IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 86

Suit No 825 of 2021
(Summonses Nos 5235 and 5238 of 2021)

Between

1. Pacific Prime Insurance Brokers Singapore Pte Ltd
2. CXA Insurance Brokers Singapore Pte Ltd

… *Plaintiffs*

And

1. Lee Suet Fern
2. Ng Lee Teng, Nellie
3. Afeli Insurance Brokers Pte Ltd
4. Afeli Pte Ltd

… *Defendants*

JUDGMENT

[Civil Procedure - Injunction - Variation]

Pacific Prime Insurance Brokers Singapore Pte Ltd and another
v
Lee Suet Fern and others

[2022] SGHC 86

General Division of the High Court — Suit No 825 of 2021 (Summonses Nos 5235 and 5238 of 2021)
Choo Han Teck J
21, 29 March 2022; 5 April 2022

18 April 2022 Judgment reserved.

Choo Han Teck J:

1 The first plaintiff, Pacific Prime Insurance Brokers Singapore Pte Ltd ("PPIBS"), is a registered insurance broker in Singapore specialising in health and medical insurance. PPIBS is also in the business of providing employee benefits solutions, which broadly means services relating to the clients' in-house employee benefits programs. PPIBS is part of a wider group of companies in Pacific Prime group of companies ("Pacific Prime Group").

2 The second plaintiff, CXA Insurance Brokers Singapore Pte Ltd ("CXAIBS"), is a registered insurance broker in the business of insurance-tech and insurance brokerage. CXAIBS was previously part of the CXA group of companies ("the CXA Group") but was fully acquired by PPIBS sometime in February 2021 ("the Acquisition").

3 One of the purposes of the Acquisition was for PPIBS to acquire a perpetual licence to a software known as CXA1. The valuable and important feature of CXA1 is its programme for a flexible benefits administration system which allows a client's employees to manage and customise their employee benefits and insurance coverage to individual preferences.

4 The first defendant, Lee Suet Fern ("Jez"), and the second defendant, Ng Lee Teng Nellie ("Nellie"), were senior-executive-level employees of CXAIBS. Jez was the Chief Executive Officer and Nellie was the Chief People Officer of CXAIBS. Post-Acquisition, the CXA Group gave a Notice of Change of Employer to Jez and Nellie, informing them that their employment with CXAIBS would be wholly transferred to PPIBS with effect from 11 February 2021. Shortly thereafter, Jez and Nellie tendered their resignation in April 2021 with the last day of their employment being 30 April 2021.

5 The third defendant, Afeli Insurance Brokers Pte Ltd, and the fourth defendant, Afeli Pte Ltd, collectively referred to as the Afeli Entities, are companies founded by Jez and Nellie after their resignation. The third defendant is incorporated in Singapore on 12 May 2021 and is in the business of insurance brokerage. The fourth defendant is incorporated in Singapore on 4 August 2021 and is in the business of providing human resource consultancy services, including flexible employee benefits services.

6 On 7 October 2021, in Summons No 4644 of 2021, the plaintiffs made an *ex parte* application for an injunction order against the defendant. The plaintiffs said that shortly after Jez's and Nellie's resignation from the company, many of PPIBS's employees gave notice of their resignation and joined the Afeli Entities. The plaintiffs also claimed that the defendants had poached some

of the plaintiffs' clients, including Baxter Healthcare SA Singapore Branch ("Baxter") and Seagate Singapore International Headquarters Pte Ltd ("Seagate").

7 In support of their application, the plaintiffs tendered a report from KPMG Services Pte Ltd ("KPMG Report") which contains a forensic analysis of the work-issued laptops of the first and second defendants. The KPMG Report shows that the first and second defendants deleted certain documents, including one Financial Projections Spreadsheet and one Revenue Spreadsheet, on the day of their resignation. The plaintiffs claimed that the KPMG Report shows:

(a) the defendants' premeditated plan to poach the plaintiffs' clients and take over the entire business of the plaintiffs for the benefit of the Afeli Entities;

(b) the defendants used and took advantage of confidential revenue data of the plaintiffs' existing clients in making financial projections for the defendants' competing business; and

(c) the defendants misused the plaintiffs' confidential and proprietary information pertaining to CXA1, when they employed Matias Richard Philip Escubio ("Ricky") who was, hitherto, the IT Programmer of PPIBS, and who had full access to the source code of CXA1.

