

Ocean Tankers (Pte) Ltd (under judicial management) v Rajah & Tann Singapore LLP and another matter

[2021] SGHC 144

Case Number : Originating Summons No. 666 of 2020 (Summons No. 4429 of 2020) and Originating Summons No. 704 of 2020 (Summons No. 4417 of 2020)

Decision Date : 21 June 2021

Tribunal/Court : General Division of the High Court

Coram : Kannan Ramesh J

Counsel Name(s) : Ong Ziyang, Clement and Khoo Shufen Joni (Damodara Ong LLC) for the applicant in OS 666; Christopher Anand s/o Daniel and Yeo Yi Ling Eileen (Advocatus Law LLP) for the applicant in OS 704; Toby Landau QC (Essex Court Chambers Duxton) (instructed) and Liew Wey-Ren Colin (Colin Liew LLC) for the respondent in OS 666 and OS 704.

Parties : Ocean Tankers (Pte) Ltd (under judicial management) — Rajah & Tann Singapore LLP — Hin Leong Trading (Pte) Ltd (in Liquidation)

Civil Procedure – Parties – Joinder

21 June 2021

Kannan Ramesh J:

Introduction

1 The applicants in Originating Summons Nos 666 and 704 of 2020 (“OS 666” and “OS 704” respectively and “the Injunction actions” collectively), Ocean Tankers (Pte) Ltd (“OTPL”) and Hin Leong Trading (Pte) Ltd (“HLT”) respectively, sought injunctions against the respondent Rajah & Tann Singapore LLP (“R&T”), a law firm. The injunctions were to restrain R&T from:

- (a) advising and acting for OTPL and HLT in Originating Summons Nos 452 and 417 of 2020 respectively (“the JM applications” collectively), which were applications to place the companies under judicial management; and
- (b) advising and acting for the interim judicial managers and the judicial managers, if appointed, of OTPL and HLT.

Procedural history

2 The directors of OTPL and HLT, Mr Lim Chee Meng (“Mr Evan Lim”) and Ms Lim Huey Ching (“the Lims” collectively), who were also shareholders of the companies, procured OTPL and HLT to file the JM applications. The Lims also procured OTPL and HLT to file the applications for the appointment of interim judicial managers. I allowed both applications for the appointment of interim judicial managers.

3 The interim judicial managers of OTPL and HLT thereafter retained the services of R&T. Following the appointment of R&T, the Lims procured OTPL and HLT to file the Injunction actions. It would appear that this was done in response to R&T being retained. However, the Lims did not procure OTPL and HLT to apply for interim injunctions pending the disposal of the Injunction actions.

4 The JM applications were subsequently granted and the interim judicial managers of OTPL and HLT were appointed the judicial managers of the companies. The judicial managers of OTPL and HLT

also retained the services of R&T.

5 Subsequently, R&T applied in Summons Nos 4317 of 2020 (as regards OS 666) and 4318 of 2020 (as regards OS 704) to strike out the Injunction actions under O 18 r 19(1)(a), (b) or (d), and alternatively under O 92 r 4 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“the Striking-Out applications”). Shortly before the hearing of the Striking-Out applications, Mr Lim Oon Kuin (“Mr O K Lim”) and the Lims applied in Summons Nos 4429 of 2020 (as regards OS 666) and 4417 of 2020 (as regards OS 704) (“the Joinder applications”) to add themselves as parties to the Injunction actions. I shall hereinafter collectively refer to Mr O K Lim and the Lims as the “Lim Family”.

6 The Striking-Out applications and the Joinder applications were heard together on 4 November 2020. I allowed the Striking-Out applications and struck out the Injunction actions on the ground that the Lims did not have standing as directors of OTPL and HLT to cause the companies to bring them. Further, I disallowed the Joinder applications.

7 The Lims procured OTPL and HLT to appeal against my decision on the Striking-Out applications. Also, the Lim Family sought leave to appeal against my decision on the Joinder applications. On 25 February 2021, I provided full grounds of my decision on the Striking-Out applications in *Ocean Tankers (Pte) Ltd (under judicial management) v Rajah & Tann Singapore LLP and another matter* [2021] SGHC 47 (“the Striking-Out GD”).

