Dispute Resolution

Analysing Interim Injunctions in the Context of Restraint of Trade Clauses

Introduction

In *MoneySmart Singapore Pte Ltd v. Artem Musienko* [2024] SGHC 94, the defendant, a former employee of the claimant, resigned and joined a subsidiary of a rival company. The claimant obtained two interim injunctions to prohibit the defendant from working for this subsidiary on the basis of two covenants in the employment agreement between the claimant and the defendant, a non-compete clause ("**Non-Compete Clause**") and a confidentiality clause ("**Confidentiality Clause**"). The interim injunctions were granted subject to the requirement that the claimant must apply for an *inter partes* hearing to determine whether the interim injunctions ought to continue. The defendant applied to set aside the interim injunctions. The central issue was whether the interim injunctions should continue or be set aside.

The High Court found in favour of the defendant, discharging both interim injunctions. The Court held that the Non-Compete Clause was not valid and enforceable, and thus there could not be a good arguable case that the clause had been breached. The claimant also failed to establish that there was a good arguable case that the alleged information was confidential and that the defendant had breached, or would breach, the Confidentiality Clause. The Court further held that the balance of convenience was in favour of the defendant and it was inequitable to allow the interim injunctions to continue.

The decision clarifies the legal principles applicable in determining whether to grant or maintain interim injunctions, in a situation where a negative covenant has been breached or is likely to be breached, and in the specific context of restraint of trade clauses. Bare and unsubstantiated assertions of legitimate proprietary interests or that there is a real risk of breach are insufficient. Interesting points to note when drafting such clauses include the impact of a non-compete clause that has been drafted in a cascading manner, and the applicability or otherwise of the employer's election and the doctrine of severance to such clauses. Companies should also note that the manner in which they handle information (including whether they take precautions to maintain the confidentiality of the information, selectively disclose confidential information, and expressly inform their employees about the confidential nature of certain information) would impact the Court's assessment on whether or not such information constitutes confidential information in the first place.

Lee Eng Beng SC, Timothy Ang and Liu Yulin of Rajah & Tann Singapore LLP acted successfully for the defendant.

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Brief Facts

MoneySmart Singapore Pte Ltd's ("**claimant's**") main business is to provide online financial product comparison services for consumers. It operates an online financial product comparison platform and an in-house insurance brand "Bubblegum" ("**Bubblegum**") which offers direct-to-consumer digital insurance products. One of its rivals is MoneyHero, whose main business also involves provision of online financial product comparison services, has also launched its own in-house insurance brand, and has subsidiaries and operations in several overlapping territories.

Mr Artem Musienko ("**defendant**") is a Russian national, formerly employed as the Head of Technology at the claimant's Bubblegum division from July 2022 to 12 January 2024. He resigned and on 15 January 2024, commenced employment as Head of Engineering, Insurance, with CAG Regional Singapore Pte Ltd ("**CAGRS**"), a subsidiary which provides technology support services to other MoneyHero entities.

During the defendant's employment with the claimant, he led the Design, Product and Technology Department for its Bubblegum division to create the Bubblegum platform and mobile application and to ensure it was functioning. The employment contract contained various clauses including:

- **Non-Compete Clause:** This prohibited the defendant from (a) directly or indirectly engaging with any business or organisation in Southeast Asia or any other country where the claimant (or its associated companies) operates; (b) which provides online financial product comparison services and thereby engages in competition with the claimant (or its associated companies); and (c) for a period of either 12 or 6 or 3 months from the date of termination of employment (depending on a competent court's determination of enforceability, with cascading effect).

- **Confidentiality Clause:** This prohibited the defendant from using and disclosing to any third party, directly or indirectly, confidential information of the claimant, without prior written consent.

At an *ex parte* hearing, the claimant obtained two interim injunctions on the basis of these two clauses to prohibit the defendant from working for CAGRS and from using/disclosing all information about the claimant. These injunctions were granted subject to the requirement that the claimant must apply for an *inter partes* hearing to determine whether they ought to continue. The defendant applied to set aside the same. The central issue was whether the interim injunctions should continue or be set aside.

High Court's Holdings

On the law, the High Court distilled the following legal principles. The traditional *American Cyanamid* test concerning the grant of an interlocutory injunction is whether there is a serious issue to be tried and whether the balance of convenience lies in favour of granting the interim injunction. However, these principles do not apply if there is a good arguable case that the negative covenant has been breached

or is likely to be breached. In such cases, an interim prohibitory injunction to enforce a negative covenant should readily be granted or maintained, absent any hardship or special circumstances over and above compliance with the contract, and the *American Cyanamid* test does not apply. Specifically, in the context of restraint of trade clauses, the applicant must first show that the clause is valid and enforceable (i.e. it protects a legitimate interest of the applicant and is reasonable in the interests of parties and the public). If the applicant is unable to show even this, it is highly doubtful that it could show that the respondent has breached or is about to breach the negative covenant. The Court then proceeded to consider the following issues.

