7
THE APPLICABLE PRINCIPLES	10
THE PARTIES’ SUBMISSIONS	13
PRELIMINARY ISSUE: WHETHER J&J SHOULD BE PERMITTED TO ADDRESS THE COURT ON THE MERITS OF SUM 2702 DESPITE NOT HAVING BEEN NAMED AS A PARTY TO THAT APPLICATION	19
DECISION	22
BSC HAS SHOWN SERIOUS QUESTIONS TO BE TRIED	23
<i>Serious questions to be tried as to the validity and enforceability of the Non-Compete Clauses</i>	25
<i>Serious question that Mr Lee has breached, or will breach the Non-Compete Clauses</i>	32
BSC HAS NOT SHOWN A GOOD ARGUABLE CASE	34
DAMAGES WOULD BE AN ADEQUATE REMEDY FOR BSC	43
IN ANY CASE, THE BALANCE OF CONVENIENCE WEIGHS AGAINST THE GRANT OF THE INTERIM INJUNCTION	45
CONCLUSION	46

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Boston Scientific Asia Pacific Pte Ltd

v

Lee Elliot and another

[2026] SGHCR 40

General Division of the High Court — Originating Claim No 762 of 2026
(Summons No 2702 of 2026)

AR Perry Peh

23 September 2026

1 October 2026

Judgment reserved.

AR Perry Peh:

Introduction

1 In HC/SUM 2702/2026 (“SUM 2702”), the claimant seeks an interim injunction pending the determination of its claims in HC/OC 762/2026 (“OC 762”) to restrain its former employee, the first defendant, from breaching a non-compete agreement by (among other things) continuing his employment with the second defendant. The first defendant’s employment with the claimant was terminated on 1 July 2026 and he commenced employment with the second defendant on 25 August 2026. It is the claimant’s case that the non-compete agreement is valid and enforceable because it protects its legitimate interest, in the form of trade and client connections which the first defendant had maintained and developed in the course of his former employment with the claimant. However, these trade and client connections consist not of

relationships with customers or suppliers (as is the case where courts have recognised trade connections as a legitimate interest: see *Lek Gwee Noi v Humming Flowers & Gifts Pte Ltd* [2014] 3 SLR 27 (“*Lek Gwee Noi*”) at [58]), but relationships with third party middlemen or institutions who are said to be capable of influencing or driving the sales of the claimant’s products.

2 The question arising in SUM 2702, which is the application before me and which the parties have agreed to be heard with notice, is how this feature of the claimant’s case should be dealt with in the analysis. A further point arises from the fact that the claimant has brought SUM 2702 *only* against the first defendant but not the second defendant, which is sued in OC 762 for inducing the first defendant’s breach of the non-compete agreement. The claimant has resisted the second defendant’s participation in SUM 2702 on the ground that the second defendant is a “non-party” to the application. The issue then is whether the second defendant should be permitted to address the court on the merits of SUM 2702 and whether, in the first place, it should be required to bring an application to obtain such permission.

3 Having carefully considered the submissions, I dismiss SUM 2702. The trade and client connections which the claimant relies on, although finding no precedent in the case law and academic authority put before me (to the best of my knowledge), is not so inarguable as a matter of law that it fails to disclose serious questions to be tried. However, given the relatively unusual nature of these trade and client connections, the claimant must demonstrate some factual basis for the court to have reason to believe that these connections would be recognised as a valid legitimate interest if the law were ultimately determined in its favour at trial, and so it has the better of the arguments at this juncture. The claimant’s case, which is largely supported by bare assertions on affidavit, falls short of demonstrating a good arguable case that the non-compete

agreement is valid and enforceable, and considering the circumstances in the round, I find that the balance of convenience weighs in favour of the status quo and so the interim injunction sought should not be granted. Further, given that the loss suffered by the claimant from any breach of the non-compete agreement can be objectively assessed with reference to the lost sales of its products, I find that damages are an adequate remedy for the claimant and this is also why the interim injunction should not be granted. These are my reasons.

Background

The parties

4 The claimant, Boston Scientific Asia Pte Ltd, is the Singapore office of its parent company, Boston Scientific Corporation. I will refer to the claimant as “BSC”. The first defendant, Mr Elliot Lee (“Mr Lee”), is a former employee of BSC whose employment was terminated on 1 July 2026. The second defendant, Johnson & Johnson International (Singapore) Pte Ltd, is part of the Johnson & Johnson (“J&J”) group of companies. I will refer to the second defendant as “J&J”. Both BSC and J&J are both big players in the medical technology (“MedTech”) industry. It is undisputed that Mr Lee’s employment with BSC was terminated on 1 July 2026, and that he commenced employment with J&J on 25 August 2026.

5 At issue in OC 762 is BSC’s business in the development, marketing and sale of MedTech products used in the field of electrophysiology (“EP”). EP is a branch of cardiology concerned with the electrical activity of the heart and the diagnosis and treatment of disorders in which the heart’s electrical system does not function normally.¹ BSC’s EP products and therapies are used in the

¹ 1st affidavit of Stephen Morse (“SM-1”) at para 55.

diagnosis and treatment of cardiac rhythm disorders which are caused by abnormalities in the electrical signals which initiate and regulate each heartbeat.² EP procedures may involve the use of specialised catheters introduced through the vascular system into the heart.³ One such procedure that can be carried out is the “catheter ablation procedure”, in which an EP practitioner identifies the cardiac tissue responsible for initiating or maintaining an abnormal rhythm and applies heat energy to that tissue to create a controlled lesion, therefore interrupting the abnormal electrical pathway while preserving the normal electrical function of the heart. Traditional technologies involve the use of radiofrequency (“RF”) energy (also known as RF ablation) or cold temperatures (also known as cryoablation) to create the controlled lesion, but a recent development in the field is the use of pulsed field ablation (“PFA”), which is a non-thermal technology that uses short electrical pulses to produce irreversible electroporation of targeted cardiac cells. According to BSC, it is the first MedTech manufacturer to introduce PFA technology into the practice of EP.⁴

6 It is not in dispute that J&J (like BSC) also has a business segment in MedTech products used in EP. In the Statement of Claim, BSC pleads that J&J and itself are “direct competitors in the EP sector through the Asia Pacific region, including in China, Japan, Korea, Australia, New Zealand, Singapore, India and the ASEAN region”.⁵ In its affidavit filed in these proceedings, J&J explained that it has similar product types in the same broad EP market as BSC as well as other MedTech manufacturers, but each manufacturer’s product

² SM-1 at para 56.

³ SM-1 at para 57.

⁴ SM-1 at paras 58-61.

⁵ Statement of Claim at para 7.

offerings are differentiated through their mapping ecosystem, catheter architecture and workflow integration, and they are designed to operate as an integrated system.⁶

Mr Lee’s employment with BSC

7 Prior to the termination of his employment with BSC on 1 July 2026, Mr Lee’s last held role was “Commercial Director, Electrophysiology, APAC”.⁷ BSC states that, in that capacity, Mr Lee was “the most senior EP executive in the Asia Pacific region”, and he was responsible for “marketing, portfolio management, clinical and regulatory strategy, physician education programmes, therapy development, training and education, and had access to highly sensitive business strategy, competitive intelligence and research and development plans”.⁸ BSC explained that Mr Lee’s role should be distinguished from that of a sales director, which involved the overseeing of country-specific sales teams and engagement with end-customers, such as medical professionals, clinics and hospitals.⁹

8 Mr Lee’s employment contract with BSC (“the Employment Agreement”)¹⁰ consists of three restraint of trade clauses, which I describe briefly: (a) clause 1, which protects BSC’s “Confidential Information” (as defined in clause 1); (b) clause 2, which constitutes the non-compete agreement that is in issue in here and which I reproduce below (at [9]); and (c) clause 3, which prohibits Mr Lee from soliciting the business or patronage of any

⁶ 1st affidavit of Kunal Manohar Karani (“KMK-1”) at paras 20–21.

⁷ SM-1 at para 10.

⁸ SM-1 at para 11.

⁹ SM-1 at para 11.

¹⁰ SM-1 at p 45.

customer of BSC for or on behalf of a business that competes with BSC, diverting any customer from BSC or soliciting any supplier of BSC (whether personally or through another person), and (ii) soliciting or recruiting any employee of BSC (whether on his own behalf or on behalf of another party or entity).

9 For the purposes of its claim in OC 762 and the interim injunction sought in SUM 2702, BSC relies only on cl 2.1 and cl 2.2 of the Employment Agreement, the material parts of which I reproduce below:

- 2.1 You agree that you shall not, directly or indirectly, at any time during the Restricted Period [12 months in Mr Lee's case] render or engage in any activities or business that competes with your employed division and/or specialization of Boston Scientific, either on your own account or for any other person or entity, in any country where you provide services on behalf of the Company during the last one (1) year of your employment with the Company or any of its affiliates.

The term 'Restricted Period' means the period which you are employed by Boston Scientific plus the period following the termination of your employment with the Company for any reason. ...