8 On 8 February 2021, I heard the applications for leave to appeal against my decision on the Joinder applications and declined to grant leave. On 18 February 2021, the Lim Family filed Originating Summons 6 and 7 of 2021 in the Court of Appeal for leave to appeal to the Court of Appeal. On 9 April 2021, the Court of Appeal granted leave to appeal against my decision on the Joinder applications. The Lim Family duly filed an appeal to the Court of Appeal on 16 April 2021. I now set out the full grounds for my decision on the Joinder applications.

Background

9 The salient background facts were set out in the Striking-Out GD and are repeated here. HLT is in the business of oil trading. OTPL is a ship chartering and management company. They were part of a group of companies with interlocking business interests that were owned and managed by the Lim Family. Mr O K Lim is the patriarch of the Lim Family. The Lim Family are the sole shareholders of OTPL and HLT. At all material times, the Lims were also the directors of both companies. Mr O K Lim was a director of both companies until he stepped down on 17 April 2020.

10 In or around the first quarter of 2020, HLT encountered financial difficulties and was consequently unable to meet its debt obligations. On 8 April 2020, HLT engaged R&T to advise on issues arising from its insolvency. HLT’s financial woes in turn impacted OTPL’s business and financial position given their interlocking interests. OTPL too engaged R&T to advise on restructuring options that were available to it. On 17 April 2021, OTPL and HLT filed Originating Summons Nos 406 and 405 of 2020 respectively, applications under s 211B of the Companies Act (Cap 50, 2006 Rev Ed) (“Companies Act”) for a debtor-in-possession restructuring, pending the formulation and approval of a debt restructuring plan. R&T filed both applications on behalf of the companies. Mr O K Lim stepped down as director of both companies shortly before the applications were filed. The applications were subsequently withdrawn with leave of court on 27 April 2020 (by HLT) and on 12 May 2020 (by OTPL) in the face of significant creditor resistance and the absence of any relevant creditor support (a precondition for a filing under s 211B). The creditors’ resistance and lack of support was a result of certain admissions of egregious conduct by Mr O K Lim in his affidavit filed in support of Originating Summons 405 of 2020. The Lims thereafter procured OTPL and HLT to file the JM applications and the

applications for appointment of interim judicial managers. These applications were also filed by R&T on behalf of the companies. Interim judicial managers were appointed on 27 April 2020 (for HLT) and 12 May 2020 (for OTPL). The interim judicial managers were appointed as the judicial managers of both companies on 7 August 2020.

11 As stated above, following the engagement of R&T by the interim judicial managers of OTPL and HLT, the Lims procured the companies to file the Injunction actions. The Injunction actions were brought on the basis that (a) confidential information of OTPL, HLT, and the Lim Family on their respective business interests and activities had been conveyed to R&T, and (b) such information was at risk of disclosure to the interim judicial managers and the judicial managers if R&T was not restrained from acting for them. Shortly before the hearing of the Striking-Out applications, the Lim Family sought to be joined to the Injunction actions as co-plaintiffs pursuant to the Joinder applications on the basis that some of the confidential information that was at risk of disclosure was theirs.

12 Having set out the background, I now turn to the parties' cases on the Injunction actions and the Joinder applications. It is necessary to traverse the former as it sets the context for the latter.

The parties' cases

The Lim Family's case

13 The Lim Family relied on O 15 rr 6(2)(b)(i) and 6(2)(b)(ii) of the Rules of Court (R 5, Cap 322, 2014 Rev Ed) ("Rules") as the primary basis of the Joinder applications. The requirements for joinder are set out in the following terms:

Misjoinder and nonjoinder of parties (O. 15, r. 6)

...

(2) Subject to the provisions of this Rule, at any stage of the proceedings in any cause or matter, the Court may, on such terms as it thinks just and either of its own motion or on application —

...

