

High Court Rejects Employer's Bid to Restrain a Former Employee from Joining a Competitor

*Shopee Singapore Pte Ltd v
Lim Teck Yong [2024] SGHC
29*

7 February 2024

LEGAL UPDATE

In this Update

The High Court recently held that Shopee Singapore Pte Ltd had failed to prove that its claim that a former employee had breached non-competition restriction terms of his employment was not frivolous.

This update discusses the decision of *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29.

03 INTRODUCTION

03 BACKGROUND

03 THE HIGH COURT'S DECISION

05 COMMENTARY

INTRODUCTION

The High Court recently dismissed an attempt by Shopee Singapore Pte Ltd (“**Shopee**”) to restrain a former employee from accepting employment with a competitor, on the basis that Shopee had failed to prove that its claim against the former employee was not frivolous.

This update discusses the decision of *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29.

BACKGROUND

Mr Lim Teck Yong was employed by Shopee on 17 August 2015 and had signed an employee confidentiality agreement (“**Confidentiality Agreement**”) and a restrictive covenants agreement (“**RC Agreement**”). Clause 2.3 of the Confidentiality Agreement provides that Mr Lim shall keep all proprietary information confidential unless such disclosure is for the exclusive benefit of the Shopee Group. The RC Agreement also contained a non-solicitation and non-competition clause which, amongst others, prevented Mr Lim from accepting employment with a competitor. Mr Lim left Shopee’s employment on 31 August 2023 and commenced employment with ByteDance Pte Ltd (“**ByteDance**”) which operates a rival e-commerce platform (ie TikTok Shop) on 11 September 2023.

On 24 November 2023, Shopee commenced proceedings and sought a declaration that clause 2.3 of the Confidentiality Agreement and the non-solicitation and non-competition clause in the RC Agreement (collectively, “**Restraint of Trade Clauses**”) are valid and enforceable, and that Mr Lim had breached them, thereby seeking damages.

Shopee also sought interim injunctions to restrain Mr Lim from accepting employment with ByteDance and soliciting Shopee’s clients and employees. Shopee alleged that Mr Lim’s role in ByteDance is substantially similar to the roles he undertook in Shopee.

Shopee argued that the interim injunctions should be granted as Mr Lim has not shown that he will suffer hardship over and above observing his contractual obligations, and in any event:

- (a) there is a serious case to be tried in respect of the validity, enforceability and breach of the Restraint of Trade Clauses; and
- the balance of convenience lies in favour of granting the interim injunctions.

THE HIGH COURT’S DECISION

KEYPOINT

The High Court dismissed Shopee’s application for interim injunctions as Shopee had not shown that there were serious questions to be tried.

In *Man Financial (S) Pte Ltd (formerly known as E D & F Man International (S) Pte Ltd) v Wong Bark Chuan David* [2008] 1 SLR(R) 663, the Singapore Court of Appeal held that restraint of trade clauses, particularly those in the context of employment, are *prima facie* void and unenforceable. This is to give effect to the public policy that frowns upon attempts to unreasonably proscribe freedom of trade.

KEYPOINT

In the present case, the High Court applied the principles set out in American Cyanamid Co v Ethicon Ltd [1975] AC 396 to an interim injunction in respect of a restraint of trade clause.

The High Court held that an applicant seeking an interim injunction in respect of a restraint of trade clause must show:

- (a) a serious question to be tried that the restraint of trade clause is valid and enforceable, namely that it protects a legitimate proprietary interest and that it is reasonable in the interests of the parties and the public;
- (b) a serious question to be tried (with a real prospect of success) that a restraint of trade clause has been breached; and
- (c) if there are serious questions to be tried that the balance of convenience lies in favour of the granting the interim injunction.

According to the High Court, Shopee failed to demonstrate that the non-competition restriction covers a legitimate proprietary interest over and above the protection of trade connections. The confidential information that Shopee sought to protect was set out along fairly generic categories, and Shopee's failure to point to any specific confidential information affected the geographical scope of the restraint that Shopee sought in the non-competition restriction. In effect, Shopee was seeking to have Mr Lim restrained from working for any of Shopee's competitors who had been in all the markets where Shopee was operating, even though Mr Lim was not even working in or had no responsibilities for those markets. The High Court therefore doubted that it could be said that there was a serious question if this would be regarded as reasonable as between the parties or reasonable in the interest of the public.

The High Court further noted that Mr Lim had stated on affidavit that he had not and would not breach the confidentiality restrictions or the non-solicitation restrictions, and therefore found that Shopee had not, on its bare assertions alone, shown a serious case to be tried that the non-solicitation restrictions had been or were about to be breached by Mr Lim.

COMMENTARY

Restraint of trade clauses are not uncommon in employment contracts in Singapore. Typically, they seek to restrain employees from working for a competitor or within the same industry for a period of time after leaving their employment. Such clauses, by their very nature, impinge on an employee's right and freedom to work.

This case illustrates the challenges and pitfalls employers can face when enforcing restraint of trade clauses against employees. In particular, the case highlights that an employer seeking an injunction to prevent an employee from working for a competitor will need to come prepared with evidence that its legitimate proprietary interests are at risk of being compromised. Given that questions of validity and enforceability of restraint of trade clauses are ultimately fact-dependent, legal advice should be sought before employers rely on such clauses to restrain their employees.

Finally, it is worth noting that the Ministry of Manpower has announced that it will soon develop guidelines regarding non-compete clauses in employment contracts. Such guidelines will no doubt provide further guidance for both employers and employees on the application of such clauses.

The content of this article does not constitute legal advice and should not be relied on as such. Specific advice should be sought about your specific circumstances. Copyright in this publication is owned by Drew & Napier LLC. This publication may not be reproduced or transmitted in any form or by any means, in whole or in part, without prior written approval

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



Chia Voon Jiet

Director, Dispute Resolution
Co-Head, Investigations

T: +65 6531 2397

E: voonjiet.chia@drewnapier.com

Drew & Napier LLC

10 Collyer Quay
#10-01 Ocean Financial Centre
Singapore 049315

www.drewnapier.com

T : +65 6535 0733

T : +65 9726 0573 (After Hours)

F : +65 6535 4906

 **DREW & NAPIER**