The term 'activities that compete with your employed division and/or specialization of Boston Scientific' is defined as any involvement with the type of, activities, products, processes or services with which you, during the last one (1) year of your employment with the Company or any of its affiliates, (a) worked on or (b) about which you acquired or had access to Confidential Information [defined in clause 1.1 of Mr Lee's employment agreement]

- 2.2 You shall not accept employment with, advise, provide consulting services to a business that that competes with your employed division and/or specialization of Boston Scientific in any capacity in which you would, directly or indirectly, engage in activities that compete with the business of Boston Scientific, without first obtaining the prior written approval from the Company. Boston Scientific shall evaluate, within its sole discretion, whether or not to allow you a limited release

from this non-compete agreement. Such release must be in writing signed by the Company's Legal Counsel.

10 Apart from the above, cl 2.6 of the Employment Agreement further provides that, to the extent an employee like Mr Lee complies with his non-compete obligations in cl 2 of the Employment Agreement, BSC will pay to the employee an amount equal to his monthly base pay at the time of the termination of employment (exclusive of extra compensation and any other employee benefits) for each month of such employment through to the end of the Restricted Period (defined in the extract at [9] above).

11 It is not in dispute that, by virtue of Mr Lee's role in BSC, the Restricted Period applicable to him is 12 months with effect from the date of the termination of his employment, 1 July 2026. In its affidavit supporting SUM 2702, BSC states that Mr Lee "has breached, and continued to breach" the entirety of clause 2 of the Employment Agreement, which it relies on as the "Non-Compete Clause". However, the focus of the analysis ought to be cll 2.1 and 2.2 of the Employment Agreement, because these are the clauses which BSC has identified as the grounds pursuant to which the interim injunction in SUM 2702 is sought, though where relevant, I will also consider the other parts of cl 2. In the remainder of these grounds, I will refer to cll 2.1 and 2.2 of the Employment Agreement as "the Non-Compete Clauses".

Events leading up to the commencement of OC 762 and SUM 2702

12 Mr Lee gave formal notice of his resignation to BSC on 22 June 2026 via an e-mail to BSC's Chief Human Resources Officer for Asia Pacific (Ms Daphne Ong) and BSC's General Counsel (Mr Julien Wileme). In that same e-mail, he also informed them that he will be starting a new role at J&J, and he requested a limited release from the non-compete obligations under cl 2.2 of the

Employment Agreement.¹¹ On 23 June 2026, Mr Lee sent an e-mail to Ms Ong and Mr Wileme sharing the link to the job description on LinkedIn for his new role at J&J (“the LinkedIn Job Description”).¹² On 24 June 2026, BSC replied, stating that Mr Lee’s position with J&J involved a “very substantial and direct overlap” with his previous role with BSC, and that they declined to grant the requested release.¹³

13 In response to BSC’s reply, on 24 June 2026, Mr Lee proposed a series of carve-outs from his responsibilities at J&J for specified periods and identified certain categories of activities and responsibilities that he was prepared to exclude from his role at J&J (“the Carve-Out Proposal”).¹⁴ The Carve-Out Proposal was rejected by BSC.¹⁵ In the event, BSC brought forward Mr Lee’s termination date to 1 July 2026 and confirmed its readiness to make recurring monthly payments under cl 2.6 of the Employment Agreement in return for Mr Lee’s compliance with his non-compete obligations under cl 2.¹⁶

14 In arguments, BSC places some emphasis on the discussions relating to the Carve-Out Proposal. In its view, those discussions were an acknowledgment by Mr Lee that his prospective employment with J&J engaged cl 2 of the Employment Agreement and constituted an attempt by Mr Lee to renegotiate a concluded agreement. According to BSC, this supported its position that substantial overlap existed between Mr Lee’s former role with BSC and his new

¹¹ SM-1 at para 28; 1st affidavit of Elliot Wook Lee (“EWL-1”) at para 88.

¹² SM-1 at para 32; EWL-1 at para 89.

¹³ SM-1 at para 34; EWL-1 at para 90.

¹⁴ SM-1 at para 35; EWL-1 at para 91.

¹⁵ EWL-1 at para 92.

¹⁶ SM-1 at para 40; EWL-1 at para 93.

role with J&J because, if there was genuinely no overlap between the two roles, Mr Lee would not have proposed these carve-outs.¹⁷ Mr Lee denies this, and he claims that he had proposed these carve outs at the suggestion of Mr Stephen Morse, whom he reported to, following a discussion on 16 June 2026 when he first informed Mr Morse of his intention to resign from BSC and take up a new role at J&J.¹⁸

15 Based on parties' correspondence (which were exhibited in the affidavits filed in SUM 2702), between July and August 2026, they continued to engage in settlement discussions concerning the terms of the Carve-Out Proposal.¹⁹ It appears that those discussions came to an end on 26 August 2026 when BSC discovered via a public announcement that Mr Lee would be commencing employment with J&J with effect from 25 August 2026.²⁰ BSC therefore commenced OC 762 on 30 August 2026 and SUM 2702 was brought on the same day. BSC initially requested that SUM 2702 be heard urgently without notice but subsequently the parties agreed for SUM 2702 to be adjourned to a later date and to be heard with notice, on certain conditions which formed the subject matter of a by-consent order of court that is to be in effect pending the determination of SUM 2702 or until further order ("the Consent Order").²¹ Directions were then given for the filing of the relevant papers and SUM 2702 was fixed for a contested hearing on 23 September 2026.

¹⁷ SM-1 at paras 40, 45 and 46.

¹⁸ EWL-1 at paras 82 and 87.

¹⁹ SM-1 at pp 87–113.

²⁰ EWL-1 at p 114.

²¹ HC/ORC 5611/2025.

16 For completeness, and to address some of the submissions made by the parties (see, for example, [27] below),²² I do not think anything in SUM 2702 turns on the parties’ pre-litigation correspondence, any discussions they had about the Carve-Out Proposal or the terms which the parties agreed to in the Consent Order – the application is to be determined based on the evidence and submissions that have been placed before me.

The applicable principles

17 Before turning to the parties’ submissions, I set out the applicable principles in this area, which are relatively settled. Restraint of trade clauses or restrictive covenants in employment contracts, which are intended to restrict an employee’s conduct after his employment comes to an end, engage two competing policies – the policy of upholding contractual bargains which parties of their free will enter into, and the policy of protecting a person’s fundamental liberty to earn a living, and to do so where and how he chooses (see *Lek Gwee Noi* ([1] above) at [33]). To strike a balance between these competing policies, the common law holds that a restrictive covenant is *prima facie* void unless the following conditions are satisfied (see *Guy Carpenter & Co Pte Ltd v Choi Okmi and others* [2026] 4 SLR 358 (“*Guy Carpenter*”) at [120]):

- (a) the restrictive covenant protects a legitimate interest of the employer;
- (b) it is reasonable in the interests of the parties; and
- (c) it is reasonable in the public interest.

²² Claimant’s written submissions at paras 164–166; 1st defendant’s written submissions at paras 31–35.

18 The law recognises three legitimate interests which employers may protect through restrictive covenants: (a) its interest in protecting trade secrets or confidential information akin to trade secrets; (b) its interest in protecting trade connections (primarily clients or customers, but also suppliers); and (c) its interest in maintaining a stable, well-trained workforce (see *Guy Carpenter* at [121]). In this case, BSC’s position is that the Non-Compete Clauses serve to protect its legitimate interests in trade and client connections, which I will elaborate below (at [21]).

19 In *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 (“*Shopee*”) (at [21]), the High Court held that the principles in *American Cynamid Co v Ethicon Ltd* [1975] AC 396 (“*American Cynamid*”) on the grant of interlocutory injunctions apply where the interim injunction is sought to enforce a restrictive covenant in an employment contract. The applicant for the interim injunction must show the following:

- (a) That there is a serious question to be tried that the restrictive covenant is valid and enforceable, *ie*, that it protects a legitimate interest and that it is reasonable in the interests of the parties and the public.
- (b) That there is a serious question to be tried that the restrictive covenant has been breached.
- (c) If there are serious questions to be tried, that the balance of convenience lies in favour of granting the interim injunction. This involves a two-stage analysis – first, whether damages would be an adequate remedy for the applicant, and if not, secondly, where the balance of convenience lies.

