Veolia Water Systems (SEA) Pte Ltd v Engineered Products and Services Pte Ltd and Others [2006] SGHC 208

Case Number : Suit 537/2005

Decision Date : 27 November 2006

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Max Ng and Daryl Ong (Gateway Law Corporation) for the plaintiff; Teoh Tsu Yang (Teoh & Co) for the first and sixth defendants; Allister Lim and R Thrumurgan (Allister Lim & Thrumurgan) for the second, third, fourth and fifth defendants

Parties : Veolia Water Systems (SEA) Pte Ltd — Engineered Products and Services Pte Ltd; Tan Cho Hiang Elvin; Aw Yong Joo; Quek Ching Ho; Goh Seng Chai Dennis; Ng Kheng Siang

Tort – Confidence – Whether breach of confidence existing – Whether plaintiff's information in question of confidential nature – Whether use of information by defendants unauthorized

Tort – Conspiracy – Whether conspiracy existing – Whether agreement between two or more defendants existing – Whether intent to injure existing – Whether damage to plaintiff existing

Tort – Conversion – Whether defendants removed items from plaintiff's premises without approval

Contract – Breach – Whether parties intended literal meaning of contractual provisions to apply – Whether obligations under employment contract ceased after leaving employment

27 November 2006 *Judgment reserved.*

Lee Seiu Kin J:

1 The plaintiff is a company incorporated in Singapore and in the business of, among other things, designing and providing water treatment systems. The plaintiff's claims against the defendants in this action are in:

(a) conversion of a number of items related to water treatment systems;

(b) breach of confidence;

(c) breach of contract of employment; and

(d) conspiracy with intent to injure the plaintiff.

2 The first defendant is a company incorporated in Singapore and is also in the business of providing water treatment systems. The sixth defendant ("Ng") is a director of the first defendant. The second to fifth defendants were all former employees of the plaintiff who, by early 2005, had become disenchanted with the plaintiff's general manager, and left between January and May of that year. They all subsequently joined the first defendant. The second defendant ("Tan") joined the plaintiff as a sales engineer in 1988 and rose to become a senior sales manager by the time he left on 22 April 2005. He joined the first defendant on 25 April 2005. The third defendant ("Aw") joined the plaintiff in 1999 as an engineering assistant. He left on 25 April 2005 and joined the first defendant the following day, 26 April 2005. The fourth defendant ("Quek") joined the plaintiff in 1996 as an

assistant service manager and was a service manager when he left on 24 May 2005. He joined the first defendant some five months later, on 1 December 2005, although he provided some consultancy services to the first defendant in the intervening period. The fifth defendant ("Goh") joined the plaintiff in 1999 as a senior sales engineer, leaving as an assistant sales manager on 7 January 2005. He was employed by the first defendant on 10 January 2005 as a sales manager.

3 Of these four former employees of the plaintiff, Tan was the most senior ranked. When he joined the plaintiff in 1988, they were known as KBS Pure Water Pte Ltd ("KBS"). He rose to become the sales director of KBS in 1992. In 1996, KBS was acquired by US Filter Finance BV and KBS was renamed US Filter (Asia) Pte Ltd. The existing staff were offered employment with the new entity and Tan himself was appointed a senior sales manager. The name of the company was changed to US Filter Asia Pacific Pte Ltd in August 1997. In February 2002, US Filter Asia Pacific Pte Ltd was in turn acquired by Vivendi Water Systems SA and renamed Vivendi Water Systems (Singapore) Pte Ltd. Tan continued as a senior sales manager with the same role and authority. In May 2003, the plaintiff changed to its present name.

4 On 20 May 2005, the plaintiff's managing director, Olivier Marche ("Marche"), made a police report with the Bedok division of the Singapore Police Force alleging that the following items were removed from the plaintiff's premises without approval on the corresponding dates in 2005:

(a) 28 March: 30 stainless steel cylinders valued at about $500 each;

(b) 5 April: 1000/ of NR30 resin valued at about $10,000;

(c) 6 April: two water pumps valued at $5,000 each; and

(d) 11 May: four 500/ fibreglass tanks valued at $1,000 each.

Marche stated that the plaintiff suspected that Aw and Quek had taken the items as another employee, Mohammed Rahimullah Idris Meah ("Rahimullah"), had seen them removing those items.

5 In the course of their investigation into the criminal complaint the police inspected the premises of the first defendant on 21 May 2005, in which the following items were found:

(a) 26 stainless steel cylinders;

(b) NR30 ion exchange resins (parties jointly measured this on 29 April 2006 and found it amounted to about 4,200/);

(c) four 500/ fibreglass tanks;

(d) TOC reduction unit.

6 The police investigation did not result in anyone being charged with an offence relating to those or any other items. There is no evidence before me as to the reason for this, although Aw said that he received a letter from the police that advised that they had "carefully considered the facts and circumstances of the case, and … decided not to take further action against [him]. All investigations and enquiries into the matter would cease and the case will be closed."