(b) order any of the following persons to be added as a party, namely:

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in the cause or matter may be effectually and completely determined and adjudicated upon;

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

14 Alternatively, the Lim Family sought joinder on the basis of the inherent powers of the Court under O 92 r 4 of the Rules which states:

Inherent powers of Court (O. 92, r. 4)

4. For the avoidance of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

15 The substantive case in the Injunction actions was that R&T had advised and acted for the Lim Family and their stable of companies, including OTPL and HLT, from the early 1990s. As a result, R&T built relationships with the Lim Family, and acquired knowledge of their business affairs and the business affairs of many of those companies. In view of this long relationship, when OTPL and HLT faced financial difficulties, R&T was engaged by the Lim Family and the companies to advise on how their respective interests could be best protected including the restructuring options that were available to the latter. In other words, there was a joint retainer by the Lim Family and the companies of R&T ("the Joint Retainer").

16 Pursuant to the Joint Retainer, the Lim Family, OTPL and HLT provided R&T with confidential information (including documents). In other words, each party shared confidential information concerning their affairs. Such information included the companies' audited financial statements and management accounts, documents relating to OTPL's vessels and bareboat charterparties, and information relating to the Lim Family's interests. The information was potentially relevant to the interim judicial managers and judicial managers of OTPL and HLT in any investigations they might undertake into the Lim Family's management of OTPL and HLT; and/or any adverse position they might take in the administration of the insolvency against the Lim Family and the management of OTPL and HLT. It was therefore argued, *inter alia*, that the Injunction actions ought to be granted to protect the confidentiality of the information that was disclosed by the Lim Family, OTPL and HLT to R&T.

17 It was submitted in the alternative that:

(a) R&T owed an equitable duty of confidence by reason of the confidential nature of the information that was disclosed, that there was a "real and sensible possibility" of such information being misused in breach of such duty of confidence, and that the breach ought to be restrained by the grant of injunctive relief; and

(b) in the interests of the proper administration of justice, the court ought to exercise its supervisory jurisdiction to regulate the conduct of its officers, and restrain R&T from acting against their former clients about whom they had confidential information.

18 The arguments in the Injunction actions were advanced by the Lims on behalf of OTPL and HLT, as Mr O K Lim was no longer an officer of the companies.

19 The arguments in the Joinder applications echoed the arguments in the Injunction actions. In essence, the Lim Family argued that pursuant to the Joint Retainer, they had disclosed and caused OTPL and HLT to disclose confidential information (including documents) concerning their respective business affairs to R&T. Such information was disclosed for the purpose of receiving advice on how OTPL, HLT and the Lim family might protect their respective positions. However, by acting for the interim judicial managers and judicial managers of OTPL and HLT, R&T was in a position to share the information with them. This would assist the interim judicial managers and the judicial managers to take adverse positions against the Lim Family. The Lim Family argued that the outcome of the Injunction actions would be determinative of whether they could commence a separate action on the same basis to restrain R&T from acting for the interim judicial managers or judicial managers of OTPL and HLT. Thus, the result of the Injunction actions without their participation would have a "cascading impact" on their rights.

20 The Lim Family therefore submitted that they ought to be joined as co-plaintiffs to the Injunction actions under O 15 r 6(2)(b)(i) of the Rules as (a) their legal rights (to maintain the confidentiality of the information disclosed to R&T) would be affected by the determination of the Injunction actions; and (b) joinder would prevent multiplicity of actions and enable the court to determine the substantive dispute between all the relevant and interested parties in one action, thereby avoiding the prospect of the court trying the same issues more than once with possibly different results.

21 Alternatively, the Lim Family submitted that they ought to be joined as co-plaintiffs to the Injunction actions on the basis of O 15 r 6(2)(b)(ii) of the Rules because their claims against R&T were based on the same facts and were for the same reliefs as the claims brought by OTPL and HLT.

22 I should point out that the Lim Family did not make any written or oral submissions on joinder pursuant to the exercise of the court's inherent powers under O 92 r 4 of the Rules. The point appeared to have been abandoned and I therefore do not deal with it in these grounds.