20 The Court of Appeal has held in *RGA Holdings International Inc v Loh Choon Phing Robin and another* [2017] 2 SLR 997 (“*RGA Holdings*”) (at [30] and [33]) that, in an application for an interim prohibitory injunction where the respondent is about to breach, or has already breached, a negative covenant in a contract, and an interim injunction is sought to restrain a prospective breach or a further breach, it would be readily be granted except where the defendant shows that he will suffer hardship over and above that which results from having to observe the contract, and the court is not concerned with the balance of convenience that would otherwise be considered when the principles in *American Cynamid* are applied. The High Court in *Shopee and MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94 (“*MoneySmart*”) has held that the approach in *RGA Holdings* is applicable to cases where interim injunctions are sought to enforce restrictive covenants in an employment contract. In *Shopee* (at [29]), the High Court held that the applicability of the principle in *RGA Holdings* is closely interwoven with whether there is a serious question to be tried that the restrictive covenant in question is valid and enforceable. In *MoneySmart* (at [22] and [26]), the High Court held that the principle in *RGA Holdings* applied where the applicant could show a good arguable case that the restrictive covenant in question was valid and enforceable, and has been breached or is likely to be breached. In my view, the requirement that the applicant meets the higher standard of a “good arguable case” (than merely demonstrating “serious questions to be tried”) in order to render the approach in *RGA Holdings* applicable can be explained on the basis that the strong policy for enforcing contractual bargains (see *RGA Holdings* at [33]) is only engaged where the court is satisfied as to the likely validity and enforceability of the contract, and that threshold is unlikely to be met where the applicant merely shows a “serious question to be tried”.

The parties' submissions

21 BSC's case is that the Non-Compete Clauses protect its legitimate interest in the "trade and client connections" developed and maintained through Mr Lee's role. Its affidavit describes these "trade and client connections" as follows:²³

... the Claimant's *customer connections*, and its *connections with KOLs [Key Opinion Leaders] and various national and regional medical associations which are instrumental in educating and promoting the sale of the Claimant's suite of EP products by the end customers* e.g., clinics and hospitals, both private and public.

[emphasis added]

22 Despite the reference to "customer connections" in the extract above, BSC's case focuses on the latter set of connections – those with Key Opinion Leaders ("KOLs") (explained later) and medical associations. Indeed, given BSC's position that Mr Lee's role was "*distinct* from the sales team (see [7] above)", which had the responsibility of driving sales through engagement with end-customers such as medical professionals, clinics and hospitals,²⁴ it is clear that the trade and client connections which BSC relies on as its legitimate interest in these proceedings are the connections which it held (through Mr Lee) with KOLs and medical associations.

23 According to BSC, KOLs are leading medical practitioners in the field who are capable of influencing the assessment or adoption of a technology within the institution in which he or she practises, and they therefore function as an important channel through which BSC's products are evaluated, adopted

²³ SM-1 at para 25.

²⁴ SM-1 at para 11.

and disseminated within the wider clinical community.²⁵ Medical associations, on the other hand, represent practitioners in the EP field and provide forums for clinical education, scientific exchange, conferences, professional guidance and the dissemination of research concerning new technologies and treatment techniques.²⁶ Mr Lee and J&J do not dispute that these KOLs and medical associations exist. Mr Lee states in his affidavit that KOLs are highly regarded and well-recognised physicians in their field and who, because of their credibility, are often invited by the industry to provide input on future products or to partner with MedTech manufacturers for clinical research using their products. J&J describes KOLs and medical associations as professional and scientific bodies that provide clinical guidelines and facilitate education. Their position, however, is that KOLs and medical associations are not capable of influencing hospitals and BSC's end-customers in their decisions on whether to purchase a particular manufacturer's product.²⁷

24 BSC states that Mr Lee, in carrying out his role, was required to develop and maintain relationships with KOLs and medical associations. The commercial significance of Mr Lee's relationships with these KOLs and medical associations lies not merely in direct sales attributable to a particular KOL or medical association, but rather, in the ability of KOLs or medical associations to "influence" the wider professional environment (namely, BSC's end-customers) to adopt and purchase its portfolio of EP products, through their endorsement and adoption of these products.²⁸ Mr Lee's relationships with these organisations were therefore an important component of BSC's "trade and

²⁵ SM-1 at para 68.

²⁶ SM-1 at para 77.

²⁷ KMK-1 at para 45; EWL-1 at paras 38 and 67.

²⁸ SM-1 at paras 68 and 77; Claimant's written submissions at para 86.

client connections” throughout the Asia Pacific Region.²⁹ Mr Lee “managed these trade and client connections, and was effectively the face of [BSC]” when it came to marketing and promoting its EP products through these client and trade connections.³⁰ In its supporting affidavit, BSC cited the following as examples evidencing Mr Lee’s involvement:

(a) He was involved in “organising and approving numerous physician education programmes, customer training sessions and scientific engagements throughout the Asia Pacific region”. BSC says that these programmes form part of its broader strategy for physician engagement, product adoption and market development in the EP business.³¹

(b) He was involved in “scientific programme planning, physician engagement activities and educational initiatives associated with [leading medical associations] and other regional scientific meetings”, in which he interacted and engaged frequently with leading physicians and KOLs throughout the Asia Pacific region concerning clinical studies, product evaluation, technology adoption and market development initiatives.³²

(c) He was involved in organising and in participating in regional and country-specific medical advisory boards and conferences involving physicians and KOLs across multiple jurisdictions in the Asia Pacific region, which form part of BSC’s efforts to maintain and develop

²⁹ SM-1 at para 78.

³⁰ SM-1 at para 25.

³¹ SM-1 at paras 69–75.

³² SM-1 at paras 78–83.

relationships with these clinical stakeholders to discuss various matters, including feedback relevant to the development and enhancement of its products and strategy matters relevant to BSC's business.³³ These demonstrate the breadth of Mr Lee's relationships with KOLs and EP stakeholders in the Asia Pacific region, and allowed him to become one of the "most visible representatives" of its EP business throughout the Asia Pacific region.³⁴

25 Based on the LinkedIn Job Description that Mr Lee shared with BSC about his new role, one aspect of Mr Lee's responsibilities at J&J is to build relationships with regional KOLs and to participate in major customer congresses. The scope of Mr Lee's responsibilities with J&J therefore justify BSC's concern that "the very relationships developed by Mr Lee on behalf of [BSC] may now be deployed for the benefit of a direct competitor [*ie*, J&J]".³⁵ Finally, BSC also submits that the scope of the restraint imposed by the Non-Compete Clauses is reasonable, and that no other provision in the Employment Agreement sought to protect the legitimate interest which it has identified.

26 Mr Lee's principal submission is that BSC has not identified any legitimate interest which could warrant the court upholding the Non-Compete Clauses, and in any event, BSC has not adduced sufficient evidence to warrant the court finding that there are serious questions to be tried as to the validity and enforceability of the Non-Compete Clauses. Mr Lee highlights that the trade connection which BSC relies on as forming the subject matter of its legitimate interest was not a relationship maintained with BSC's *customers*, but with

³³ SM-1 at paras 84–86.

³⁴ SM-1 at para 88.

³⁵ Claimant's written submissions at para 106.

intermediaries or *third-party middlemen* like KOLs and medical associations who themselves did not purchase any of BSC's products. That, Mr Lee submits, does not constitute a trade connection recognised by the common law, which encompasses only relationships between an employee and the employer's *clients* or *suppliers*. He argues that there can be no trade connection between an employer and third-party middlemen who are merely capable of influencing end-customers because those middlemen *themselves* do not generate business or sales for the employer.³⁶ In any case, even if BSC's case were to be taken at its highest and the legitimate interest which it has identified is capable of protection by the restraint of trade doctrine, BSC has not adduced: (a) evidence of his *influence* over these medical associations and KOLs, and the evidence which BSC has adduced in its supporting affidavit regarding the role he played in managing relationships with KOLs and medical associations does not show that he held any such influence;³⁷ and (b) evidence that KOLs and medical associations are indeed capable of influencing end-customers to purchase EP products of a particular MedTech manufacturer.³⁸ Mr Lee emphasises that for BSC's case to even cross the threshold of disclosing "serious questions to be tried", its mere assertions on affidavit were insufficient and the court had to find that there is evidentiary basis to these assertions, and in this case, there was none.

27 Mr Lee also highlights that in pre-litigation correspondence, BSC never indicated that the legitimate interest it relies on constitutes the trade and client connections with KOLs and medical associations, and the trade and client connections which BSC now relies on was asserted for the first time in a letter

³⁶ 1st defendant's written submissions at para 47.

³⁷ 1st defendant's written submissions at paras 48–52.

³⁸ 1st defendant's written submissions at para 53.

from BSC’s solicitors dated 28 August 2026, sent shortly before OC 762 was commenced.³⁹ In all previous correspondence, the legitimate interest which BSC claimed it is seeking to protect was its “confidential information and trade secrets”. The shift in position, Mr Lee argues, reflects BSC’s recognition that the trade and client connections which it now relies on provides no justification for upholding the Non-Compete Clauses. This is also because any legitimate interest which BSC had in Mr Lee’s relationships with KOLs and medical associations, which were capable of generating sales of its EP products, were adequately protected by cl 3 of the Employment Agreement which prohibits the non-solicitation of BSC’s customers by Mr Lee whether “personally or through another person”.⁴⁰

28 In oral submissions, J&J focused its arguments on the reasonableness of the Non-Compete Clauses. It argues that cll 2.1 and 2.2 were both unreasonable as they were excessive in terms of the scope of activities covered as well as the duration of the Restricted Period. J&J highlights that cl 2.2 contained no temporal limitation, and whereas for cl 2.1, beyond BSC’s bare assertion that a Restricted Period of 12 months was reasonable in respect of an employee who occupied Mr Lee’s role, BSC has not provided any explanation as to why the period of 12 months was necessary to protect the trade and client connections it relies on, or adduced any evidence to that effect, such as by explaining the steps which it has to undertake internally following Mr Lee’s departure. Such explanations or evidence are necessary for BSC to persuade the court of a real prospect that the Non-Compete Clauses are reasonable and thus valid and enforceable.

