

Hi-P International Ltd v Tan Chai Hau and others
[2020] SGHC 128

Case Number : Suit No 224 of 2020 (Summonses No 1569, 1572 and 2025 of 2020)
Decision Date : 24 June 2020
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Kong Man Er, Chua Xyn Yee and Chan Ming Li Elizabeth (Drew & Napier LLC) for the plaintiff; Christopher Anand s/o Daniel (Advocatus Law LLP) for the first defendant; Second defendant absent and unrepresented; Paul Seah Zhen Wei and Yeow Yuet Cheong (Tan Kok Quan Partnership) for the third defendant.
Parties : Hi-P International Limited — Tan Chai Hau (Chen Zaihao) — Shih, Cheng-Chieh — Tan Ping Eng

Civil Procedure – Interim orders

Civil Procedure – Injunctions

24 June 2020

Judgment reserved.

Choo Han Teck J:

1 The plaintiff is a company incorporated and publicly listed in Singapore. It describes itself as a manufacturer and seller of components in the wireless telecommunications, consumer electronics, automotive and computing industries. The defendants are all former employees of the plaintiff. The first defendant left the plaintiff's employ in April 2019, and joined another company, Kunshan Kersen Science & Technology Co, Ltd. ("Kunshan Kersen") in October 2019 as its Chief Executive Officer. Kunshan Kersen is a company incorporated and publicly listed in China. The first defendant is also a director of Kersen Science and Technology (Singapore) Pte Ltd. ("Kersen Singapore"), a Singapore-incorporated company and a wholly-owned subsidiary of Kunshan Kersen. The second defendant allegedly left the plaintiff's employ in October 2019, and joined Kunshan Kersen sometime between end-2019 and early-2020. The third defendant's last day with the plaintiff was 6 September 2019, and he joined Kunshan Kersen in October 2019 as its Tooling Senior Director.

2 In this suit, the plaintiff claims that the defendants breached various confidentiality, non-solicitation and non-compete clauses in their employment contracts, and that the first defendant induced the second and third defendants' breaches of contract. It alleges that Kunshan Kersen and Kersen Singapore are its competitors, which the first and third defendants deny. In addition to damages to be assessed, the plaintiff seeks a permanent injunction to, *inter alia*, restrain one or more of the defendants from revealing its trade secrets and confidential information to Kunshan Kersen or Kersen Singapore, poaching its employees, customers and suppliers, as well as inducing any of its former and current employees to breach the confidentiality, non-solicitation and non-compete clauses in their contracts. The second defendant is currently outside of jurisdiction in China, and has not yet been served with the writ of summons. In their pleadings, the first and third defendants dispute the enforceability of the relevant clauses, and the plaintiff's allegations that they had breached the same.

3 Before me, the plaintiff applied:

(a) under Summons No 1572 of 2020 for an interim injunction against the first and third defendants ("Interim Injunction Application");

(b) under Summons No 2025 of 2020 for leave to adduce further evidence in the Interim Injunction Application ("Further Evidence Application"); and

(c) under Summons No 1569 of 2020 for an order that Annex 1 of the 2nd affidavit of Zheng Yunfan filed on 2 April 2020 ("Annex 1") in this suit be sealed from non-parties to the Interim Injunction Application, and that any reference to the names of the persons in Annex 1 in their capacities as customers, agents or suppliers of the plaintiff or its associated companies in all documents, records or orders made or filed in this suit be redacted ("Sealing Order Application").

4 I first deal with the Further Evidence Application. The further evidence in question is an affidavit by Mr Chen Wang, an employee in the plaintiff's IT department. Mr Chen Wang's evidence is that in mid-April 2019, shortly before the first defendant left the plaintiff's employment, the first defendant asked Mr Chen Wang for assistance with his work laptop. Mr Chen Wang said that the first defendant's request required him to format the laptop's hard drive, which would result in a loss of data and affect the plaintiff's ability to investigate whether any information had been copied from the laptop. Mr Chen Wang also recalled the first defendant saying that he had made a backup copy of the data in an external hard drive. However, when the first defendant left the plaintiff, his work laptop apparently contained no (or few) files, and he did not hand any data storage devices to the plaintiff.