R&T's case

23 R&T submitted that the Injunction actions were unmeritorious as they were both factually and legally unsustainable. As to factual unsustainability, R&T submitted that there was no global engagement of R&T by the Lim Family's stable of companies for the purpose of a "group restructuring". Nor did the Lim Family engage R&T to protect their personal interests. R&T was at all times retained only by OTPL and HLT. In short, there was no Joint Retainer. Further, there was no implied retainer with the Lim Family as R&T neither regarded nor conducted themselves as having been retained by the Lim Family. There was therefore no reasonable basis for the Lim Family to have regarded R&T as acting for them or for R&T to have regarded the Lim Family as their clients.

24 R&T submitted that the Injunction actions were legally unsustainable for the following reasons:

(a) The confidential information in issue in the Injunction actions belonged to OTPL and HLT and not to any other entity or person, including the Lim Family. As the information belonged to the companies, the interim judicial managers and the judicial managers were entitled to the information on the basis of their statutory power to take possession of the companies' property. There was therefore no basis to restrain R&T from sharing the information with them.

(b) The confidential information allegedly disclosed by the Lim Family was described in vague and unclear terms, suffering from a lack of detail. In particular, Mr Evan Lim was unable to particularise the information, and identify the parties to whom it belonged.

(c) Even taking the Lim Family's case at its highest (*ie*, that R&T was retained under the Joint Retainer), in the absence of specific instructions to the contrary, information disclosed pursuant to a joint retainer was not confidential as between the parties to the joint retainer. Thus, unless there were specific instructions to the contrary, the Lim Family could not assert that (a) OTPL and HLT were not entitled to the information they had disclosed to R&T pursuant to the Joint Retainer, and (b) R&T was in breach of confidence in sharing such information with OTPL and HLT. R&T asserted that the Lim Family did not give instructions that the information that they had disclosed should not be shared. As the information disclosed by the Lim Family could be shared with OTPL and HLT, the interim judicial managers and the judicial managers were entitled to it pursuant to their statutory power to take possession of the companies' property.

(d) Information which R&T had received from entities which they did not represent was not

confidential as it was disclosed with the consent of those entities.

(e) R&T's appointment by the interim judicial managers and the judicial managers of OTPL and HLT was a natural extension of their original brief, *ie*, to file the JM applications and advise on restructuring solutions for the companies. OTPL and HLT must therefore be taken to have consented to R&T acting for the interim judicial managers and the judicial managers.

(f) OTPL and HLT's interests were not "adverse" to the interests of their respective interim judicial managers and judicial managers in any relevant sense. Instead, the interests of the companies on the one hand, and their interim judicial managers and judicial managers on the other were aligned. In acting for the interim judicial managers and the judicial managers, R&T was therefore not acting against the interests of OTPL and HLT.

25 R&T also submitted that they had put in place effective measures to prevent the improper disclosure of confidential information. For example, not acting in matters adverse to the personal rights and liabilities of the Lim Family, allocating separate teams of lawyers to handle the OTPL and HLT engagements, ensuring that there was no sharing of information between the teams, and not acting or advising on any contentious matter which would put them in a position of conflict of interest.

26 R&T further submitted that there was no basis for the court to exercise its supervisory jurisdiction to restrain them in the interest of the proper administration of justice. First, the proper administration of justice would be served by restraining *individual* lawyers whose conduct was regarded by the court as inappropriate, and not the entire law firm. Second, a high threshold needed to be crossed in order to invoke the court's supervisory jurisdiction. This would be the case where there was an actual or reasonably perceived risk that the proper administration of justice would be prejudiced unless the lawyers in question were restrained from acting. Such risk, whether actual or reasonably perceived, did not arise as the Lim Family's argument on supervisory jurisdiction was based upon the same factual premise that underpinned their case on confidentiality, *ie*, that the information they had disclosed to R&T pursuant to the Joint Retainer could not be shared with the other parties to the Joint Retainer. Accordingly, both arguments therefore stood and fell on the same basis – whether the information was confidential vis-à-vis OTPL and HLT, and by extension their interim judicial managers and judicial managers.

27 As there was no breach of confidentiality in R&T disclosing to OTPL and HLT (and by extension their interim judicial managers and judicial managers) the information that was disclosed by the Lim Family, the Joinder applications did not satisfy either O 15 rr 6(2)(b)(i) or 6(2)(b)(ii).