Conversion

7 In its statement of claim, the plaintiff pleaded that the following items were converted at

various times by Tan, Aw, Quek or Goh:

(a) 30 stainless steel cylinders;

(b) 5,200/ of NR30 ion exchange resin and 4,500/ of NR30 ion exchange resin;

(c) four 500/ fibreglass tanks; and

(d) one TOC reduction unit.

Stainless steel cylinders

8 Rahimullah was a contract worker with the plaintiff on 28 March 2005. In his affidavit he deposed that he saw Aw use a forklift truck to load "approximately 30" stainless steel cylinders onto a lorry and drive away. He clarified in cross-examination that he was quite certain it was exactly 30 pieces because 24 had been wrapped in plastic sheets in a pallet and on top of this were six loose pieces. Rahimullah's evidence is corroborated by Abbas bin Alias ("Abbas"), one of the plaintiff's senior technicians. Abbas also said that around 28 March 2005, he saw Aw use a forklift truck to load "approximately 30" stainless steel cylinders onto one of the plaintiff's lorries which he then drove out of the plaintiff's premises. Abbas also said that it was exactly 30 pieces. Abbas was present at the first defendant's premises during the police raid on 21 May 2005 and he saw around 26 stainless steel cylinders identical to the cylinders he saw Aw remove on 28 March 2005.

9 Aw admitted taking the cylinders but said he only took 26 pieces. He explained that sometime in March 2005, Tan instructed him to deliver one pallet of stainless steel cylinders to Proserv Machine Tool Pte Ltd ("Proserv"). However Aw said that the pallet of cylinders was loaded onto the truck by the plaintiff's warehouse personnel, one Sivaperumal. He then delivered the pallet of stainless steel cylinders to Proserv as instructed by Tan.

10 Tan confirmed giving those instructions to Aw. He explained that those cylinders were given to Proserv, one of the plaintiff's customers who bought resins from the plaintiff to resell to its own customers. Tan said that sometime in March 2005 he had a conversation with the general manager of Proserv, Boo Yew Seng ("Boo"). Boo asked about the possibility of Proserv supplying resins to customers in canisters or cylinders to lock them to a long-term buying pattern. Tan said that this was feasible and quoted about $650 for a 20/ stainless steel canister and about $150 for a 20/ fibreglass cylinder. Boo countered that it was too high an investment to make immediately but asked if Tan had any old canisters to enable him to evaluate the proposal and added that Proserv would continue to buy resins from the plaintiff. If the trial was successful, Boo would then order new canisters from them. Tan replied that he would check on this. Tan explained that he was keen to assist Proserv, an existing customer, for if this succeeded, it would increase business for the plaintiff. Tan knew that the plaintiff had quite a number of used stainless steel canisters given to them by its customers. He gave the example of Chartered Silicon Partners that had given the plaintiff more than 100 used stainless steel containers sometime in 2002.

11 Tan said that a few days after that he asked Alice Ong ("Ong"), the plaintiff's customer service manager, to give one pallet of used stainless steel containers to Proserv. He said that Ong agreed and she instructed the store personnel, Sivaperumal, to release a pallet of the used stainless steel canisters. Tan then asked Aw to make the delivery. However sometime in early May 2005, after Tan had joined the first defendant, Boo called him to ask if he could store the stainless steel canisters for a while as Proserv was shifting office. Tan agreed and said that this was why the 26 stainless steel canisters were at the first defendant's premises in May 2005. Boo's evidence in court accords

with Tan's version of events.

12 Ong was called to give evidence for the plaintiff. She said that Tan had mentioned to her that he wanted to give some stainless steel cylinders to Proserv. She said she told Tan to seek the approval of the general manager, Robert Crewdson ("Crewdson"), as she did not have the authority to approve the proposal. However it would appear that the issue is not so straightforward. Ong confirmed that she was responsible for keeping track of all items in the warehouse. She said that such items comprised stock items and non-stock items, the latter being items leftover from projects. The records for non-stock items were kept by the storekeeper, Supramaniam, and since these items had been expensed on the original projects they were not audited. Only the stock items were tracked in the plaintiff's computerised inventory system and audited. According to Ong, there was a third category, which is neither stock nor non-stock and which Ong termed "unrecorded items". The stainless steel cylinders in question fell into this category as they were given to the plaintiff by one of its customers, Chartered Silicon Partners.

13 So far as formal authority is concerned, Crewdson said that Ong "did not have the [plaintiff's] authority to grant clearance" to Tan to give the cylinders to Proserv. Crewdson also said that Ong told him that she had asked Tan to obtain permission from him. Crewdson said that Tan had not done so.

14 It is Tan's word against Ong as to whether she had given the green light when he asked her about it. However, Ong agreed that the store personnel, Sivaperumal, would not release the cylinders unless she gave him the go-ahead. Crucially, the plaintiff did not call Sivaperumal, who was still in its employ, to give evidence as to the release of the cylinders. It would also appear that the cylinders were not an important stock item, certainly not one that the plaintiff tracked on its inventory system, and one that Ong could feel comfortable about approving their release for a customer. On Tan's part, his evidence is corroborated by Proserv's Boo. On the evidence before me, I find that Ong had given approval to release the cylinders to Boo. It follows that Proserv is the lawful owner of the cylinders and I hold that the plaintiff's claim on them in this action fails.