5 I will grant the leave for this application by the plaintiff. I am satisfied that Mr Chen Wang's evidence is relevant to the plaintiff's allegation that the first defendant had taken its confidential information when he left its employment, which is in turn relevant to the question of whether the first defendant ought to be restrained on an interim basis from disclosing the plaintiff's confidential information. The evidence appears credible, and I accept the plaintiff's explanation that it has introduced the evidence at this stage because it only discovered the matter recently on 14 May 2020 in the course of its investigations.

6 In deciding whether to grant the Interim Injunction Application, the court will consider:

(a) whether there is a serious question to be tried;

(b) if there is, whether damages would be an adequate remedy; and

(c) where the balance of convenience lies.

Although this is purportedly an application for an interim injunction, and it is clear that all the parties considered it as such, the plaintiff did not include the words "until the trial of or determination of this action or further order, whichever may be earlier" in the relevant prayers (*ie*, prayers 2 to 6). Wherever I grant any of these prayers below, it should thus be taken as including the said words.

7 Before me, counsel for the plaintiff, Ms Kong Man Er, made an oral application to amend the wording of prayers 2 and 3 of the Interim Injunction Application. I will allow the plaintiff's amendment, but emphasise that such belated applications should be avoided in future. As amended, the prayers are that:

2. The **1st Defendant be restrained**, pursuant to Clause 3.2 of the 1st Defendant's Confidentiality Undertaking..., **from using** for his own benefit or gain **or revealing to [Kunshan Kersen] or [Kersen Singapore] any trade secrets or confidential information** listed in

paragraph 1 of the Particulars of the Statement of Claim served pursuant to the 1st Defendant's Request for Further and Better Particulars (dated 16 April 2020) belonging to the Plaintiff or any of the Plaintiff's associated companies that had come to his knowledge during the period of his employment with the Plaintiff;

3. The **3rd Defendant be restrained**, pursuant to Clause 3.2 of the 3rd Defendant's Confidentiality Undertaking..., **from using** for his own benefit or gain **or revealing to Kunshan Kersen or Kersen Singapore any trade secrets or confidential information** listed in **paragraph 2 of the Particulars of the Statement of Claim and Reply to Defence of the 3rd Defendant (filed on 13 May 2020)** belonging to the Plaintiff or any of the Plaintiff's associated companies that had come to his knowledge during the period of his employment with the Plaintiff

[emphasis added]

8 In my view, there is a serious question to be tried as to whether the plaintiff's claim that the confidentiality clause in the first and third defendants' employment contracts are enforceable, and whether the said defendants had breached the clause. The former issue depends on whether the clause is an unreasonable restraint on trade. This requires a difficult balancing exercise between an employer's legitimate interest in protecting its trade secrets and confidential information, and the interests of its former employees in using the skills and experience they have gained in order to earn a living, as well as the wider public interest in favour of competition.

9 Mr Christopher Daniel, and Mr Paul Seah, counsel for the first and third defendants respectively, argued that the plaintiff failed to sufficiently particularise the confidential information which it seeks to protect. Specificity is a matter of degree. I agree with counsel that the original wording of prayers 2 and 3 was too wide, in that it referred generally to "any trade secrets or confidential information" belonging to the plaintiff. Based on the amended wording, however, I am satisfied that most of the categories of information are sufficiently specific for the first and third defendants to know what they are prohibited from disclosing.

10 As to whether the first and third defendants had breached their confidentiality obligations (if any), my view is that the plaintiff has raised sufficient questions regarding the circumstances surrounding the defendants' departure from the plaintiff, and their subsequent employment at Kunshan Kershen. Mr Chen Wang's evidence, as set out at [4] above, suggests that the first defendant had at least the opportunity to copy the plaintiff's confidential information before his departure. Other officers from the plaintiff have given evidence that it had made a bid for a particular tender to supply plastic components for use in speakers. According to the plaintiff, the second and third defendants were working on the tender, but resigned in quick succession in the midst of preparations and then followed the first defendant in joining Kunshan Kersen. Ms Kong pointed out that despite the plaintiff's allegation that the first defendant induced the third defendant's departure, the latter has yet to identify the person who made him the offer to join Kunshan Kersen. Subsequently, the plaintiff was informed that it had been successfully selected for the tender, but it eventually lost the same to Kunshan Kersen. Two-thirds of the plaintiff's project team for the tender also apparently received calls from Kunshan Kersen soliciting their employment.