My decision

The law

28 In *ARW v Comptroller of Income Tax and another and another appeal* [2019] 1 SLR 499 ("ARW") at [40], the Court of Appeal held that the question of whether joinder should be allowed under either or both limbs of O 15 r 6(2)(b) of the Rules should be approached in a two-part inquiry, with the first part being entirely non-discretionary and the second discretionary.

29 Under the first limb, *ie*, O 15 r 6(2)(b)(i) of the Rules, the non-discretionary inquiry is whether it is necessary, and not merely desirable, to order joinder. The key question is whether there is anything to prevent the action as originally drawn from being effectually and completely determined thereby making joinder necessary. If the non-discretionary inquiry is satisfied, the court must, under the

second limb, consider whether joinder *should* be ordered, having regard to all the factors which are relevant to the balance of justice in a particular case: *ARW* at [41]. One such factor is the prejudice to the party seeking to be joined if joinder is not granted: *ARW* at [45].

30 Thus, where the party seeking to be joined has *no legal interest* in the outcome of the action, the threshold requirement of necessity will not be crossed, and joinder under O 15 r 6(2)(b)(i) of the Rules ought not be granted. In the present case the threshold of necessity would not be crossed if the information that was disclosed pursuant to the Joint Retainer was not confidential as between the parties thereto. If it could not be shown that R&T would breach confidentiality by disclosing information provided by the Lim Family to OTPL and HLT (and by extension their interim judicial managers and judicial managers as the court appointed officers), there was no basis for a joinder. In such circumstances, the Lim Family would have no legal interest in the outcome of the Injunction actions and accordingly ought not to be joined as parties thereto.

31 Under the second limb, *ie*, O 15 r 6(2)(b)(ii) of the Rules, the non-discretionary inquiry is whether there is a question or issue involving the party sought to be joined which relates to an existing question or issue between the existing parties: *ARW* at [46]. If this inquiry is satisfied, the court must consider whether joinder ought to be granted. In the present case, the parties to the Injunction actions were OTPL and HLT on the one hand and R&T on the other. The Injunction actions related to the issue of whether the information disclosed by the Lim Family pursuant to the Joint Retainer was confidential as between the parties to the Joint Retainer. It follows that if such information was not in fact confidential, there would be no basis for joinder under O 15 r 6(2)(b)(ii) of the Rules.

32 From the above, the Joinder applications turned on one principal issue, that is, whether information disclosed pursuant to a joint retainer could not be shared with the parties thereto on the basis that it was confidential. It is to this issue that I now turn.

Whether there was any basis for confidentiality

33 It is settled law that solicitors may be restrained from acting against a former client if such a restriction is necessary to avoid a significant risk of the disclosure or misuse of confidential information belonging to the former client: *Prince Jefri Bolkiah v KPMG (a firm)* [1999] 2 AC 222 ("*Bolkiah*") at 234. The former client seeking to restrain the solicitors from acting must establish, first, that the solicitors are in possession of information which is confidential to him and to the disclosure of which he has not consented; second, that the information is or may be relevant to the new matter in which the interest of the other client is or may be adverse to his own: *Bolkiah* at 235. Whether the *Bolkiah* rule could be invoked in the present case to restrain R&T from acting for the interim judicial managers and judicial managers of OTPL and HLT therefore turned on whether the information disclosed by the Lim Family to R&T pursuant to the Joint Retainer was confidential as regards OTPL and HLT, and therefore could not be shared with the companies. If not, the Injunction actions, with or without the joinder of the Lim Family, were a non-starter.

34 The two possible categories of the allegedly confidential information disclosed by the Lim Family to R&T pursuant to the Joint Retainer were:

- (a) Information that was disclosed by OTPL and HLT; and
- (b) Information that was disclosed by the Lim Family.

I shall consider each category in turn.

Information that was disclosed by OTPL and HLT

35 It could not be gainsaid that information disclosed by OTPL and HLT was not confidential *vis-à-vis* them. Thus, the issue of restraining R&T from sharing such information with OTPL and HLT on the basis of confidentiality did not even arise.