8 Additionally, the plaintiffs claimed that the forensic evidence in the KPMG Report suggests that the first defendant had downloaded and copied a large number of files from her work laptop onto her personal USB device ("First

Defendant's USB Drive"). These files included files relating to the accounts of the plaintiffs' clients, slide decks prepared for specific clients and revenue sheets recording the revenue and accruals booked by the plaintiffs for each of their clients ("Revenue Spreadsheet").

9 On those grounds, the plaintiffs applied for injunctions against the defendants. The injunctions fall into three broad categories:

(a) injunctions against all four defendants to restrain the defendants from disclosing or using the plaintiffs' confidential business information ("confidentiality injunctions");

(b) injunctions against all four defendants to restrain the defendants from soliciting any clients from the plaintiffs and the plaintiffs' group of companies ("non-solicitation injunctions"); and

(c) an injunction against the first defendant to restrain the first defendant from destroying or disposing of the USB Drive and any files or data contained therein ("USB injunction").

10 Considering the submissions of counsel for the plaintiffs' in the *ex parte* application, I granted the plaintiffs an order in terms ("the Injunction Order"). The defendants now apply to discharge and/or vary the injunction orders. In Summons 5235 of 2021, the first and second defendants apply for:

(a) the discharge of the non-solicitation injunction against Jez in paragraph 1(b) of the Injunction Order;

(b) the discharge of the non-solicitation injunction against Nellie in paragraph 2(a) of the Injunction Order, or in the alternative, the variation of paragraph 2(a) so that the non-solicitation injunction ends on 30 April

2022 and Nellie is only restrained from soliciting clients of the second plaintiff; and

(c) the variation of the confidentiality injunction against Nellie in paragraph 2(b) of the Injunction Order, limiting the scope of the confidentiality injunction by deleting the terms "or other information".

11 In Summons 5238 of 2021, the third and fourth defendants apply for:

(a) the discharge of the confidentiality injunction against the third and fourth defendants in paragraph 3(a) of the Injunction Order;

(b) alternatively, varying paragraph 3(a) to limit the confidentiality injunction to information pertaining to the plaintiffs' business plans, client and financial information and proprietary software, and deleting the term "or other information"; and

(c) the discharge of the non-solicitation injunctions against the third and fourth defendants in paragraph 3(b) of the Injunction Order.

12 The crux of the defendants' case is that the plaintiffs had failed to make full and frank disclosure in their *ex parte* application for the injunction orders:

(a) First, the defendants say that the plaintiff failed to disclose that there was no non-solicitation clause in Jez's employment contract with the plaintiffs.

(b) Second, the defendants say that the plaintiffs failed to present a true and accurate picture of the plaintiffs' loss of employees after the Acquisition. The defendants say the plaintiff failed to inform the court that there was an exodus of employees after the Acquisition due to

unhappiness with the plaintiffs' human resources issues and at least 17 employees left PPIBS to join the plaintiffs' major competitors after Acquisition.

(c) Third, the defendants say that the plaintiffs failed to disclose material information pertaining to their loss of customers and presented a misleading picture that their loss of customers was due to the defendants' solicitation. The defendants say that the plaintiff did not disclose an email from Baxter dated 30 September 2021 which indicated that Baxter discontinued their arrangements with the plaintiffs because of their employees' complaints about the plaintiffs' services. The defendants also say that the plaintiffs failed to disclose a phone call with Seagate on 22 September 2021 which showed that Seagate's reasons for not wanting to extend their insurance policies were completely unrelated to the Afeli Entities.