³⁹ 1st defendant’s written submissions at para 33.

⁴⁰ 1st defendant’s written submissions at paras 58–66.

Preliminary issue: Whether J&J should be permitted to address the court on the merits of SUM 2702 despite not having been named as a party to that application

29 SUM 2702 is brought only against Mr Lee and it does not name J&J as a respondent. At the Duty Registrar hearing where I gave directions for the filing of papers and the fixing of the contested hearing of SUM 2702, BSC’s counsel objected to J&J’s participation in SUM 2702, and it argued that J&J should not be permitted to file any affidavits or written submissions for SUM 2702. I directed the parties (in particular, BSC and J&J) address this issue in their written submissions and informed them that issue of J&J’s entitlement to participate in SUM 2702 would be decided at the contested hearing proper.

30 BSC’s counsel made the following submissions in support of its objections. First, J&J is a “non-party” to SUM 2702. Secondly, there is no legal basis for J&J to participate in SUM 2702 because (a) J&J has no legal interest in the application (beyond a mere commercial interest) to warrant its participation as a non-party since it is a stranger to the Employment Agreement which BSC is seeking to enforce via the interim injunction sought and (b) in any event, J&J does not satisfy the requirement to be joined as a party to SUM 2702 pursuant to O 9 r 10(1) of the Rules of Court 2021 (“ROC 2021”).

31 Order 1 r 3 of the ROC 2021 defines a “non-party” as “any person who is not a party in *the action*” [emphasis added], and an “action” is in turn also defined in O 1 r 3 as “proceedings commenced by an originating claim or an originating application”. Reading these definitions together, I do not think the ROC 2021 contemplates that a party (hereafter referred to as “A”), who is already a co-defendant or co-claimant in the action and wishes to participate in an interlocutory application that is brought by the *other* co-claimant or co-defendant (as the case may be) against the other parties in the action and not

against *A*, must then take out *another* application to seek permission to participate in the interlocutory application, whether in the capacity of a non-party intervener (see *Zhang Xin v Liu Yingkui* [2026] SGHCR 7 at [33]) or by virtue of being added as a party to that application (see *DFD v DFE and another* [2024] 6 SLR 455 at [33]). If *A* were required to bring a further application in order to seek permission to participate in the interlocutory application that is not brought against him, it would be contrary to the Ideal of expeditious proceedings because the filing of a further application in connection with the interlocutory application is likely to lengthen and complicate the process before the action can proceed to trial or determination on the merits. This can also be contrary to the Ideal of cost-effective work, especially where *A*'s participation is resisted, because any time and costs incurred would be disproportionate when the significance of this subsidiary issue is viewed in the context of the action as a whole.

32 The entitlement of *A* to participate in an interlocutory application that is not brought against him is a matter of the court's exercise of its general case management powers in the context of the proceedings constituted by the originating application or the originating claim. In some scenarios, the extent of *A*'s participation would be rightly limited to that of a watching brief, such as in an application for specific production of documents that are said to be in the possession or control of the party named as the respondent in that application. However, where *A*'s interests stand to be affected by the application – whether by virtue of the reliefs sought in that application or by virtue of the significance of those reliefs when viewed in the context of the action as a whole – then *A* should be permitted further participation in the interlocutory application, the extent of which is at the court's discretion, and that can include the entitlement of filing reply affidavits or submissions for the application. In its directions, the

court can also limit the specific matters or issues in the interlocutory application which A would be permitted to participate in. However, where it not feasible for the court to be prescriptive, then A ought to be sensible as to the scope of matters on which it should be addressing the court, and it should limit its evidence or submissions only to matters which the other parties are not in a position to address the court on or matters which squarely affect its interests.

33 For the reasons above, I disagree with BSC's objections on J&J's entitlement to participate in SUM 2702. While J&J is a non-party to SUM 2702, it is not required to take out an application to seek permission to participate in SUM 2702. Whether it is entitled to do so is an exercise of the court's case management powers. I was of the view J&J is entitled to participate fully in SUM 2702, including by filing a reply affidavit and making submissions, because its interests were clearly affected, whether viewed in terms of the reliefs in SUM 2702 or in the context of OC 762 as a whole. First, although SUM 2702 only seeks to enjoin Mr Lee from continuing his employment with J&J, any such interim injunction granted in SUM 2702 effectively also prevents J&J from further employing Mr Lee or else J&J risks placing itself in contempt of the orders made in SUM 2702. J&J had expended resources in the recruitment of Mr Lee and if Mr Lee had to be put out of work because of the orders made in SUM 2702, J&J's interests as an employer would also be affected, inasmuch as Mr Lee's interests as an employee. The fact that J&J is a stranger to the Employment Agreement is neither here nor there; the key is whether J&J had any interest in the reliefs sought in SUM 2702. Secondly, in *support of SUM 2702*, BSC has also made allegations against J&J, in particular, that J&J had recruited Mr Lee because it intends to "take advantage of Mr Lee's experience, trade connections and specialised knowledge of the EP industry to

further J&J's business interests",⁴¹ and that Mr Lee is of value to J&J because of "the relationships, credibility, goodwill and industry standing that he accumulated through years of representing [BSC] throughout the Asia Pacific EP market".⁴² Effectively, these are assertions concerning J&J's motives in engaging Mr Lee, and it has a bearing on BSC's claim against J&J for inducing Mr Lee's breach of the Non-Compete Clauses, which is pursued in OC 762. In its capacity as the second defendant in OC 762, J&J obviously would have an interest to rebut these allegations which can have a bearing on its position in OC 762 and correspondingly contest the interim injunction sought in SUM 2702.

Decision

34 Based on the authorities discussed earlier (at [19]–[20]), in a case where an interim injunction is sought to enforce a restrictive covenant in an employment contract, the analysis can be approached in the following manner:

(a) First, whether the claimant has shown serious questions to be tried regarding the validity and enforceability of the restrictive covenant and that it has been breached or will be breached by the employee.

(b) If so, secondly, whether the claimant's case on the issues at [34(a)] above rise to the standard of a good arguable case. If a good arguable case is shown, then the court would apply the approach in *RGA Holdings* ([20] above) to determine if the interim injunction should be granted, and the principles in *American Cyanamid* and the balance of convenience analysis does not apply.

⁴¹ SM-1 at para 93.

⁴² SM-1 at para 128.

(c) Where the claimant is unable to show a good arguable case but is nonetheless able to show that there are serious questions to be tried, the court would consider whether the balance of convenience lies in favour of granting the interim injunction.

35 For the reasons explained below, while I find that BSC has shown serious questions to be tried, the evidence put forward by BSC does not show, on the standard of a good arguable case, that the Non-Complete Clauses are valid and enforceable. Further, I find that damages would be an adequate remedy for BSC if it succeeds at trial. Therefore, the interim injunction sought should not be granted. In any case, the balance of convenience also weighs in favour of the status quo and against the grant of the interim injunction.

BSC has shown serious questions to be tried

36 The test of a “serious question to be tried” requires the claimant to only show that he has *some* prospects of success which, in substance and reality, exist (see *Shopee* ([19] above) at [17(a)]). This is a “low threshold” that is not difficult to satisfy and all the claimant must show is that its case is not “obviously frivolous or vexatious” (see *Buckman Laboratories (Asia) Pte Ltd v Lee Wei Hoong* [1999] 1 SLR(R) 205 (“*Buckman Laboratories*”) at [28]; *Leong Quee Ching Karen v Lim Soon Huat and others* [2024] 4 SLR 862 (“*Karen Leong*”) at [22]). The significance of this approach is that the court would investigate the merits of the claimant’s case or its prospects of success only to a limited extent (see, for example, *Buckman Laboratories* at [28]). The rationale of this approach is two-fold. First, because the matter is at an early stage and the evidence and arguments before the court would often be incomplete, the court would not be in a position to resolve conflicts of evidence on affidavit or decide difficult questions of law which call for detailed arguments and mature

considerations (see *Maldives Airports Co Ltd v GMR Malé International Airport Pte Ltd* [2013] 2 SLR 449 (“*Maldives Airports*”) at [53]; *Jardine Lloyd Thompson Pte Ltd v Howden Insurance Brokers (S) Pte Ltd* [2015] 5 SLR 258 at [6]). Secondly, if the court could only exercise its discretion to grant interim injunctions where it evaluated the claimant’s merits and was persuaded that it would likely succeed at trial, the purpose underlying the grant of interim injunctions, which is to protect the claimant’s interests pending a full trial on the merits, would be stultified (see *Karen Leong* at [22]). A further point is that interim injunctions are often sought by applications without notice, meaning that the court may have to decide on the claimant’s entitlement to the interim injunction without hearing from parties who are likely to object to the relief sought. In the absence of contradicting evidence or submissions from the other party, the court may be fairly constrained in its ability to engage in a robust assessment of the merits of the claimant’s case.