Issue 1: Whether there is a good arguable case, that the Non-Compete Clause is valid and enforceable, and has been breached by the defendant?

The Court held that the Non-Compete Clause did not protect a legitimate proprietary interest of the claimant, nor was it reasonable in the interests of parties and the public. Thus, there could not be a good arguable case that the clause was valid and enforceable and had been breached. In this regard:

- **Legitimate proprietary interest:** First, the claimant alleged that the legitimate proprietary interest being protected is the interest in protecting its confidential information. However, it is settled that where the protection of a legitimate proprietary interest (here, the protection of confidential information) is already covered by another clause in the employment agreement (here, by the Confidentiality Clause), the claimant would have to demonstrate that the clause in question (here, the Non-Compete Clause) covers a legitimate proprietary interest over and above that. Secondly, the claimant alleged that the additional interest it was protecting was its interest in maintaining a stable and trained workforce. However, the claimant failed to make out its case, as it had not shown that its digital insurance business operated in a small, specialised industry, nor that it had invested time and resources providing the defendant with specialised training.

- **Reasonableness:** The Court held that the Non-Compete Clause was far too wide and not reasonable as between the parties or in the interests of the public.

    - **Activity scope:** There was a very tenuous connection between the restriction in the clause (against engaging with any business which provides online financial product comparison services) and the defendant's work while employed by the claimant (concerning Bubblegum and digital insurance-related matters).
    - **Geographical scope:** It would only have been reasonable for the clause to limit the defendant from participating in the Singapore market (where he had worked with the claimant and since Bubblegum's products were offered to Singapore residents only), and not in Southeast Asia or any other country where the claimant operates.

- **Temporal scope**: The Non-Compete Clause was drafted in a cascading manner which left the vulnerable employee uncertain as to which restriction bound him until determined by the Court.

- **Employer's Election:** The Court rejected the claimant's position of seeking to enforce the Non-Compete Clause only in respect of Singapore and Hong Kong. It is not open to an employer to argue that he will not seek to enforce the unreasonable parts of the covenant, or to specify which countries to enforce it in within the much wider geographical scope.

- **Severance:** The Court found the doctrine of severance could not save this clause. It was not possible to amend the scope of prohibited activities from "online financial product comparison services" to "digital insurance products", as this would change (not simply narrow) the scope and the fundamental character (not just the extent) of the restriction. The underlying public policy in employment contracts is that such clauses must be drafted precisely, clearly, and unequivocally with respect to scope of work. Imposing wide, general clauses in a manner that later supports severance is unfair and inequitable to the employee, and against public policy, including the overriding principles of individual freedom to trade and liberty of action.

Issue 2: Whether there is a good arguable case, that the Confidentiality Clause has been breached or is likely to be breached by the defendant?

The Court held that the claimant had failed to establish that there was a good arguable case that: (a) the alleged information was confidential; and (b) the defendant had breached, or would breach, the Confidentiality Clause. On (a), the Court held that the information in question was not confidential for two reasons. First, the claimant had already publicly shared (e.g. on finance websites / articles) much of the information (e.g. business plans, financial results, data on revenues, growths and margins, expansion initiatives and strategy). Secondly, the claimant's manner of handling the information showed that it did not treat the same as confidential prior to proceedings (no precautions to maintain confidentiality e.g. labelling the information "confidential" or informing staff that it was confidential; the claimant sharing this information with all of its staff; the claimant not informing the defendant that certain information was confidential and must not be shared with third parties, and the defendant would not have known this). On the specific categories of allegedly confidential information relied on by the claimant, it was clear that the defendant had not actually accessed the same, or that his work with the claimant was not concerned with the same and that he had to merely use his information technology expertise acquired over the years prior to employment with the claimant to render value added services. On (b), the claimant had failed to establish, on the facts, that the defendant had breached or would breach the Confidentiality Clause. The claimant's bare assertion that there is a real risk that the Confidentiality Clause has been or will be breached is insufficient to establish a good arguable case.

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Issue 3: Whether balance of convenience lies in favour of maintaining interim injunctions?