NR30 ion exchange resin

15 In water treatment systems, ion exchange resins are tiny organic beads between which water is passed as part of the purification process. Manufacturing processes (such as wafer fabrication) that require pure water have water purification systems that incorporate an ion exchange process using such resins. These resins become spent after a certain amount of use and need to be recharged by washing with certain solutions before they can be re-used. By this process, known as "regeneration", the spent resins regain their water purification qualities. The plaintiff performs resin regeneration for its customers as part of its services.

16 Rahimullah gave evidence that on 5 April 2005, he saw Aw in the plant transfer resin into a 1,000/ IBC tank. Quek then went up to him and asked him to release the 1,000/ of resin transferred by Aw to make up a shortfall at Exxon Mobil. Rahimullah said he told Quek that he was not authorised to do this and that he should speak to Abbas. Abbas said that he also saw Aw transfer resin into the 1,000/ IBC tank. He said that Aw was asked by one of his staff for written authorisation for this, but Aw ignored him. Abbas said that Aw then went up to him and told him that the resin was to make up for a shortfall to one of its major customers, Exxon Mobil. Abbas told the court that a delivery order would normally be issued, but as Aw was a manager, he did not question him.

17 Aw admitted removing 1,000/ of NR30 ion exchange resin on one occasion but said that this was in the course of servicing one of the plaintiff's customers, UMCi. He said that the resins belonged

to UMCi and set out the background to that event. In December 2004, he carried out the replacement of resins at UMCi's water treatment facility, which had two vessels of resins, each with a capacity of 4,500/. Replacement would be carried out on one vessel at a time so as not to interrupt operations. After the resins in the first vessel were replaced, he tested its performance. He found that the resultant water did not meet the required purity. To investigate the reason for this, he refilled the vessel with the old resins which were stored at the plaintiff's premises. This was done in batches and the last one of about 1,000/ was brought back to UMCi by late March or early April 2005. Aw had worked with Wu Hui Ming ("Wu"), one of UMCi's engineers, in this exercise. Aw said that after he left the plaintiff in late April 2005 and joined the first defendant, Wu called him to ask him to dispose of the used resins. Aw said that Wu knew at the time that he had left the plaintiff because he had told Wu of it on a prior occasion. Aw went to UCMi to collect the 4,500/ of the used resin and brought it to the first defendant's premises and that was how it ended there. Aw further clarified that the resins were brought to the first defendant's premises in five 1,000/ tanks and there transferred into the bags in which they were subsequently found during the police raid on 21 May 2005.

18 Wang I Hsing ("Wang") was the section manager of the De-Ionised Department of UMCi at the material time, although he left the company in August 2005. He confirmed Aw's assertion that there was a replacement of the resins at UMCi's water treatment facility in December 2004 which operation ran into early 2005 on account of problems with the quality of the replacement resins. He and one of his engineers, Wu, had dealt with the matter. At the conclusion of the replacement exercise in April 2004 he told Wu to dispose of the old resins. Wu said that he would get Aw to do so. Wu left UMCi in May 2005.

19 Abbas further said that around 10 April 2005, he was involved in the regeneration of 5,200/ of NR30 ion exchange resins. Tan told him that the resin was to be delivered to Exxon Mobil. On Tan's instructions, Abbas packed the resins into 25kg and 50kg nylon bags and then double packed them into plastic bags. They were then placed into twenty-six 200/ blue plastic drums. Abbas said that he recalled this event as it was the first time that he had packed NR30 resins in this manner. They then loaded these drums into a lorry that was not from the plaintiff's regular transport contractor and he did not recognise its driver. Abbas said that he saw resins packed in an identical manner at the first defendant's premises when he visited it on 8 November 2005. The similarity of packing appeared to be the basis for the plaintiff's claim on the resins found in the first defendant's premises. There are several problems to this claim, chief among which are as follows:

(a) The quantity of resins found here was about 4,400/ which was closer to the 4,500/ that Aw said he had collected from UCMi in late April 2005 than the 5,200/ Abbas said he had packed.

(b) There was evidence that 5,200/ of resins were regenerated on 10 April 2005 for Exxon Mobil and were transported away by them.

(c) Exxon Mobil's resins were not NR30, but of another make known as Rohm & Haas.

(d) The plaintiff did not adduce any evidence that Exxon Mobil had not received those resins.

20 On the evidence before me I find that the NR30 resins in the first defendant's premises were given to them by UCMi. There is no evidence of any other resins that have been converted by any of the defendants. The plaintiff's claim in respect of the resins (5,200/ and 4,500/) is therefore dismissed.