37 The case of *Buckman Laboratories* illustrates the low threshold underlying the test of a “serious question to be tried”. In that case, which involved the plaintiff employer seeking an interim injunction to restrain the defendant employee from working with its competitors, the High Court considered the restrictive covenants relied upon by the plaintiff at some length and expressed the view that it had “grave doubts about the enforceability of those covenants” (at [28]). However, the court was ultimately cognisant that this was not an issue it could decide at an early stage of the proceedings, and in the circumstances, it concluded that the plaintiff’s case could not be characterised as “frivolous or vexatious” and that the facts disclosed serious questions to be tried (at [29]).

38 For present purposes, there are three issues on which BSC must demonstrate “serious questions to be tried” (or a good arguable case if it wishes

to persuade the court to apply the approach in *RGA Holdings* ([20] above)): (a) that the Non-Compete Clauses protect BSC's legitimate interest; (b) that the Non-Compete Clauses are reasonable; and (c) that Mr Lee has breached or will breach the Non-Compete Clauses. The first two issues come within the broader issue concerning the validity and enforceability of the Non-Compete Clauses, which I turn to next.

Serious questions to be tried as to the validity and enforceability of the Non-Compete Clauses

39 Mr Lee and J&J's submissions regarding the validity and enforceability of the Non-Compete Clauses may be distilled into two key points:

(a) First, the trade and client connections which BSC relies on does not come within the category of trade connections recognised by the restraint of trade doctrine at common law, because it concerns the relationship between an employee and third-party intermediaries or middlemen who can potentially drive sales but who themselves do not purchase the employer's products.

(b) Secondly, beyond the bare assertions stated on affidavit, BSC has not adduced any evidence showing that the Non-Compete Clauses are valid and enforceable. In particular, BSC has not adduced any evidence showing the extent of Mr Lee's relationship with KOLs and medical associations, the level of influence which KOLs and medical associations had over end-customers such that their views could influence sales of BSC's products, as well as evidence which warrant the court finding that the Non-Compete Clauses are reasonable.

40 In my view, these submissions, while forceful, do *not* show that BSC’s case discloses no serious questions to be tried regarding the validity and enforceability of the Non-Compete Clauses. Given the low threshold implicit in the test of “serious questions to be tried”, it can be met so long as the court is satisfied that BSC’s case is not clearly unsustainable (see *Twitter Asia Pacific Pte Ltd v Media Matters for America* [2026] SGHC 134 (“*Twitter Asia*”) at [41]). Therefore, the question to be asked here is whether I could conclude that BSC’s case is legally or factually unsustainable on the basis of the submissions put forward by Mr Lee and J&J. I answer this in the negative for the following reasons.

41 First, while Mr Lee and J&J are correct that the trade and client connections which BSC relies on fall outside of the paradigm category of trade connections recognised at common law, I do not think this necessarily warrants a finding at this stage that BSC’s case on the legitimate interest which the Non-Compete Clauses seek to protect is legally unsustainable. While *trade connections* are typically found in employee-customer and employer-supplier relationships, I think that is reflective of the scenarios in which relationships with third parties fostered by an employee in the course of his or her employment pertain peculiarly to the employer and which have such a bearing on the employer’s profitability and competitiveness so that the employer has a legitimate interest to protect that relationship following the departure of the employee (see generally, *Guy Carpenter* ([17] above) at [145]; JD Heydon, *The Restraint of Trade Doctrine* (Butterworths, 2nd Ed, 1999) at p 67). Thus, the fact that trade connections hitherto have only been found in relationships between an employer and its customers or suppliers might not necessarily be exhaustive of the employee-third party relationships in which an employer can be found to have a legitimate interest to protect. Given that the categories of

legitimate interests which can warrant protection by the restraint of doctrine are not closed (see *Man Financial (S) Pte Ltd (formerly known as E D & F Man International (S) Pte Ltd) v Wong Bark Chuan David* [2008] 1 SLR(R) 663 (“*Man Financial*”) at [94]), and the law develops with changes in the wider society it ultimately serves (see *Man Financial* at [122]), I do not think it can be ruled out, at this stage, that the trade and client connections which BSC has sought to rely on do *not* constitute a legitimate interest capable of protection by the restraint of trade doctrine. That is especially so if, as BSC argues, MedTech companies like BSC and J&J rely on KOLs and medical associations as an integral part of their strategy to drive product adoption and sales and where employees are trained specifically to cultivate relationships with KOLs and medical associations for that purpose. To sum up, I do not think it is open to me to conclude, at the present stage of the proceedings and with the benefit of only limited arguments, that BSC’s case is unsustainable as a matter of law and so the Non-Compete Clauses are invalid or unenforceable on that ground. I emphasise that this view is formed on the basis of what has been put before me in SUM 2702, and Mr Lee and J&J are obviously at liberty to persuade the court that BSC’s case is legally unsustainable at the appropriate forum with fuller arguments.

42 On a related note, both Mr Lee and J&J argue that, even if the trade and client connections which BSC relies upon were valid, these are adequately protected by the non-solicitation provision in cl 3 of the Employment Agreement. I reproduce cl 3 below:

3.1 Customers and Suppliers

While employed by Boston Scientific and for a period of twelve (12) months after termination of employment with the Company for any reason, you shall not, in any capacity, directly or indirectly, personally *or through another person*:

(i) Solicit the business or patronage of any Customer of Boston Scientific for or on behalf of a business that competes with Boston Scientific, (ii) divert, entice or otherwise take away from Boston Scientific the business or patronage of any Customer of Boston Scientific, or attempt to do so, or (iii) solicit or induce any vendor, supplier or Customer of Boston Scientific to terminate or reduce its relationship with Boston Scientific.

‘Customer’ means any person or entity either (i) with whom or which you had Contact during the last twelve (12) months of your employment with Boston Scientific. ‘Contact’ means contact with a person or entity that was made in an effort to initiate or further a business relationship between Boston Scientific and the person or entity.

43 Mr Lee and J&J argue that, in so far as Mr Lee’s engagement with KOLs and medical associations are concerned, he is prohibited by cl 3.1 from utilising these engagements to promote the sale of J&J’s EP products, and cl 3.1 therefore adequately protects BSC’s trade and client connections with KOLs and medical associations. The part of cl 3.1 which prohibits Mr Lee from soliciting the business or patronage of a “Customer” (defined in the extract above) “through another person” would capture any engagements that Mr Lee has with KOLs and medical associations for the purposes of promoting the sale of J&J’s products to end-customers. As such, BSC’s case does not disclose a further legitimate interest over and above that which is already protected by cl 3.1, and this is a further reason why BSC’s case is legally unsustainable. On the other hand, BSC submits that its trade and client connections are not protected by cl 3.1 of the Employment Agreement because that clause only prohibits the solicitation of business from a “Customer”, which is in turn defined (in the extract above) as persons or entities with whom the employee had contact with for the purposes of initiating or furthering a business relationship with that person or entity. KOLs or medical associations do not share any business relationship with BSC because they do not directly purchase products from

BSC. Therefore, cl 3.1 only prohibits the solicitation of business from BSC's end-customers but is inapplicable to Mr Lee's relationship with KOLs and medical associations.

44 Although it is trite law that where an employer's legitimate interests are already directly protected by other contractual covenants, then the remaining function of a non-compete clause would be invalid as its sole object would be that of inhibiting competition (see *HT SRL v Wee Shuo Woon* [2019] 5 SLR 245 at [74]), the issue raised by the arguments about cl 3.1 require the court to decide between the competing interpretations of that clause, which I do not think can be done at this stage without fuller evidence on the parties' contracting intentions and legal submissions. The two interpretations advanced of cl 3.1 are equally plausible and the court is not in a position to decide one way or the other at this juncture. For this reason, I do not think the submissions made about cl 3.1 warrant a finding at this stage that BSC's case on the legitimate interest which the Non-Compete Clauses seek to protect is legally unsustainable.