11 The plaintiff says that all these suggest that the first and third defendants had misused its trade secrets and confidential information relating to, *inter alia*, the allocation of projects amongst its staff, and its costings, pricings and other details of its bid for the tender. Perhaps there was nothing insidious about all of this, and the plaintiff's allegations are either untrue or purely coincidental. The first and third defendants have vigorously contested these allegations in their affidavits. Ultimately, however, I do not think that the plaintiff's case is so frivolous or vexatious that it has no chance of

succeeding at trial. If the injunction is refused, and the plaintiff succeeds at trial, damages may not be an adequate remedy. Beyond a loss of profits, the misuse of the plaintiff's trade secrets and confidential information may result in a loss of customer connections and goodwill, as well as disruptions to the plaintiff's workforce, which are not easily compensable in monetary terms, if at all.

12 That brings me to the question of the balance of convenience. In my view, granting prayers 2 and 3 (as amended) carries a lower risk of injustice than not doing so. It appears more likely to me that the information enumerated in the amended prayers 2 and 3 (such as customer lists and quotations for projects) constitutes protectable, confidential information belonging to the plaintiff, as opposed to forming part the skills and knowledge of the first and third defendants. Once the confidentiality of such information is breached, it is permanently lost. In the circumstances, my view is that the balance of convenience favours the preservation of this confidentiality, pending the determination of this action. I therefore grant the amended prayers 2 and 3 of the Interim Injunction Application with two modifications. First, any trade secrets and confidential information concerning the plaintiff's "associated companies" or "group of companies" is excluded, given that the plaintiff has not even identified these companies. Second, I will exclude the categories of information referring to the plaintiff's "business strategies" and "capabilities [and] team members' skills", as it is unclear what they refer to exactly.

13 As to prayer 2, I order that the first defendant be restrained until the trial of or determination of this action or further order, whichever may be earlier, from using for his own benefit or gain or revealing to Kunshan Kersen or Kersen Singapore the following trade secrets or confidential information listed in paragraph 1 of the Particulars of the Statement of Claim served pursuant to the 1st Defendant's Request for Further and Better Particulars (dated 16 April 2020) belonging to the plaintiff that had come to his knowledge during the period of his employment with the plaintiff:

- (a) The plaintiff's "price negotiations with customers and potential customers and terms of sale to customers, including quotations, cost reductions, cost rebates and special arrangements for each customer".
- (b) The plaintiff's "management of customer accounts such as the periodic review of latest commitments (i.e. production forecasts) from customers and the Total Exposure Limit approved for each customer".
- (c) The plaintiff's "details of projects undertaken or to be undertaken for each customer and monthly financial performance of such projects, including details of products manufactured or to be manufactured, capital expenditure, project life, margin contributions, costs and profit margins".
- (d) The plaintiff's "costings and pricings of their products and services".
- (e) The plaintiff's "existing and potential customers and their specific personnel liaising with or having the authority to approve the award of projects to the Plaintiff for each customer account and for each project".
- (f) The "decisions made by the Plaintiff's investment committee, including decisions relating to significant capital expenditure investments".
- (g) The "monthly profit and loss of each site in the Plaintiff".
- (h) The "human resource matters such as the remuneration, performance appraisals and the

key performance indicators of the employees in the 1st Defendant's team".

(i) The plaintiff's "deployment of specific staff (including function heads, business managers and other executives) to the accounts and projects of specific customers".