Four 500-litre fibreglass tanks

21 In his evidence-in-chief, Abbas said that on the morning of 12 May 2005, Quek told him that he wanted four 500/ fibreglass tanks which were lying in the plaintiff's premises to be taken out and loaded onto a lorry. Abbas asked him why and Quek said that it was for "scrap". The plaintiff's regeneration operator, Bay Heng Chai, was then instructed to use the forklift truck to load the four tanks onto a lorry. Abbas said that he did not recognise the driver and that the lorry was not from the plaintiff's usual transport contractor, Chin Guan Transport. Abbas said that this was unusual. Abbas said that when he went to the first defendant's premises on 21 May 2005 he saw the four 500/ fibreglass tanks there.

22 Quek said that sometime in late April or early May 2005, Abbas complained to him that there was not enough space for storage of resins from customers. He wanted to use an area along the fence outside the plant. At that time, the four used 500/ fibreglass tanks had been stored there for a number of years. Quek recalled that they were returned from a Petronas project in which the engineer had commented that the tanks were leaking. As they were in poor condition, Quek said that he told Abbas that he would arrange for the fibreglass tanks to be scrapped to free up the space.

23 Quek said that he then called one Wang Tian Ter ("Tian Ter") of Ace Ocean Industries Enterprise to ask if he wanted four used 500/ fibreglass tanks. Tian Ter called a few days later to say that he would take the fibreglass tanks. Quek told Tian Ter to contact Abbas to make arrangements for the collection. Quek said he then told Abbas about this and thereafter the matter was handled by Abbas. Quek testified that since he joined the plaintiff in 1996 it was part of his duty to take charge of non-stock items and maintain the area around the service workshop.

24 Tian Ter was called to give evidence on behalf of the defendants. He was the sole proprietor of Ace Ocean Industries Enterprise whose principal business was in trading, with expertise in fibreglass materials. Tian Ter said that in early May 2005 Quek called him and asked if he was able to help the plaintiff scrap four 500/ fibreglass tanks that were old and leaking. Tian Ter said he called a few customers and asked if they needed any large fibreglass tanks, saying he could procure four used 500/ tanks for a few hundred dollars. When Tian Ter called Tan, the latter offered $500 for them, inclusive of delivery. Tian Ter accepted and got back to Quek to confirm he would take the tanks. Around 10 May 2005, Tian Ter called Quek who told him to look for a gentleman called "Abbas" to make the collection. Tian Ter went to the plaintiff's plant the following day to take delivery. Abbas assisted him to load the tanks on the truck. From there Tian Ter drove to the first defendant's premises and delivered the four tanks. He exhibited copies of the delivery order and invoice for the transaction.

25 Tan's evidence corroborated Tian Ter's. He said that prior to their delivery he did not know that the tanks were from the plaintiff. It was only one day after delivery when he saw the tanks that he recognised them and realised that they were from the plaintiff. Tan said that had he known these were the tanks offered by Tian Ter, he would not have bought them as he knew that they had been left in the open for a number of years and were in really poor condition.

26 At issue is whether Quek had authority to scrap non-stock items such as the four 500/ fibreglass tanks. Although Crewdson said that Quek did not have authority to scrap the tanks, I took into account the evidence of Tung Chee Weng ("Tung"), who was the plaintiff's service director from 1998 to 2004. Quek reported to him at the time. Tung said that Quek's primary duty was to oversee and co-ordinate operations of the service group which included production, planning, co-ordination of manpower and equipment support for service contracts and management of non-stock equipment and items. As a part of Quek's duty, he had the authority to deal with and dispose of non-stock items. Quek was to ensure that there was sufficient space within the plaintiff's compound to cater for the needs of existing contracts and to ensure that the space within the compound is kept tidy. There is no evidence that such authority was revoked after Tung left. Indeed, it would be strange if it was

revoked unless there was an incident that triggered this. I therefore hold that Quek had this authority.

27 In view of the evidence, I hold that the plaintiff has not proved that the defendants or any of them had converted the four 500/ fibreglass tanks.

TOC reduction unit

28 A TOC reduction unit is a contraption that reduces the total organic content of water by passing it under ultraviolet light. The unit in question is the size of a large drum and made of stainless steel. Crewdson said that during his visit to the first defendant's premises on 21 May 2005, he observed that there was a TOC reduction unit with serial number WO99004. He said that this unit was purchased by the plaintiff around 1999 and used for one of its projects. It was returned sometime in 2002 and stored in the plaintiff's premises.

29 The defendants admit that the TOC reduction unit came from the plaintiff. Quek said that sometime in or about late 2004 or early 2005, he arranged for a used TOC reduction unit and an assortment of used PVC pipes lying along the fence to be scrapped as part of housekeeping and to free up space for the plaintiff's ongoing and future projects. He said that the plaintiff then had about seven to eight used TOC reduction units that they had stored for a number of years. The TOC reduction unit that he chose to scrap was one that had been lying in the open while the other units were stored under shelter. In his view, that unit was in the worst condition. Therefore he called Ng (the sixth defendant) to ask if he wanted a used TOC unit and an assortment of used PVC pipes. Quek said that the first defendant was also a customer of the plaintiff. Ng replied that since the plaintiff was scrapping the items and they would not cost him anything, he would take it. Quek told him that they were scrap items and Ng said he would ask one of his staff to contact Quek to collect the items. However there was some delay in the collection and as Quek was anxious to get rid of the items, he instructed Aw to deliver the TOC reduction unit and assortment of used PVC pipes to the first defendant.