45 Next, although I agree with Mr Lee and J&J that the material which BSC has put forward to substantiate its case in SUM 2702 have been limited to affidavit assertions only (see also [57] below), I do not think this alone warrants a finding that BSC's case on the validity and enforceability of the Non-Compete Clauses is factually unsustainable. Given that the test of a "serious question to be tried" entails a "low threshold" (see [36] above), I do not think it is a requirement that the claimant seeking the interim injunction must necessarily back up each and every assertion on affidavit with documentary evidence. Whether the claimant's case discloses a "serious question to be tried" turns on a consideration of the affidavit evidence (even if it were only limited to assertions) as a whole and whether that lends cogent support to the *grounds* on which the interim injunction is sought, and if so, that would warrant the

conclusion that the claimant’s case has some prospects of success at trial. Of course, that is not to say that the court must uncritically accept every statement on an affidavit, even where it is equivocal, lacking in precision or contradicted by contemporary documents or other assertions or statements contained in the same affidavit (see *Singapore Civil Procedure 2026, Vol I* (Sweet & Maxwell, 2025) (“*Singapore Civil Procedure*”) at para 13/1/13). The point here is that the *evidential sufficiency* of the claimant’s case is not a necessary requirement for the court to find that a “serious question to be tried” is disclosed. In my view, such an approach is also consistent with the reality that interim injunctions, including those sought to restrain the breach of restrictive covenants, are often applied for in urgent circumstances and at an early stage of the proceedings. Requiring the claimant to support each and every affidavit assertion with documentary evidence would severely limit the court’s discretion to grant interim injunctions and defeat the purpose which such relief is intended to serve (see [36] above).

46 In this case, I find that BSC’s assertions on affidavit support its factual case that the Non-Compete Clauses are valid and enforceable and the threshold of a “serious question to be tried” is crossed. The assertions which BSC has relied on are:

- (a) As part of Mr Lee’s role with BSC, he was required to develop and maintain relationships with KOLs and medical associations throughout the Asia Pacific region.⁴³ These KOLs and medical associations serve as important channels through which BSC’s EP products are evaluated, adopted and disseminated within the wider community, and so Mr Lee’s relationships with them serve as a channel

⁴³ EWL-1 at para 76.

via which BSC's end customers are influenced to adopt and purchase BSC's EP products.⁴⁴

(b) In particular, a medical practitioner who is a KOL may influence the assessment or adoption of a technology within his or her EP department, which can subsequently affect hospital-level purchasing decisions and the selection of complementary products within the broader EP portfolio.⁴⁵

(c) BSC relied on Mr Lee to maintain these relationships, which are crucial for achieving sales of EP products. Given Mr Lee's departure, BSC would have to notify KOLs and medical associations of the change in BSC's representative, and any replacement from BSC would need time to secure and rebuild the relationships via these channels, and this provides the context in which the 12-month Restricted Period is to be construed. Further, under cl 2.6 of the Employment Agreement, Mr Lee is also provided remuneration for the entire 12-month Restricted Period.⁴⁶

(d) The Non-Compete Clauses are "reasonable in scope, duration and geography". The Restricted Period is limited to 12 months, and it applies only to the EP division and markets where Mr Lee previously worked, and it does not prevent Mr Lee from pursuing employment outside the EP field or in unrelated industries.⁴⁷

⁴⁴ EWL-1 at paras 68 and 77.

⁴⁵ EWL-1 at para 68.

⁴⁶ EWL-1 at paras 98 and 132.

⁴⁷ EWL-1 at para 138.

Serious question that Mr Lee has breached, or will breach the Non-Compete Clauses

47 The next issue is whether BSC has shown a serious question to be tried that Mr Lee has breached or will breach the Non-Compete Clauses. The parties’ submissions did not place much emphasis on the issue of breach given that the central plank of Mr Lee and J&J’s case is that the Non-Compete Clauses are void and unenforceable.

48 According to BSC, based on the LinkedIn Job Description which Mr Lee had sent to BSC in June 2026, Mr Lee’s new role at J&J is that of senior director of regional marketing and strategy for J&J’s business in the Asia Pacific region, and one of his key responsibilities (under the umbrella of “[c]ustomer engagement activities”) is to “[b]uild strong connections and relationship with regional level top KOLs”.⁴⁸ This aspect of Mr Lee’s new role at J&J appears to overlap with the previous role at BSC and similarly encompasses operations in the Asia Pacific region, just as his previous role at BSC did, and therefore his employment with J&J comes within the scope of: (a) cl 2.1 of the Employment Agreement, because Mr Lee has engaged in “activities” that compete with the EP division of BSC in the Asia Pacific region; and (b) cl 2.2 of the Employment Agreement, because Mr Lee has accepted employment with a “business” that competes with the EP division of BSC in the Asia Pacific region in circumstances where no prior written approval had been obtained from BSC.

49 Both Mr Lee and J&J have disputed the extent of overlap between Mr Lee’s former role at BSC and his new role at J&J. Mr Lee highlights that his new role at J&J differs from his previous role at BSC and no longer encompasses responsibilities in clinical education and therapy development

⁴⁸ EWL-1 at p 77.

functions, and instead encompass responsibilities in data and analytics and business development, which previously was not part of his role at BSC.⁴⁹ Importantly, most of J&J’s EP portfolio lies outside PFA technology and pursuant to arrangements put in place internally within J&J, he is prohibited from involvement in these areas until 1 July 2027 (*ie*, for the duration of the Restricted Period).⁵⁰ On the other hand, J&J emphasises that the LinkedIn Job Description only provides a very high-level overview of Mr Lee’s role and does not explain the role in practice, and in any event, there is no overlap between the two roles, because Mr Lee’s actual role at J&J does not involve developing or maintaining relationships with hospitals, physicians or medical associations, and the reference to KOLs in the LinkedIn Job Description is merely a “high-level aspiration that would appear in any senior marketing strategy role in the MedTech Industry”.⁵¹

50 The law is trite that in deciding if there are “serious questions to be tried”, the court should not be resolving differences in conflicting affidavit evidence (see *Karen Leong* ([36] above) at [22]), and as I have explained earlier, implicit in the low threshold of showing “serious questions to be tried” is that the court should not be overly preoccupied at this stage with the evidential sufficiency of the claimant’s case (see [45] above). Here, considering the evidence which BSC has put forward, and without making any attempt to reconcile BSC’s evidence with the factual disputes raised by Mr Lee and J&J (which are to be dealt with at trial), I find that BSC has shown “serious questions to be tried” regarding Mr Lee’s breach or prospective breach of the Non-Compete Clauses.

⁴⁹ EWL-1 at para 114.

⁵⁰ EWL-1 at para 115.

⁵¹ KMK-1 at paras 40–41.

BSC has not shown a good arguable case

51 That BSC is able to show “serious questions to be tried” is not the end of the matter because it must be further considered whether it has shown a “good arguable case” such that the approach *RGA Holdings* ([20] above) applies and the court does not have to consider the balance of convenience in deciding if the interim injunction should be granted. As I explain below, it is in this part of the analysis that the forceful arguments which Mr Lee and J&J have made regarding BSC’s failure to adduce objective evidence showing the validity and enforceability of the Non-Compete Clauses (see [39(a)] above) became most relevant.

52 A “good arguable case” encompasses a higher standard than a “serious question to be tried” (see *Twitter Asia* ([40] above) at [41]). The standard of a “good arguable case” is one which is more than capable of serious argument, but not necessarily one which the court considers would have a better than 50% chance of success (see *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159 (“*JTrust*”) at [38]). It does not require the claimant to make out its case to the standard of a balance of probabilities, but the claimant must have “the better of the argument, on the evidence before the court” (see *Twitter Asia* at [41]). Like the analysis into whether there is a “serious question to be tried”, the court making the assessment does not resolve conflicts of evidence on affidavit or decide difficult questions of law which call for detailed argument, but it would examine the *apparent* strength or weakness of the respective cases to decide whether the claimant’s case, on its merits, meets the threshold (see *JTrust* at [38]).

53 Here, there are two key factors which shaped my analysis of the strength of BSC’s case.

54 First, the trade and client connections which BSC relies on falls outside of the paradigm category of trade connections recognised at common law. To recap, BSC’s case is that Mr Lee developed relationships with KOLs and medical associations, who in turn were capable of influencing the adoption of BSC’s products in the EP field, and these relationships constitute the “trade and client connections” which form the subject matter of BSC’s legitimate interest. I have mentioned earlier that this does not warrant me finding that BSC’s case on the validity and enforceability of the Non-Compete Clauses is legally unsustainable (see [41] above). However, given the relatively unusual nature of the trade and client connections which BSC relies on as the basis of the interim injunction sought in SUM 2702, for the court to conclude that it has the better of the arguments at this stage, BSC must demonstrate some *factual basis* for the court to have reason to believe that the trade and client connections which it relies on would likely be recognised as a valid legitimate interest if the matter goes to trial and the law is ultimately determined in its favour. In other words, while the evidential sufficiency of BSC’s case is not a necessary requirement for the court to find “serious questions to be tried” (see [45] above), I think it matters in the context of assessing if BSC has shown a “good arguable case”, given the sort of trade and client connections which BSC has chosen to rely on. In support of SUM 2702, BSC should therefore adduce *some* objective evidence showing that Mr Lee’s relationship with KOLs and medical associations is of such a nature that he could gain some degree of influence and leverage over them (for example, with reference to the factors and considerations set out by the High Court in *Smile Inc Dental Surgeons Pte Ltd v Lui Andrew Stewart* [2012] 1 SLR 847 at [70]–[74]) and critically, that these KOLs and medical associations are indeed capable of influencing sales of BSC’s products and have been responsible for driving these sales.