14 As to prayer 3, I order that the third defendant be restrained until the trial or determination of this action or further order, whichever may be earlier, from using for his own benefit or gain or revealing to Kunshan Kersen or Kersen Singapore the following trade secrets or confidential information listed in paragraph 2 of the Particulars of the Statement of Claim and Reply to Defence of the 3rd Defendant (filed on 13 May 2020) belonging to the plaintiff that had come to his knowledge during the period of his employment with the plaintiff:

(a) The plaintiff's:

(i) "specific tooling designs and technical information for the tooling projects of customers and potential customers";

(ii) "tooling costings, pricings and quotations for projects of customers and potential customers"; and

(iii) "management of customer accounts such as the periodic review of latest commitments (i.e. production forecasts) for tooling to meet customers' forecasted product demand for up to one year, and information on the costs and profit margins for specific tooling projects undertaken by the Plaintiff".

(b) The plaintiff's "tooling designs".

(c) The plaintiff's:

(i) "monthly profit and loss of each tooling site in the Plaintiff"; and

(ii) "changes to the tooling capacity in each site in the Plaintiff to cater to customers' projects and forecasted allocations to the Plaintiff in respect of such projects, including the Plaintiff's tooling loading, utilisation and productivity rate and outsourcing arrangements".

(d) The plaintiff's "tooling costings, pricings and quotations for projects of customers and potential customers".

(e) The plaintiff's:

(i) "precision tooling designs developed by the Plaintiff for each project";

(ii) "tooling design and fabrication methods and solutions developed by the Plaintiff to address specific design and/or fabrication issues";

(iii) "technical information relating to each project";

(iv) "tooling costings, pricings and quotations relating to each project"; and

(v) "costing systems, processes and procedures developed by the Plaintiff to compute their tooling costings and pricings".

(f) the plaintiff's "deployment of specific staff (including function heads, tooling managers and other executives) to the accounts and projects of specific customers".

15 Next, the plaintiff also prayed that:

4. The **3rd Defendant be restrained**, pursuant to Clause 3.5.2 of the 3rd Defendant's Confidentiality Undertaking..., **from**, directly or indirectly, in his capacity as an employee or representative of Kunshan Kersen or Kersen Singapore, **soliciting or transacting business** in respect of **any of the types of products and/or services set out in Annex A**, from or with **any of the persons as set out in Annex 1** of the 2nd Affidavit of Zheng Yunfan (郑云帆) filed herein, until 6 September 2020 or such other time or period as this Honourable Court deems fit;

5. The **3rd Defendant be restrained**, pursuant to Clause 3.5.3 of the 3rd Defendant's Confidentiality Undertaking (as pleaded at paragraph 31(d) of the Statement of Claim), **from** directly or indirectly, for his own benefit or for the benefit of Kunshan Kersen, Kersen Singapore and/or any associated company of Kunshan Kersen, **soliciting for purposes of employment** or association **any employee of the Plaintiff** who was employed by the Plaintiff on 6 September 2019 or within the three month period prior to 6 September 2019, until 6 September 2020 or such other time or period as this Honourable Court deems fit;

[emphasis added]

16 I dismiss prayer 4. As Mr Seah pointed out, the terms of this prayer are too broad. First, it goes beyond the wording of the non-solicitation clause in the third defendant's employment contract, which the plaintiff relies upon in the main suit. The said clause is limited to the "non-solicitation" of business from certain customers or suppliers of the plaintiff, whereas prayer 4 also includes "transacting business" with them. This would mean that the third defendant would be prevented from working with any such customers or suppliers of the plaintiff, even if Kunshan Kersen had routinely been doing business with them long before the third defendant joined it.

17 Further, the enforceability of the non-solicitation (of business) clause is doubtful, because it purports to restrain the third defendant from soliciting the sale or purchase of "all products and services" from certain customers and suppliers of the plaintiff. This would potentially include products and services in which the plaintiff has no legitimate proprietary interest. For this reason, even if there is a serious question to be tried on this issue, I do not think the balance of convenience favours the granting of such a draconian order.