36 Indeed, it was questionable for the Lim Family to assert confidentiality over information that was disclosed by OTPL and HLT. It was for OTPL and HLT to assert that, and for the reasons set out in the Striking-Out GD, the Lims had no standing to make that case on behalf of the companies.

37 As the information belonged to OTPL and HLT, it would also not be confidential *vis-à-vis* their judicial managers. These court appointed officers had custody and control of “all the property to which the company is or appears to be entitled”: s 227G(1) of the Companies Act, which plainly included information that belonged to the companies. The judicial managers of OTPL and HLT could also exercise and perform all powers conferred and duties imposed on the directors of the companies: s 227G(2) of the Companies Act. Such powers and duties would include the right to receive any information (including documents) of the companies.

38 The interim judicial managers were entitled to exercise all the powers and entitlements of the judicial managers (including the abovementioned), pursuant to the orders of court under which they were appointed (“the IJM Orders”) read with s 227B(10)(b) of the Companies Act. The provision reads as follows:

(10) Nothing in this section shall preclude a Court —

...

(b) from appointing, after the making of an application for a judicial management order and on the application of the person applying for the judicial management order, an interim judicial manager, pending the making of a judicial management order, and such interim judicial manager may, if the Court sees fit, be the person nominated in the application for a judicial management order. *The interim judicial manager so appointed may exercise such functions, powers and duties as the Court may specify in the order.*

[emphasis added]

39 The IJM Orders read in part as follows:

It is ordered that:

...

2. The affairs, business and property of the Company [*ie*, HLT and OTPL] be managed by the Interim Judicial Managers during the period in which the Order for the appointment of the Interim Judicial Managers is in force;

3. The Interim Judicial Managers be empowered and authorised to exercise all powers and entitlements of a judicial manager and all powers and entitlements of directors of the Company conferred by the Companies Act (Cap. 50) (the “Act”) and/or by the memorandum and articles of association of the Company, or by any other applicable law in force, but nothing in this Order shall require the Interim Judicial Managers to call any meetings of the

Company;

...

[emphasis added]

40 Accordingly, the Lim Family had no basis or standing to assert confidentiality as regards information that OTPL and HLT had disclosed to R&T. Also, the interim judicial managers and the judicial managers were fully entitled to receive such information from R&T. For the same reason, the question of the court exercising its supervisory jurisdiction as regards this category of information did not arise.

Information that was disclosed by the Lim Family

41 The remaining question was whether the Lim Family could assert that the information that belonged to them or their other companies (excluding OTPL and HLT) that they had disclosed to R&T could not be shared with OTPL and HLT. As a preliminary observation, it was unclear on what basis the Lim Family could assert confidentiality on behalf of these other companies when they were neither parties to the Injunction actions nor seeking to be joined under the Joinder applications. Putting that to one side, I turn to the applicable legal principles.

42 In *Winters v Mishcon de Reya* [2008] EWHC 2419 (Ch) ("*Winters*"), the claimant, Winters, was the Chief Executive of a prominent charity, the Jewish National Fund ("JNF"), which was represented by the defendant, Mishcons, a law firm. Winters and the JNF became embroiled in an employment dispute, with Winters contending that the JNF had breached his employment contract by changing its management structure such that his position as Chief Executive of the JNF was undermined. Mishcons, on behalf of the JNF, replied, contending that the JNF had not breached Winters' employment contract and that Winters had been suspended from his duties pending investigations into alleged financial misconduct committed by Winters. Winters sought to restrain Mishcons from acting for the JNF on the basis that Mishcons was in possession of confidential information about him as they had advised him in the past on matters similar to that in relation to which they were now acting for JNF against him. Such matters comprised two libel proceedings in which Winters was the plaintiff, and an investigation by the UK Charity Commission, all of which related to Winters' conduct in relation to the finances of the JNF. Winters' primary case was based on an alleged misuse of such confidential information by Mishcons: at [85].