(d) Fourth, the defendants say that the plaintiffs had misled the court when they said that Ricky had full access to the source code of CXA1 and could engineer a program similar to the CXA1. The defendants say that Ricky only had supervised access to the source code, and that the plaintiffs would have a clear record if Ricky attempted to access the source codes. The defendants also say that contrary to the plaintiffs' representation that Ricky was poached by the defendants, Ricky was never employed by the Afeli Entities and his reason for resigning from PPIBS was purely for starting his own business.

(e) Lastly, the defendants say that another material non-disclosure was that the Revenue Spreadsheet, which was forensically recovered from the first and second defendants' laptops, did not contain up-to-date

data on the plaintiffs' client revenues. The defendants say that the Revenue Spreadsheet was created on 3 August 2020 and that at least 17 clients who had been listed in the Revenue Spreadsheet had terminated their appointment of the second plaintiff prior to April 2021.

13 The defendants further argue that given the lack of any contractual basis for the non-solicitation injunctions against Jez and the Afeli Entities, the plaintiffs are essentially seeking "springboard" injunctions against Jez and the Afeli Entities. The defendants say that the "springboard" injunctions should not be granted because the confidential information in question, namely, the revenue data of the plaintiffs' client, does not give the defendants an unfair competitive advantage.

14 In relation to Nellie, whose employment contract with CXAIBS contained a non-solicitation clause, the defendants say that the non-solicitation clause should be struck down for being an unreasonable restraint of trade. The defendants say that CXAIBS's indiscriminate insertion of non-solicitation clauses into the employment contracts of all employees shows that CXAIBS did not have any legitimate proprietary interest to protect.

15 A "springboard" injunction is not a separate species of injunction, nor a special legal tool. The nomenclature "springboard" refers to the purpose for which the injunction is sought, namely, the removal of an unfair competitive advantage arising from a breach of confidence (*BAFCO Singapore Pte Ltd v Lee Tze Seng* [2020] SGHC 281 ("*BAFCO*") at [12]). In other words, when an applicant is seeking a "springboard" injunction, he is seeking an injunction to prevent a wrongdoer from enjoying the advantages of starting a venture using confidential information that the wrongdoer had unfairly obtained (*BAFCO* at

[10]). To succeed, the plaintiff must show: (a) confidential information had been misused or is at risk of being misused; (b) such misuse of confidential information had given an unfair competitive advantage to the defendant; (c) the "unfair advantage" was being enjoyed by the defendant at the time the injunction was sought; and (d) damages would be inadequate to compensate the plaintiff (*Goh Seng Heng v RSP Investments* [2017] 3 SLR 657 ("*Goh Seng Heng*")).

16 In the present case, the parties disagree as to whether the non-solicitation injunctions sought by the plaintiffs are "springboard" injunctions. Perhaps due to the confusing usage of the nomenclature "springboard", the plaintiffs overtly disclaim that they are making a "springboard" application when the facts suggest otherwise. The plaintiffs' case is that the defendants had misused the plaintiffs' client revenue information to solicit the plaintiffs' clients by offering cheaper prices to undercut the plaintiffs' prices. The plaintiffs' basis for seeking the non-solicitation injunctions was to remove the unfair competitive advantage that the defendants had unfairly obtained by using the plaintiffs' confidential information, and not to protect the confidential information itself. Therefore, I am of the view that the non-solicitation injunctions are, what is commonly understood as, "springboard" injunctions.

17 Nevertheless, I find that the non-solicitation injunctions should be granted in the present case because the requirements laid out in *Goh Seng Heng* have been met. The KPMG Report suggests that the defendants are in possession of the Revenue Spreadsheet, which contains confidential information of the plaintiff pertaining to the revenue the plaintiff receives from each client. The circumstances of the case further suggest that the defendants might have already used the client revenue data to undercut the plaintiffs' prices,

and that some of the plaintiffs' clients have moved their business to the defendants. The core issue in dispute is whether the information on client revenue gave the defendants an unfair competitive edge. I am of the view that it does. Having the data on how much each client pays the plaintiffs, the defendants are able to offer services at a lower price to undercut the plaintiffs, which will certainly be considered a competitive advantage. In fact, in the email sent by Baxter to the plaintiffs, it can be seen that Baxter moved their business to the Afeli entities because they were able to offer "a substantially lower cost structure". This suggests, if anything, that there is a real risk of the defendant misusing the plaintiffs' confidential information to give themselves an "unfair advantage" in terms of pricing, and that the "unfair advantage" is still being enjoyed by the defendant.