30 Ng corroborated Quek's evidence. He said that from around 2000, the plaintiff had on several occasions given away to the first defendant various other scrap items. He cited one instance, in 2002, when the plaintiff's then service director, Tung, had given away a scrap reverse osmosis unit to the first defendant. Tung confirmed this in his evidence.

31 Again, the issue is whether Quek had the authority to scrap this item and, on the evidence, I hold that he had. In the premises, the plaintiff's claim in respect of the TOC reduction unit fails.

Breach of confidence

32 The plaintiff pleaded that Tan (the second defendant), Aw (the third defendant), Quek (the fourth defendant) and/or Goh (the fifth defendant) had access to the following confidential information or trade secrets in the course of their employment:

(a) the plaintiff's costing and pricing practice in relation to various products, designs and/or systems of the plaintiff;

(b) the plaintiff's customer lists and contact particulars; details of the plaintiff's terms of trade with various customers; and

(c) details of the plaintiff's regeneration plant, including photographs taken of the same

and/or sketches made of the same by or procured by the second and/or fourth defendants on or about 11 May 2005.

33 The plaintiff pleaded that Tan, Aw, Quek and Goh had, without the consent of the plaintiff and to its detriment, used and/or disclosed to the first defendant confidential information of the plaintiff relating to four of its customers. The plaintiff claimed that in doing so they had acted in breach of express and implied terms of their contracts of employment, confidentiality agreements and/or general releases and/or in breach of their duty of confidence to the plaintiff. The four customers are:

(a) Dupont Photomasks Singapore Pte Ltd ("Dupont");

(b) Seagate Technology International ("Seagate");

(c) Institute of Microelectronics ("IME"); and

(d) Infinite Graphics Pte Ltd ("Infinite Graphics").

Dupont

34 In its statement of claim, the plaintiff pleaded as follows:

> The plaintiff had supplied and installed a DI System and a Waste Treatment System at Dupont's premises, which was utilised for the provision of high purity water. Since March 2000, the plaintiff had secured the servicing contract for these systems. These contracts were for six-month periods and the last one dated 1 October 2004 was due to expire on 31 March 2005. The contract price was $9,000 per month. Around 10 March 2005, Tan, who was still with the plaintiff, sent to Dupont the new service agreement for the next six-month period at the price of $10,000 per month. On 14 March 2005, Dupont wrote to Tan inquiring about the increase in the contract price for the said services. Tan did not disclose this matter to the plaintiff. Around 1 April 2005, Dupont wrote to Tan to say that Dupont had decided not to renew the service agreement. Sometime in March 2005, Dupont awarded the first defendant the service contract from 1 April 2005 at the price of $7,500 per month. During the time that Aw, Quek and Goh were still employed by the plaintiff, they had access to the details of the proposed new equipment service agreement between the plaintiff and Dupont, including the contract price. The first defendant could not have obtained the Dupont service contract without the disclosure by Tan, Aw, Quek and/or Goh of the terms of the plaintiff's previous contract with Dupont and the terms of the plaintiff's proposed new contract with Dupont.

35 I note at the outset that the evidence showed that it was only Tan who handled the service agreement with Dupont. The plaintiff had not given any evidence that the other three, namely Aw, Quek and Goh, were aware of the confidential pricing information relating to Dupont. Indeed, Goh had left the plaintiff on 7 January 2005 and Quek tendered his resignation only on 16 May 2005. Therefore, this part of the claim against Aw, Quek and Goh must be dismissed.

36 As to the claim against Tan, the plaintiff is relying on the fact that Tan had raised the quote from $9,000 to $10,000 and his silence about it when Dupont responded with a query about the increase to make the inference that Tan had an ulterior motive. This is to be seen with the fact that Tan had been preparing to leave the plaintiff's employment at the time and did in fact leave about a month later, on 22 April 2005, and joined the first defendant on 25 April 2005, as well as the fact that Tan earned a commission from the first defendant on contracts handled by him. In the circumstances,

the plaintiff submits that this raises a strong suspicion that Tan had manipulated the process. Although the burden of proof rests with the plaintiff to prove its case, I can well appreciate the difficulty it faces in a situation like this. I could well be persuaded to its case if not for several aspects of the evidence before me:

(a) The first is that the price of the new Dupont contract with the first defendant is $7,500, which is much less than the $10,000 that Tan is alleged to have manipulated the plaintiff into quoting. If the first defendant had been aware of this price, then it does not seem logical that they would go so much lower and a price of $9,000 or so would have been more logical.