55 Secondly, in assessing the apparent strength of BSC’s case, I also had to be cognisant of the competing factual accounts put forward by Mr Lee and J&J regarding the state of Mr Lee’s relationship with KOLs and medical associations and whether these KOLs and medical associations in fact have the ability to influence adoption of BSC’s EP products and drive sales. Of course, in deciding if a “good arguable case” is shown, the court does not resolve conflicting affidavit evidence, but surely the material put before the court by the opposing party would be a relevant consideration in assessing the apparent strengths or weaknesses of the claimant’s case.

56 In this regard, Mr Lee emphasised that he never met with any physician or KOL more than twice a year and in the majority of situations only once a year, and that he only had limited contact with them, which would not have amounted to any meaningful relationship or trade connection on the part of BSC.⁵² According to Mr Lee, most of these interactions took place at academic congresses or meetings, and beyond that, as part of his role in facilitating research contributions.⁵³ Mr Lee acknowledges that he has had direct interactions with as well as involvement in the various medical associations identified by BSC, but based on his account, this largely consisted of his involvement in scientific programmes organised by these associations.⁵⁴ Both Mr Lee and J&J also stated in their respective affidavits that purchasing decisions and product adoption by hospitals or end-users entail multi-factorial considerations and so even if a KOL or medical association endorsed a particular product, that would not necessarily result in actual adoption, which is subject to the decision-making process and workflow in place within each

⁵² EWL-1 at paras 36 and 48.

⁵³ EWL-1 at paras 44–47.

⁵⁴ EWL-1 at paras 51–59.

hospital or end-user institution.⁵⁵ I acknowledge that BSC did not have an opportunity to file an affidavit responding to the assertions made by Mr Lee and J&J but it would not have come as a surprise to BSC that Mr Lee and J&J would contest its account on the nature of the relationship Mr Lee had with these KOLs and medical associations, and the influence that these KOLs and medical associations had over actual product adoption and sales. In these circumstances, BSC surely would be expected to adduce *some* objective evidence to support its assertions regarding the trade and client connections it relies on in the affidavit which it filed in support of SUM 2702.

57 However, BSC’s supporting affidavit does not contain any objective evidence which supports its affidavit assertions, and having regard to the two factors explained above, BSC’s evidence falls short of demonstrating a good arguable case that the trade and client connections with KOLs and medical associations which it relies on even *exist* (assuming the law in BSC’s favour and so these connections constitute valid legitimate interests protected by the restraint of trade doctrine). In the affidavit, BSC exhibited various documents which it says, “demonstrate the extent of Mr Lee’s interaction with physicians, hospitals, [KOLs] and other important stakeholders”, provide “examples of [his] role in developing and maintaining [BSC’s] relationships” with these stakeholders and illustrate his interactions with influential physicians and KOLs throughout the Asia Pacific region.⁵⁶ However, as highlighted by J&J in its written submissions,⁵⁷ these documents do not show that Mr Lee had any *meaningful* relationships with KOLs and/or that Mr Lee had any influence over

⁵⁵ EWL-1 at paras 74–76; KMK-1 at para 45.

⁵⁶ SM-1 at paras 70–87.

⁵⁷ 2nd defendant’s written submissions at para 67.

these KOLs such that he could have a leverage over the views of these KOLs and the products they were likely to endorse.

(a) The vast majority of the documents which BSC adduced in support were approval memos circulated within BSC, and which involved Mr Lee as “HQ Approver 1”.⁵⁸ It is not in dispute that these memos related to BSC’s internal approval workflows in connection with logistical or financial arrangements made for workshops or product training events that were organised by BSC. The contents of these documents are largely redacted but based on the unredacted portions, it is not apparent that these workshops or training events necessarily involved physicians who were KOLs and that their purpose was necessarily to promote BSC’s EP products. In any case, even if KOLs were involved and these events were indeed for the purpose of promoting BSC’s EP products, they only show Mr Lee’s involvement in the logistics and organisation of the events, and it does not show his actual participation in the event and/or that had developed any relationship with KOLs through those events.

(b) BSC exhibited an e-mail sent by Mr Lee to his colleagues at BSC attaching a deck of slides and a recording of a Microsoft Teams call, and the subject of that e-mail was “APAC EP Strat Plan Kick-off”.⁵⁹ BSC identified this document as an example of a programme forming part of BSC’s broader strategy in the EP business but it did not specifically elaborate on the significance of this document.⁶⁰ It is unclear what this

⁵⁸ SM-1 at pp 197–198, 200–203, 205–208, 213–214, 218–224.

⁵⁹ SM-1 at pp 209–211.

⁶⁰ SM-1 at para 74.

e-mail was intended for but what is clear is that the e-mail constitutes internal correspondence between Mr Lee and his colleagues at BSC and on its own it does not show that Mr Lee had any relationship with KOLs.

(c) BSC exhibited an e-mail sent by Mr Lee, which appears to be addressed to a physician whose e-mail address and identity is redacted.⁶¹ Based on the unredacted portions of the e-mail, this appears to relate to a physician engagement activity with the said physician and reference is also made to BSC's EP products. However, this document (which is also the *only* document exhibited by BSC that shows Mr Lee's communications with physicians) does not show that Mr Lee had any meaningful relationship with the said physician. The matters communicated in Mr Lee's e-mail are simply factual matters pertaining to the engagement activity that BSC was organising. BSC did not exhibit any further e-mail showing the physician's response or that there was sustained communications over e-mail between Mr Lee and that physician. The e-mail which BSC has exhibited is not of much significance because, as part of his role at BSC, he obviously would have reached out and/or contacted various physicians in connection with engagement events (that is undisputed) but that contact alone would not mean that he had a meaningful relationship with them or any influence over their views.

(d) BSC exhibited an e-mail sent by Mr Lee to his colleagues at BSC in which he mentioned that his team had just met with a physician (whose identity is redacted) and that they were aligned on dates.⁶²

⁶¹ SM-1 at pp 215–217.

⁶² SM-1 at pp 226–228.

Again, this shows that Mr Lee had contact or communications with physicians, which he is expected to have as part of his responsibilities at BSC but that alone would not mean that he had any meaningful relationship with them or had any influence over them.

(e) BSC exhibited an e-mail sent by Mr Lee to his colleagues at BSC attaching “updated advisor profiles”, as part of an e-mail chain with the subject “APAC EP Advisory Board Pre-Survey Results”.⁶³ On BSC’s case, as part of Mr Lee’s job scope, he obviously would have knowledge of who the leading physicians in the EP field are (which is a matter of public knowledge anyway) and he had circulated these advisor profiles as part of his job functions at BSC. The fact that he could put together these profiles or that he knew who the leading physicians in the field are does not show that he had any meaningful relationship with these physicians or any influence over their views.

(f) Finally, BSC exhibited an e-mail sent by Mr Lee to various “Advisors” informing them of the logistics arrangements in connection with an advisory board meeting held in Tokyo.⁶⁴ The identity of these “Advisors” are redacted but presumably these are physicians in the EP field involved in the engagement activity organised by BSC. Again, this e-mail shows that Mr Lee was involved in the logistics of the engagement activity and it appears that he had written to them as part of his responsibilities at BSC, but that alone would not show that Mr Lee had any meaningful relationship with the physicians or any influence over their views.

⁶³ SM-1 at pp 230–232.

⁶⁴ SM-1 at pp 234–236.

58 Importantly, it is undisputed that BSC has not exhibited any objective evidence supporting its assertion that endorsement by KOLs or medical associations for a particular EP product is likely to lead to increased adoption within the practising community and therefore increased sales for the relevant MedTech manufacturer whose products were endorsed, *ie*, that the views of these KOLs and medical associations can influence the sale of BSC's products. I agree with the submission by Mr Lee's counsel that such evidence would be readily available because BSC, as a large multinational MedTech manufacturer, would have the data and statistics showing the extent to which sales for their EP products are linked to endorsements by KOLs and medical associations,⁶⁵ since such data and statistics would be integral in any commercial strategy that BSC would pursue in marketing its products, provided of course (which BSC asserts) that these KOLs and medical associations are indeed integral to how MedTech manufacturers market and push sales of their products. To be clear, I am not drawing any inference against BSC for its omission to adduce such evidence, and the point here is simply that BSC has not adduced any objective evidence to support the assertion it has made regarding the influence held by KOLs and medical associations over the sales of its EP products, where it could and should have done so.