18 I also dismiss prayer 5. The plaintiff has not shown that there is a serious question to be tried as to whether the third defendant breached its purported obligation not to poach the plaintiff's employees. There is nearly no evidence in this regard, save that one of the plaintiff's employees allegedly received an offer letter from Kunshan Kersen and that employee was in the same department as the third defendant when they were employed by the plaintiff. I find this claim to be completely speculative.

19 Lastly, the plaintiff also prayed that:

6. The **1st Defendant be restrained from procuring or inducing any former or existing employee of the Plaintiff to breach** any of **the terms of his or her employment contract** with the Plaintiff **prohibiting** the former or existing employee of the Plaintiff from:

(a) **using** for his or her own benefit or gain **or revealing to Kunshan Kersen or Kersen**

Singapore any trade secrets or confidential information belonging to the Plaintiff or any of the Plaintiff's associated companies that had come to his or her knowledge during the period of his or her employment with the Plaintiff;

(b) directly or indirectly, in his or her capacity as an employee or representative of Kunshan Kersen or Kersen Singapore, **soliciting or transacting business** in respect of **any of the types of products and/or services set out in Annex A**, from or with any customer, agent or supplier of the Plaintiff or the Plaintiff's associated companies:

(i) with whom the employee had transacted business on behalf of the Plaintiff or any of the Plaintiff's associated companies in the twelve months immediately preceding the employee's termination of his or her employment with the Plaintiff; or

(ii) to whom the employee had been involved in planning a presentation or approach in the twelve months immediately preceding the employee's termination of his or her employment with the Plaintiff, for a period of one year following the termination of the employee's employment with the Plaintiff; and/or

(c) directly or indirectly, for his or her own benefit or for the benefit of Kunshan Kersen, Kersen Singapore and/or any associated company of Kunshan Kersen, **soliciting for purposes of employment** or association **any employee of the Plaintiff** who was employed by the Plaintiff on the date of termination of the employee's employment with the Plaintiff or within the three month period immediately preceding such date, for a period of one year following the termination of the employee's employment with the Plaintiff...

[emphasis added]

20 In my view, the plaintiff's evidence discussed at [10] above raises a serious question as to whether the first defendant poached the second and third defendants and induced them to breach their non-complete clauses by joining Kunshan Kersen. However, it cannot be inferred from that same evidence at this stage that the first defendant was also responsible for inducing the second and third defendants to use the plaintiff's confidential information regarding the tender to assist Kunshan Kersen in "snatching" the tender, soliciting the plaintiff's potential customer and poaching its employees who were working on the tender (as opposed to the second and third defendants engaging in such conduct of their own accord).

21 What prayer 6 seeks to do is restrain the first defendant from inducing the plaintiff's former or existing employees to breach their confidentiality and non-solicitation (of business and employees) clauses. Even if there is a serious question to be tried on the plaintiff's claim, its case showing that the first defendant had induced the second and third defendants' breaches of their confidentiality and non-solicitation (of business and employees) clauses is, at present, inadequate and I am thus of the view that the balance of convenience weighs against the grant of prayer 6.

22 I now turn to the Sealing Order Application. According to the plaintiff, Annex 1 contains a list of some of the persons who the third defendant is prohibited from soliciting under his employment contract. The plaintiff seeks a sealing order on the basis that the list is highly confidential and commercially sensitive. The first and third defendants argue that this is untrue. Mr Daniel even says that the relationship between some of the persons listed and the plaintiff is publicly available.

23 Whether this list is confidential is likely to be contested in detail at trial. In interlocutory proceedings such as the present, the court is limited to relying upon the affidavit evidence of the

parties to resolve such disputed issues. At this stage, I accept that there is a likelihood that Annex 1 contains confidential information, and that its disclosure may cause substantial damage to the plaintiff (*ie*, by resulting in a breach of its confidentiality obligations owed to the persons listed, or by allowing its customers and suppliers to bypass it resulting in a loss of business). Mr Daniel and Mr Seah also did not dispute Ms Kong's submission that the sealing order would not undermine public confidence in the administration of justice. I see no reason to disagree, this being an essentially private commercial dispute. I therefore grant an order in terms of prayers 1 and 2 of the Sealing Order Application.

24 Costs are reserved to the trial judge.

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