(b) The plaintiff's service contract with Dupont had first been priced at $11,350 and subsequently reduced to $10,000 and then to $9,000 which was the price only for the last two six-month periods. There was some evidence that this price was lowered on account of reduced usage by Dupont during those periods. There was also evidence that Tan had carried out a costing exercise in preparation for the last unsuccessful quote and this came up to more than $10,000. In the event he quoted $10,000, which Dupont rejected.

(c) The plaintiff's general manager, Crewdson, agreed that Tan handled clients' inquiries and did not refer these to him. Tan gave evidence that he did contact the Dupont representative on this and explained the increase. The plaintiff did not produce any evidence to rebut this.

37 I accordingly find that the plaintiff has not proved its case in respect of Dupont.

Seagate

38 In its statement of claim, the plaintiff pleaded as follows:

On 29 April 2005, the plaintiff submitted to Seagate a quotation for the supply of a "TOC Analyser/Liquid Particle Counter and Hook-Up". On 8 June 2005, they submitted to Seagate a proposal for the supply of a "Neutralization Package for Wastewater Reclaim System". Prior to his departure on 25 April 2005, Tan had dealings with Seagate for at least eight years as the accounts manager in charge of the Seagate account and had access to the details of the said proposals and quotations to Seagate. Aw, Quek and Goh also had access to those details. Seagate did not accept both the quotation and proposal and these projects were subsequently awarded to the first defendant. The first defendant could not have obtained the Seagate project without the use of confidential information provided to the first defendant by Tan, Aw, Quek and/or Goh.

39 Again, as in the case of Dupont, the plaintiff produced no evidence of the involvement of Aw, Quek and Goh in relation to the Seagate account. Accordingly, this part of the claim against Aw, Quek and Goh must be dismissed.

40 The offers made by the first defendant to Seagate for these projects were signed by Tan. The plaintiff submits that Tan must have used confidential information acquired while he was employed with the plaintiff to obtain the Seagate contracts. However, the plaintiff did not specify the nature of the confidential information used by Tan. It appears that it was not an issue of confidential technology but a matter of price as this pertains to equipment that is available in the open market. It transpired that the plaintiff's quotation and proposal to Seagate were prepared by one Derek Tan who was not called by the plaintiff to give evidence of the quotation and proposal and specifically whether Tan was aware of the pricing.

41 In the circumstances, the evidence adduced falls far short of what is necessary for the plaintiff to prove its case against Tan in respect of the Seagate contracts.

IME

42 In relation to IME, the plaintiff had pleaded as follows:

> The plaintiff had entered into a "Warranty Service Contract" with IME around 4 May 2004. The Warranty Service Contract was due to expire on 3 May 2005. On or about 4 May 2005, the plaintiff submitted its quotation to IME for the renewal of the Warranty Service Contract for a period of two and a half months. However, they failed to secure this contract. During their employment with the plaintiff, Tan, Aw, Quek and Goh had access to the details of the IME contract. The plaintiff discovered that the first defendant had secured the contract with IME, which would not have been possible without the use of confidential information provided by one of the four of them.

43 Tan had left the plaintiff on 22 April 2005, well before the plaintiff prepared the quotation to IME for submission on 4 May 2005. The evidence showed that Tan had no hand in it, and neither did Aw (who left on 25 April 2005) and Goh (7 January 2005). As for Quek, he was still with the plaintiff during that time as he only left on 24 May 2005. The quotation to IME was prepared by Derek Tan and was for the sum of $2,500. The quotation by the first defendant was for $1,600, a sum so far below the plaintiff's $2,500 as would indicate that the defendants had no idea of this.

44 In the circumstances, the plaintiff had failed to produce sufficient evidence to prove its claim in respect of IME.

Infinite Graphics

45 The plaintiff pleaded that around 20 May 2005 and 2 June 2005, respectively, they had submitted quotations to Infinite Graphics for the supply of an activated carbon column and for the change of new carbon media ("the Infinite Graphics Projects"). The plaintiff discovered that the Infinite Graphics Projects were awarded to the first defendant. During the time they were employed by the plaintiff, Tan, Aw, Quek and Goh had access to the details of the said quotations to Infinite Graphics. The first defendant could not have obtained the Infinite Graphics Projects without the use of confidential information provided by one of the four defendants.

46 It should be noted that on 20 May 2005, only Quek was still in the plaintiff's employ. But Quek left on 24 May 2005 and was not around when the second quotation to Infinite Graphics was given on 2 June 2005. Quek did not join the first defendant until 1 December 2005 and, although he had worked for them as a consultant on various projects after leaving the plaintiff, there is no evidence that Quek had disclosed any information to the first defendant regarding the plaintiff's quotation to Infinite Graphics.

47 As for Tan, Aw and Goh, they were not with the plaintiff during this time and therefore could not have any information about the quotations submitted on 20 May 2005 and 2 June 2005. In the circumstances, the plaintiff has failed to prove its claim in relation to Infinite Graphics.

