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High Court Dismissed Interim Injunctions Restraining Former Employee from Working for Rival

***MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94**

8 April 2024

LEGAL UPDATE

In this Update

The High Court set aside interim injunctions previously granted to MoneySmart Singapore Pte Ltd that prevented a former employee from working for a rival company. The High Court agreed with the employee that the non-compete clause contained in the employment contract was unreasonable and unfair.

Our update discusses this High Court decision.

INTRODUCTION

The High Court set aside interim injunctions granted to MoneySmart Singapore Pte Ltd ("**MoneySmart**") that prevented Mr Artem Musienko, a former employee, from working for MoneyHero Limited ("**MoneyHero**"), a rival company. The High Court held that the non-compete clause contained in the employment contract was unreasonable and unfair.

This update discusses the decision of *MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94.

BACKGROUND

In late 2022, MoneySmart (which has operations in Singapore, Hong Kong, as well as presence in Taiwan and the Philippines) launched an in-house insurance brand – "Bubble-gum" – which offers direct-to-consumer digital insurance products such as travel insurance and vehicle insurance for the Singapore market.

Mr Musienko was employed by MoneySmart as the Head of Technology at its Bubblegum division from 4 July 2022 to 12 January 2024. During this period of employment, Mr Musienko was responsible for the creation of the Bubblegum platform and mobile application, as well as to ensure that this platform worked properly. The employment contract between Mr Musienko and Money Smart ("**Employment Contract**") contained both a non-competition and non-solicitation clause (at Clause 8) and a confidentiality clause (at Clause 9).

Like MoneySmart, MoneyHero also has an in-house insurance brand – Seedly Travel Insurance – distributed by one of its subsidiaries. On 15 January 2024, Mr Musienko commenced employment with CAG Regional Singapore Pte Ltd (another subsidiary of MoneyHero) as Head of Engineering, Insurance. CAG Regional Singapore Pte Ltd provides technology support services to the entities within the MoneyHero group.

On 25 January 2024, MoneySmart applied to the court for:

(a) an injunction for a 12-month period commencing from 12 January 2024 to restrain Mr Musienko from acting in breach of Clause 8 of the Employment Contract by "engaging with any business or organisation in Singapore and Hong Kong where [MoneySmart] or its associated companies operates which provides online financial product comparison services"; and

(b) an injunction to restrain Mr Musienko from acting in breach of Clause 9 of the Employment Contract "by using and/or disclosing to any third party … all information about [MoneySmart]".

MoneySmart also sought damages from Mr Musienko in respect of losses it had suffered as a result of the latter's breach of Clauses 8 and 9 of the Employment Contract.

On the same day, MoneySmart filed *an ex parte* application seeking interim injunctions. At an urgent hearing, interim injunctions were granted upon

MoneySmart's undertaking not to enforce those injunctions against Mr Musienko until after full arguments had been heard from the parties and the court determines that those injunctions should continue.

On 8 February 2024, Mr Musienko applied to set aside the interim injunctions.

THE HIGH COURT'S DECISION

The High Court discharged the interim injunctions granted to MoneySmart.

KEYPOINT

An employer applying for an interim injunction in respect of a restraint of trade clause must show a good arguable case that the clause has been or is likely to be breached.

In *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, the Court of Appeal identified a two-step test for determining whether a restraint of trade clause is enforceable, namely, (a) whether the restraint of trade protects a legitimate interest of the employer, (b) if so, then the restraint of trade will be enforceable if it is reasonable in the interests of the parties and in the public interest.

In the present case, the High Court held that MoneySmart had failed to establish a legitimate proprietary interest in maintaining a stable and trained workforce. The High Court did not accept MoneySmart's bare assertion that it had offered training in the "specialised field" of the digital insurance industry to build up Mr Musienko's expertise in his area of employment. Based on Mr Musienko's CV and his affidavit evidence, the High Court was satisfied that Mr Musienko possessed relevant experience in the fintech industry prior to his employment with MoneySmart.

While the High Court held that the first of the two-step test in *Man Financial* was not satisfied and therefore Clause 8 of the Employment Contract cannot be enforced, the High Court nevertheless proceeded to consider the geographical scope and temporal scope of Clause 8 for the sake of completeness.

The High Court held that it is crucial that there is a close connection between the geographical scope of the restriction and the work done by the employee prior to leaving. In the present case, the High Court noted that Clause 8 was too wide in geographical scope because it extended to South East Asia, whereas Bubblegum was only offered to Singapore residents. The High Court also considered that the temporal scope of 12 months was unreasonable, and the cascading duration in Clause 8 (i.e. providing for shorter durations if the Court finds the longer duration unenforceable) was also deemed unfair to Mr Musienko. Clause 8 was therefore unenforceable.

The High Court rejected MoneySmart's bare assertion that Mr Musienko had access to confidential information and trade secrets belonging to MoneySmart. The High Court held that much of the alleged confidential information had already been publicly shared by MoneySmart and MoneySmart had not treated the information as confidential until the present proceedings. None of the information had been labelled as "confidential", and steps had not been taken to inform its staff that information shared with employees in the course of business was confidential.

The High Court therefore held that there is no good arguable case that Mr Musienko had accessed confidential information belonging to MoneySmart and Mr Musienko could not have breached Clause 9 of the Employment Contract. Accordingly, the interim injunctions against Mr Musienko were set aside.

COMMENTARY

For the second time this year, the High Court rejected an employer's attempt to restrain its former employee from working for a competitor. In both cases, the employer unsuccessfully sought to restrain its former employee by way of interim injunctions. An earlier update on the other High Court case, *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29, may be accessed at this link.

These cases illustrate the considerable challenges employers face when seeking to enforce restraint of trade clauses against their employees. Although employment contracts often contain a restraint of trade clause agreed upon by both parties, this does not mean that such a clause is legally enforceable. The law requires the clause to be reasonable in terms of scope, geographical area, and duration, and to protect legitimate business interests. Before enforcing such a clause, a careful and considered analysis of the facts and circumstances is necessary to assess its enforceability in any given case. As these recent decisions demonstrate, a bare and unsubstantiated assertion that legitimate proprietary interests are being protected by such clauses will not be sufficient.

The Ministry of Manpower has announced that it is developing guidelines regarding restraint of trade clauses in employment contracts, due to be released in the second half of this year. Such guidelines will no doubt provide further guidance for both employers and employees on the application of such clauses.

If you have any questions or comments on this article, please contact:

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