18 The defendants say that since the confidential client revenue data in the Revenue Spreadsheet contains no pricing information, there can be no competitive advantage. I disagree. The Revenue Spreadsheet shows the breakdown of the revenue the plaintiffs received from their clients for their services. Even without detailed pricing information, the knowledge of the exact amount each client pays the plaintiffs would allow the defendants to price their services accordingly to undercut the plaintiffs.

19 For completeness, I find that damages would not be adequate to compensate the plaintiffs in the present case. The Revenue Spreadsheet contains confidential revenue information from 318 clients of the plaintiffs. Even if, as the defendants claim, 17 of the clients had terminated their appointment with the plaintiffs prior to April 2021, there is still a very significant number of clients on the list that are current clients of the plaintiffs. The non-solicitation injunctions are therefore necessary to prevent the defendants from using the

confidential information in the Revenue Spreadsheet to further undercut the plaintiffs and siphon off businesses from the plaintiffs. Notwithstanding the injunctions, the defendants remain free to carry on their business as long as they do not solicit the plaintiffs' clients or rely on the plaintiffs' confidential information. Any losses suffered by the defendants as a result of the interim injunctions can be compensated with damages.

20 I am minded that a "springboard" injunction is not meant to be maintained indefinitely and is only meant to be in place for such time as it would take the wrongdoer to achieve lawfully what he was hoping to achieve unlawfully, relative to the plaintiff (*Jardine Lloyd Thompson Pte Ltd v Howden Insurance Brokers (S) Pte Ltd* [2015] 5 SLR 258 at [21]). In the present case, I am of the view that the non-solicitation injunctions should be effective for six months from the date of this judgment. By then, both sides ought to be able to compete against each other on reasonably even terms. The plaintiffs, for example, would – or at least they should – have completed damage control and taken steps to stop the bleeding, if any, to prevent further losses. The defendants, on the other hand, would be steadier on their feet, and would be able to meet their rivals evenly too. Therefore, I will allow the defendants to vary paragraphs 1(b), 2(a) and 3(b) of the Injunction Order to limit the duration of the non-solicitation injunctions to six months from the date of this judgment. It should be borne in mind that the non-solicitation injunctions were first granted about six months ago. So an overall 12 months protection would be adequate to bring the plaintiffs' position back on even keel.

21 Turning to the issue of material non-disclosure, I am of the view that although there may have been matters which the plaintiffs omitted to disclose,

they are not material non-disclosures that are sufficient to discharge the injunction orders. My reasons are as follows:

(a) First, although the plaintiffs could have told the court that Jez's employment contract did not contain a non-solicitation clause, the plaintiffs' omission is not fatal because Jez's employment contract has been provided in full in the affidavit of Oliver Xavier Jean Claude Zeller. Furthermore, the plaintiffs are not relying on any contractual basis for the non-solicitation injunctions. Instead, the non-solicitation injunctions were sought to give effect to the confidentiality obligations arising from the confidentiality provisions in Jez's employment contract, which was not disputed by the parties.

(b) Second, in relation to the non-disclosure of the exodus of employees who resigned from the plaintiffs after the Acquisition, I am of the view there is no material non-disclosure. The fact that other employees had decided to leave the plaintiffs' employ around the same time may be relevant for the trial, it does not change the fact that at least five of the plaintiffs' former employees resigned from the plaintiffs to join the defendants' rival incipient business.