The Court rejected the claimant's submission that damages would not be an adequate remedy for the claimant, as any purported difficulty in assessing the same was not due to conceptual quantification difficulties, but only because the claimant itself was not sure what its precise loss would be. The Court accepted that damages would not be an adequate remedy for the defendant, as it would be difficult to assess the impact of the interim injunctions on his future career development as a senior employee in the fast-paced technology industry. On the balance of convenience, given the critically weak case of the claimant, it would be in the interests of justice not to maintain the interim injunctions, which would interrupt the status quo where the defendant had already commenced employment with CAGRS.

Concluding Words

The High Court's decision clarifies the legal principles applicable in determining whether to grant or maintain interim injunctions, in a situation where a negative covenant has been breached or is likely to be breached, and in the specific context of restraint of trade clauses. Bare and unsubstantiated assertions of legitimate proprietary interests or that there is a real risk of breach are insufficient. Interesting points to note when drafting such clauses include the impact of a non-compete clause that has been drafted in a cascading manner, and the applicability or otherwise of the employer's election and the doctrine of severance to such clauses. Companies should also note that the manner in which they handle information (including whether they take precautions to maintain the confidentiality of the information, selectively disclose confidential information, and expressly inform their employees about the confidential nature of certain information) would impact the Court's assessment on whether or not such information constitutes confidential information in the first place.

For further queries, please approach our team below.

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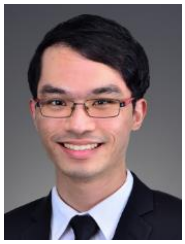

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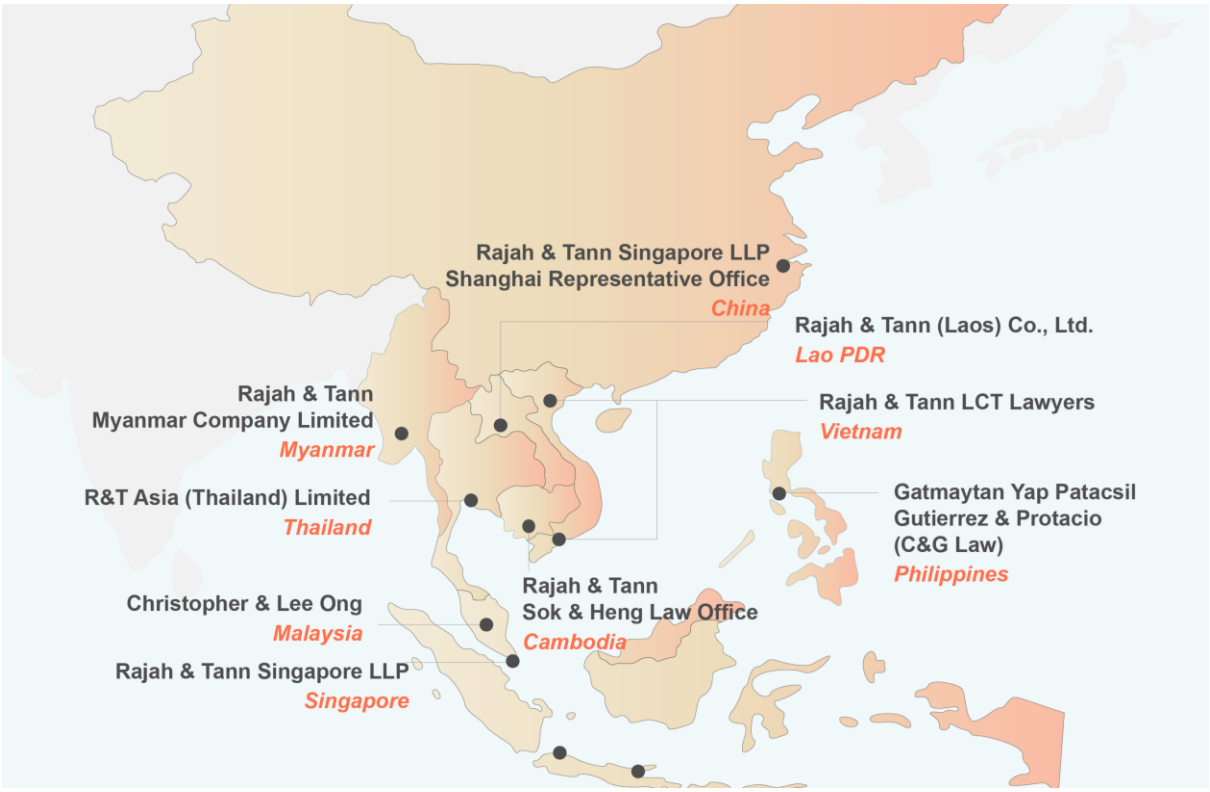

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