48 With respect generally to the claims by the plaintiff in relation to Dupont, Seagate, IME and Infinite Graphics, the approach of the plaintiff has been to allege that they had, or rather, must have had, confidential information which they must have disclosed to the first defendant; otherwise the latter could not have secured those contracts. While I do not say that in appropriate circumstances

this is incapable of proving its case, I should state that the evidence adduced is insufficient to satisfy its burden. In particular, the plaintiff has failed to specify the nature of the confidential information beyond general knowledge of the pricing structure. Information on the plaintiff's pricing policies and costs of various components making up water purification systems are not of a sufficiently high level of confidentiality that the law would impose upon the defendants a general obligation not to use or disclose to their new employers – see *Faccenda Chicken Ltd v Fowler* [1987] Ch 117. In *Universal Westech (S) Pte Ltd v Ng Thiam Kiat* [1997] 2 SLR 139 the High Court followed *Faccenda Chicken Ltd v Fowler* and stated (at [37]) that:

> Former employees who start their own businesses cannot be prevented from applying the policy to their businesses because their previous employees use the same approach. Employees who acquire knowledge of the products that they deal with do not have to abandon the knowledge when they resign. They are entitled to make the best use of their experience and knowledge in their subsequent employment or ventures, even if that involve their former employers' confidential information – so long as they do not steal and use their trade secrets or information of such high confidentiality as to amount to a trade secret.

49 The plaintiff also made various allegations about Tan and Goh copying files from their office personal computers. I do not intend to go into these in detail as I am of the view that the evidence does not support the contention that they had copied any confidential information. The plaintiff also alleged that two weeks before he left, Tan was sent an e-mail by Quek enclosing a price list for Infineon, one of the plaintiff's customers. However, Tan explained that this was a follow-up action to a complaint from that customer. The plaintiff was not able to rebut this evidence. Another allegation was that Tan had taken photographs of the plaintiff's plant shortly before he left. Tan explained that he had taken photographs before he left the plaintiff for marketing purposes and denied using those photographs after he left the plaintiff.

Breach of contract of employment

5 0 The plaintiff pleaded that in taking up employment with the first defendant, Tan was in breach of cl 11.03 of his Contract of Employment which provides as follows:

> The Executive shall not at any time *during the continuance of his employment hereunder or for a period of three (3) years after the date hereof* whichever is longer in any country or place where any member of the Group has carried on the business of water purification and/or waste water treatment carry on or be employed, concerned or interested directly or indirectly whether as shareholder, director, employee, partner, agent or otherwise and whether alone or jointly with others in any business carried on by any member of the Group during the continuance of the said employment in competition with any member of the Group (other than as a holder of not more than five per cent (5%) of the issued shares or debentures of any company listed on any recognised stock exchange) provided that the provisions of this Clause 11.03 shall only apply in respect of products or services with which the Executive was personally concerned or for which he was responsible during his said employment. [emphasis added]

51 The plaintiff also pleaded that in directly or indirectly soliciting the business of Dupont, Seagate, IME and/or Infinite Graphics, Tan was in breach of cl 11.04 which states as follows:

> The Executive shall not at any time *during the continuance of his employment hereunder or for a period of three (3) years after the date hereof* whichever is longer either on his own account or in conjunction with or on behalf of any other person or body corporate or unincorporate in competition with any member of the Group directly or indirectly solicit or entice away from any

member of the Group any person or body corporate or unincorporate who now is or at any time during or at the date of the termination of the said employment may have become a customer or supplier or prospective customer or supplier of any member of the Group and with whom the Executive had personal contact or dealings during his said employment. [emphasis added]

52 An unusual feature in these two clauses is found in the words emphasised: "during the continuance of his employment hereunder or for a period of three years after the date hereof". Read literally, this means that Tan was under the obligations described in those provisions for the longer of two periods, *ie*, the duration of Tan's employment with the plaintiff, or three years from the date of the agreement. The agreement was dated 9 February 1996 and the three-year period ended in February 1999. The obligations in both clauses would cover the longer of those two periods, *viz*, until 22 April 2005 when Tan left the plaintiff.

53 If this were the position, the plaintiff would have no claim against Tan the moment he left its employment. The plaintiff was constrained to submit that "context and necessity dictate [that it should] read 'after the date of termination hereof'". As I have said at the outset, this is an unusual feature in an employment contract as it meant that if Tan were to work for only one year, he would be bound by those obligations for another two years, but if he worked for 20 years, he would not be bound the moment he left the job. One would have thought that the longer an employee worked the more important it is to bind him to such obligations for a period after his employment.

54 However, an examination of the background to that employment contract provides the explanation. Tan had commenced employment much earlier, in March 1988, when the plaintiff were named KBS Pure Water Pte Ltd. In 1996, they were bought over by US Filter Finance BV and renamed US Filter (Asia) Pte Ltd. In 2002, Vivendi Water Systems SA bought over the company and the plaintiff's name was changed to Vivendi Water Systems (Singapore) Pte Ltd. In 2003, there was yet another name change, this time to the present one.