43 Henderson J observed that the case was governed by the *Bolkiah* principles, but found that Winters' case failed at the first hurdle of establishing that "Mishcons were in possession of information which was confidential to Mr Winters and to the disclosure of which Mr Winters had not consented" (at [88]). This was because (at [82]–[83]):

82 ... *no reasonable expectation of confidence arose in respect of that information as between Mr Winters and the JNF, for whom Dr Julius [the Mishcons lawyer] was also acting at the same time. This principle was indeed recognised by Mr Winters himself in an important passage in his cross-examination, when he was asked about one of the matters described in his third statement which he said he had disclosed to Dr Julius in the context of the Charity Commission investigation, as well as in the context of the first proposed libel proceedings. It was of course Mr Winters' case that Dr Julius was also acting for him personally at the time of the Charity Commission investigation, under a joint retainer ...*

83 Mr Winters went on to say that he also felt that Dr Julius was looking out for his interests,

but agreed that he never imparted any information to Dr Julius on the express footing that it was to be confidential between him and Dr Julius and was not to go back to the JNF.

[emphasis added]

44 *Winters* therefore stands for the proposition that where information is voluntarily disclosed by one party to his solicitor in circumstances where there was no reasonable expectation of confidence, *eg*, in respect of a matter for which the solicitor was jointly retained, there generally is no confidentiality of such information as between the other party to the joint retainer *unless* the party disclosing has made it clear that the information was to be regarded as confidential between him and the solicitor.

45 Applying the proposition in *Winters* to the present case, any information that was disclosed by the Lim Family pursuant to the Joint Retainer would not be confidential *vis-à-vis* the other parties thereto (namely OTPL and HLT), *unless* R&T was instructed not to disclose the information to the other parties or must have understood that to be the case. The Lim Family did not put forward any evidence that they had expressly instructed R&T not to share the information they had disclosed pursuant to the Joint Retainer with OTPL and HLT. Indeed, this was, in my view, a highly unlikely scenario. On the Lim Family's case, the information was disclosed to R&T for the purposes of advising on the restructuring of, *inter alios*, OTPL and HLT (see [15] above). It would be contrived for the Lim Family to suggest that the information was not to be shared with OTPL and HLT when the purpose of the disclosure was to facilitate the restructuring of the companies in the first place. For the same reason, R&T would not have understood that they would not be able to share the information with OTPL and HLT.

46 Accordingly, the Lim Family could not assert that the information they had disclosed to R&T pursuant to the Joint Retainer was confidential *vis-à-vis* OTPL and HLT. As OTPL and HLT were entitled to the information, for the reasons stated above at [37]–[40], the same was not confidential *vis-à-vis* their interim judicial managers and judicial managers. For the same reasons, the Lim Family's arguments on the basis of an equitable duty of confidence, which were also predicated on the confidentiality of the information, failed.

47 Finally, there was also no basis for the court to exercise its supervisory jurisdiction to restrain R&T from acting for, and sharing the information disclosed by the Lim Family with OTPL and HLT as well as their interim judicial managers and judicial managers. Given the information was not confidential *vis-à-vis* OTPL, HLT and, by extension, their interim judicial managers and judicial managers in the first place, it could not be said that restraining R&T was in the interests of the proper administration of justice.

48 As the Joinder applications failed *in limine*, it was unnecessary for me to consider the efficacy of the measures taken by R&T to prevent the disclosure of the information if they were found to have been confidential *vis-à-vis* OTPL and HLT, and by extension their interim judicial managers and judicial managers.

Conclusion

49 For the reasons set out above, I concluded that there was no basis for the Lim Family to assert that the information disclosed by them to R&T under the Joint Retainer was confidential *vis-à-vis* OTPL and HLT and by extension their interim judicial managers and judicial managers. The question of confidentiality does not even arise with regard to information that was disclosed by OTPL and HLT to R&T. Accordingly, there was no basis for the Lim Family to be joined as co-plaintiffs to the Injunction

actions. I therefore dismissed the Joinder applications.

50 As R&T had succeeded in the Striking-Out applications, I awarded costs of the applications and OS 666 and OS 704 to R&T save for the costs of the discovery applications in Summons Nos 4346 of 2020 (in OS 666) and 4347 of 2020 (in OS 704) (see the Striking-Out GD at [47]), noting that insofar as the parties had not resolved the quantum of costs on the Striking-Out applications, they were at liberty to raise the issue before the court.

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