(c) Third, I find that there was no material non-disclosure of the circumstances in which the plaintiffs' clients have moved their business to the Afeli Entities. The email to the plaintiffs from Baxter dated 30 September 2021 suggests that the main reason that Baxter decided to move their business to the Afeli Entities is that the Afeli Entities were able to offer a cost structure that is much cheaper than the plaintiffs. This is consistent with the plaintiffs' case that there has been a misuse of the

confidential client revenue information by the defendants to undercut the plaintiffs.

(d) Fourth, I agree that it may not be completely accurate to say that Ricky had "complete access" to the source codes of CXA1 if he had only "supervised access". However, I am of the view that this does not amount to a material non-disclosure. The plaintiffs clarified that "supervised access" in this case does not mean that Ricky had to seek approvals before he could access the source codes. Instead, it simply meant that there will be a record if Ricky so chooses to access the source codes. The "supervision" to Ricky's access is, therefore, *ex post facto* in nature and does not prevent Ricky from accessing the source code.

(e) Lastly, in relation to the non-disclosure that the information in the Revenue Spreadsheet is outdated, I am of the view that this does not amount to a material non-disclosure. Even if the Revenue Spreadsheet only contained client revenue data as of 3 August 2020, it could be still used by the defendants to approach the plaintiffs' clients and undercut the plaintiffs. Generally, information like pricing does not change drastically on a year-on-year basis, and historical prices are always commercially useful for planning purposes.

22 Turning to the defendants' argument that the non-solicitation clause in Nellie's employment contract should be struck down for being an unreasonable restraint of trade, I am of the view that the reasonableness and validity of the non-solicitation clause should not be assessed at the interlocutory stage (*Littau Robin Duane v Astrata (Asia Pacific) Pte Ltd* [2010] SGHC 361 at [30]). The relevant threshold at this stage is whether there is "a serious question to be tried", which has been readily satisfied by the plaintiffs. In any event, the

plaintiffs' basis for seeking the non-solicitation injunction against Nellie is not that there is an enforceable non-solicitation clause in Nellie's employment contract. Rather, as mentioned above, the plaintiffs are seeking the non-solicitation injunction against Nellie to prevent the defendants from gaining any unfair competitive advantage from their misuse of the plaintiffs' confidential information. Therefore, the issue of the enforceability of the non-solicitation clause may well be rendered moot.

23 Lastly, I am of the view that the balance of convenience lies in favour of the plaintiff and that maintaining the injunctions carries a lower risk of injustice than not doing so. This is especially when the confidential information in question includes the information of the plaintiffs' client revenues and proprietary information pertaining to CXA1. Once the confidentiality of such information is breached, it will be permanently lost. Therefore, the balance of convenience favours the preservation of this confidentiality, pending the determination of this action. However, I agree with the defendants that the current scope of the confidentiality injunctions against the second and third defendants, found in paragraphs 2(b) and 3(a) of the Injunction Order, is too wide because they contain the term "or other information". I will therefore allow the defendants to vary paragraphs 2(b) and 3(a) of the Injunction Order to limit the scope of the confidentiality injunctions by making their proposed amendments and deleting the terms "or other information".

24 For the aforementioned reasons, I dismiss the defendants' application to discharge the non-injunction injunctions and the confidentiality injunctions, but allow the defendants to vary paragraphs 1(b), 2(a) and 3(b) of the Injunction Order to limit the duration of the non-solicitation injunction to six months, and to make their proposed amendments to paragraphs 2(b) and 3(a) of the

Injunction Order to limit the scope of the confidentiality injunctions. Costs of this application will be reserved to the trial judge.

- Sgd -
Choo Han Teck
Judge of the High Court

Prakash Pillai, Koh Junxiang, Charis Toh Si Ying and Yap Zhan Ming (Clasis LLC) for the plaintiffs;
Gregory Vijayendran Ganesamoorthy, Lester Chua Kee Tian and Tomoyuki Lewis Ban (Rajah & Tann Singapore LLP) for the first and second defendants;
Lim Ker Sheon and Zeng Hanyi (Focus Law Asia LLC) for the third and fourth defendants.