59 I now turn to consider J&J's submission regarding BSC's failure to adduce sufficient evidence to satisfy the court that the temporal scope of the Non-Compete Clauses is reasonable. I think the point here is not so much that BSC has failed to adduce *objective* evidence to support its case on the reasonableness of the 12-month Restricted Period. Rather, the point is that BSC has failed to provide any factual basis for the court to be satisfied on the standard

⁶⁵ 1st defendant's written submissions at para 53.

of a good arguable case that the 12-month Restricted Period reasonable, such as by explaining or providing a justification for why that duration is necessary to protect its legitimate interest. The burden is on the claimant seeking to enforce the restrictive covenant to persuade the court that the duration of the restraint is not unreasonable (see *Centre for Creative Leadership (CCL) Pte Ltd v Byrne Roger Peter and others* [2013] SGHC 4 (“CCL”) at [111]). At the stage where an interim injunction is sought, the court may not necessarily require the claimant to substantiate its position on the reasonableness of a restrictive covenant with objective evidence, but at the very least, the claimant must put forward a cogent explanation to justify the restraint imposed by the restrictive covenant and specifically where the duration of the restraint is concerned, the claimant cannot simply “pluck[] a figure from the air” (see *CCL* at [111]). In this case, BSC has stated that they require time to notify KOLs and medical associations of the change in personnel on BSC’s part, and of the time needed to obtain replacements to secure and maintain the trade and client connections previously established by Mr Lee,⁶⁶ but BSC has said nothing regarding the time required to carry out these steps and for its trade and client connections to be restored. Viewed against this, the explanation provided by BSC regarding the duration of the Restricted Period fails to establish a good arguable case that that duration is reasonable.

60 For the reasons above, I am not satisfied that BSC has shown a “good arguable case” that (a) the Non-Compete Clauses protect its legitimate interest in the trade and client connections with KOLs and medical associations (since BSC has not adduced sufficient evidence showing, on the standard of a good arguable case, that these trade and client connections even exist) and (b) the

⁶⁶ EWL-1 at para 98.

Non-Compete Clauses are reasonable in duration. I am therefore not satisfied that BSC has shown a “good arguable case” that the Non-Compete Clauses are valid and enforceable.

Damages would be an adequate remedy for BSC

61 Given the conclusion above that BSC has not shown a good arguable case, the approach in *RGA Holdings* ([20] above) does not apply, and I now turn to consider where the balance of convenience lies and whether this is in favour of the interim injunction being granted. There are two steps to this analysis – the court considers whether damages would be an adequate remedy, and if not or if the court is doubtful about the adequacy of damages, where the balance of convenience lies (see *Karen Leong* ([36] above) at [42]).

62 Central to the analysis of whether damages would be an adequate remedy for the claimant seeking an interim injunction is whether its alleged loss is quantifiable with objective evidence (see generally *Karen Leong* at [44]; *Da Vinci Collection Pte Ltd v Richemont International SA* [2006] 3 SLR(R) 560 at [21]). For example, in *Karen Leong*, the claimant sought an interim injunction to restrain the defendants from transferring certain properties out of the ownership of a company, but the High Court refused the injunction as it was of the view that any loss caused to the claimant by the transfer of these properties were quantifiable since the valuation of the property could be objectively assessed (at [44]). The claimant who is seeking the interim injunction bears the burden of *satisfying* the court that damages would be an inadequate remedy if it succeeds at trial. The claimant can do so by reference to the interest which it seeks to protect through the action commenced and why losses arising from any injury to that interest cannot be assessed objectively.

63 In this case, BSC stated in its supporting affidavit that “[d]amages would not be an adequate remedy” and that BSC would suffer “immeasurable losses” or “irreparable harm” if the interim injunctions were not granted. The reason, it appears from preceding paragraphs in the affidavit, is because Mr Lee’s employment with J&J would undermine BSC’s trade and client connections and disrupt its competitive position in the EP market.⁶⁷ In BSC’s written submissions, it was stated that Mr Lee’s conduct would result in the “transfer of physician goodwill, professional influence and industry relationships” and hence the “resulting damage may be difficult or impossible to reverse”.⁶⁸ I do not agree with BSC’s position that damages would be an inadequate remedy. On BSC’s case, the value of the relationships which Mr Lee cultivated with KOLs and medical associations lies in how these relationships could encourage adoption of BSC’s EP products and ultimately generate *sales*, and it is through wider adoption and higher sales that BSC’s competitiveness is maintained. BSC’s interest – which it seeks to protect by way of the interim injunctions sought – lies not in these relationships themselves but in the *sales* generated as a result of these relationships. Given the interest which the Non-Compete Clauses ultimately seek to protect, any losses arising from Mr Lee’s breach can be quantified with objective evidence because it is simply a matter of the lost sales of EP products which BSC has suffered or will likely suffer as a result of Mr Lee joining J&J. Since damages would be an adequate remedy and given that there is no suggestion from BSC that Mr Lee and/or J&J would not be in a position to pay these damages, no interim injunction should be granted (see *Shopee* ([19] above) at [17(b)(i)]).

⁶⁷ SM-1 at paras 93, 104, 124, 125, 133, 135 and 136.

⁶⁸ Claimant’s written submissions at paras 178–179.

In any case, the balance of convenience weighs against the grant of the interim injunction

64 The conclusion above (at [63]) suffices to dispose of SUM 2702 but I go on to consider the adequacy of damages from Mr Lee’s perspective and if inadequate, where the balance of convenience lies. I find it doubtful that Mr Lee would be adequately compensated by any undertaking as to damages provided by BSC, if he were to prevail at trial. This is because the interim injunction granted would have had an adverse impact on his *career development and livelihood* (see *Buckman Laboratories* ([36] above at [32]; *Nature’s Farm Pte Ltd and others v Poa Kheng Bee and others* [1998] SGHC 343 at [21]). Such impact is *irreversible* and any consequent losses suffered by Mr Lee would also not be easily quantifiable in monetary terms. In this case, if it transpires after trial that BSC is not entitled the interim injunction sought in SUM 2702, the loss which Mr Lee would suffer is not merely that of lost remuneration by virtue of being kept out of work from J&J for the Restricted Period, but the lost job opportunity with J&J and the impact of that loss on his future career prospects, which are not insignificant given the specialised nature of the MedTech and EP industry in which Mr Lee’s experience lies (see also *Shopee* at [90]).

65 In terms of the balance of convenience, the court adopts the course which carries the lesser risk of injustice if it transpires after trial that the interim injunction ought not to have been granted (see *Maldives Airports* ([36] above) at [53]). In this analysis, where the court, having considered the material put forward by the claimant in support of the application for the interim injunction has reasonable doubt over the claimant’s eventual success in the action, it would prefer not to disturb the status quo (see *Buckman Laboratories* at [33]; *Shopee* at [92]). Here, although BSC’s case has passed the lower threshold of

demonstrating serious questions to be tried, the evidence which it has presently put before the court fails to demonstrate a good arguable case that the Non-Compete Clauses are valid and enforceable (see [60] above). To be clear, I am not expressing any view about BSC's eventual success, which falls to be determined with fuller evidence and arguments put forward at trial, but the point is that the material put forward by BSC at this stage fails to persuade me that the court should disrupt the status quo and halt Mr Lee's continued employment with J&J. That is all the more so when viewed against the irreversible hardship which Mr Lee would likely suffer in terms of lost career prospects, if an interim injunction were granted. On the whole, the balance of convenience weighs in favour of preserving the status quo and against the grant of the interim injunction sought in SUM 2702.

Conclusion

66 The parties have made significant and forceful arguments about the validity and enforceability of the Non-Compete Clauses, especially in relation to the point that the trade and client connections which BSC relies on falls outside of the paradigm category of trade connections which the common law has recognised as an employer's legitimate interests. The public policy considerations underlying the restraint of trade doctrine in the employment context requires the court to scrutinise restrictive covenants in employment agreements strictly (see *Guy Carpenter* ([17] above) at [121]). However, based on the materials which the parties have put before me in this application, I do not think the court is in a position to grapple with these policy considerations and decide if BSC's asserted trade and client connections constitute a legitimate interest. While BSC's case passes the lower threshold of showing "serious questions to be tried", its failure to adduce objective evidence to support its affidavit assertions regarding the *existence* of the trade and client connections

which it relies on gives rise to reasonable doubts over its eventual success in the action, and when viewed against the irreversible hardship likely caused to Mr Lee if SUM 2702 were allowed, the balance of convenience weighs in favour maintaining the status quo. Further, the interim injunction should also not be granted because damages would be an adequate remedy for BSC if it succeeds at trial.

67 For these reasons, I dismiss SUM 2702. The Consent Order (see [15] above) is also set aside with immediate effect. At the hearing before me, the parties agreed that the court should order that the costs of SUM 2702 be in the cause of OC 762, whichever way this application is decided. Such an order is described as the “normal practice” in *Singapore Civil Procedure* ([45] above) (at para 13/1/42). In light of the parties’ agreement and in the absence of any particular circumstances which warrant me departing from the norm, I order that costs of SUM 2702 be costs in the cause of OC 762.

Perry Peh
Assistant Registrar

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