55 When the plaintiff was bought over by US Filter Finance BV, Tan was required to enter into a written employment contract. The Hong Kong office of Baker & McKenzie was engaged by the plaintiff to draft the contract. There was a course of negotiations in which the parties exchanged drafts and amendments. In relation to the terms in question, the first draft put up by Baker & McKenzie provided as follows:

… during the continuance of his employment hereunder or for a period of 5 years thereafter …

Tan counter-proposed the present form of the provision by deleting the words "5 years thereafter" and substituting with the words "three years after the date hereof". The draft contract that was exchanged at the time showed the following:

… during the continuance of his employment hereunder or for a period of ~~5 years thereafter~~ <u>three (3) years after the date hereof whichever is longer</u> …

56 In view of those circumstances, it is clear that the parties had intended the literal meaning of cll 11.03 and 11.04. Therefore, Tan's obligations under those provisions ceased the day he left the employment of the plaintiff.

Conspiracy with intent to injure the plaintiff

57 The last head of the plaintiff's claim is in conspiracy. To make out a case of conspiracy, the plaintiff must establish (a) an agreement between two or more persons; (b) that is for the purpose of

injuring the plaintiff; and (c) that acts done in execution of that agreement resulted in damage to the plaintiff.

58 The plaintiff pleaded that all six defendants had unlawfully conspired with each other with the intent to injure the plaintiff by unlawful means by:

(a) converting the goods (the subject of the claim in conversion) and thereby depriving the plaintiff from possessing or using the same; and

(b) using or disclosing the plaintiff's confidential information in order to divert business away from the plaintiff.

59 In view of my findings that the plaintiff has not proved that:

(a) any of the goods the subject of the claim in conversion had been converted by any of the defendants; and

(b) any of the defendants had used or disclosed the plaintiff's confidential information,

it follows that the plaintiff's claim in conspiracy with intent to injure must be dismissed.

"Without Prejudice" telephone conversations

60 The plaintiff had sought to rely on two telephone conversations on 24 May 2005 that Mehbub Vakil ("Mehbub"), the plaintiff's business development director, had with Ng (the sixth defendant), a director of the first defendant. This was three days after the police inspected the first defendant's premises on 21 May 2005. Mehbub had recorded these conversations on tape and produced transcripts thereof. By way of Summons No 1533 of 2006, the first defendant and Ng, sought to strike out evidence of the two telephone conversations on the ground that they were without prejudice communications and, therefore, privileged. This summons was heard at the start of the trial but I had reserved my decision on it until the completion of the trial and all evidence had been heard.

61 The gist of the defendants' case on this issue is that Ng had called Mehbub with the intention to explore how the matter can be resolved amicably as he was keen to avoid the complications and consequences that may arise if a police investigation were to take its full course. Ng gave evidence that he had first called Mehbub a day earlier, *ie*, on 23 May 2005. He had been surprised by the police turning up at the first defendant's premises and after getting the story from Tan, he telephoned Mehbub. This was prior to the two recorded conversations. Ng claimed that he told Mehbub in this unrecorded conversation that he was speaking to him on a without prejudice basis. Ng also said that even on the occasion of the first recorded conversation, he had restated that it was without prejudice but somehow this was not recorded. Ng said that the statements that he made to Mehbub must be taken in that context, even though at that stage there was no civil suit being contemplated. Mehbub agreed that there was a first, unrecorded conversation and that was why when Ng called again he was able to record it. But Mehbub denied that Ng had said anything about their discussion being without prejudice.

62 I need not go into great detail on the evidence as to whether the conversations were without prejudice as in this case Ng had no authority to represent Aw, Quek and Goh as he did this on his own volition and without consulting them. In any event, the subject matter of the conversations pertain to the police investigation and was not in contemplation of any civil suit. I therefore hold that the evidence is admissible.

63 However, in my view, the evidence of the conversations does not add anything to the plaintiff's case. The gist of the two conversations is that Ng had asked Mehbub to intervene with his superiors to see if the matter could be resolved amicably. Ng had suggested to Mehbub that the persons responsible (he did not name anyone) could admit to converting the goods. He had made statements such as: "… but if lets say Veolia intention is to go all out and charge them then … no point denying … just go there make a statement, admit that they took things out of Veolia and wait for the charges", "Because now is planning to go in and admit the thing and then and wanted to take the right … so to me is also no point denying it. If we deny it, Veolia come up with proof later on, we might add another charge of cheating or whatever, making false statement." and "If we don't admit it, it might be even more complicated in terms of charges."

64 However, Ng clarified in evidence that what he was trying to do was to resolve the matter even though he had been assured by Tan that the goods were not converted. He was also trying to keep the matter under lid so that there would be no adverse publicity for the first defendant. I am satisfied based on the circumstances of the matter, his demeanour in cross-examination and the entirety of the evidence that this was simply a situation where Ng was exploring an expedient resolution of the matter with Mehbub.

Conclusion

65 In view of the findings of fact I have made above, the plaintiff's claims in this action are dismissed. I will hear counsel on the question of costs.