**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2019] SGHC 54**

HC/Suit No 63 of 2019
(HC/Summons No 235 of 2019)

Between

World Fuel Services (Singapore) Pte Ltd

… *Plaintiff*

And

Xie Sheng Guo

… *Defendant*

---

# GROUNDS OF DECISION

---

[Contract] – [Illegality and public policy] – [Restraint of trade]

# World Fuel Services (Singapore) Pte Ltd
# v
# Xie Sheng Guo

## [2019] SGHC 54

High Court — HC/Suit No 63 of 2019 (HC/Summons No 235 of 2019)
Choo Han Teck J
29 January, 7 and 14 February 2019

5 March 2019

**Choo Han Teck J:**

1 The plaintiff is a company that supplies marine and aviation oil in Asia, and was the employer of the defendant, whose job, according to the plaintiff's counsel, Miss Lee Ping, was to negotiate prices of aviation oil and enter into supply contracts for the plaintiff which then re-sells the oil to its own customers, including airlines.

2 The defendant tendered his resignation on 19 November 2018 and informed the plaintiff that he intended to join a company called China Aviation Oil (Singapore) Corporation Ltd ("CAO SG") on 19 February 2019 immediately after he ceased employment with the plaintiff. CAO SG is a public listed company in Singapore, and its controlling shareholder is China National Aviation Fuel Group ("CNAF"), a state-run entity in China which supplies aviation oil to the plaintiff.

3 After tendering his resignation, the defendant was put on garden leave until his last day of work, that is, 18 February 2019. Under his contract of employment dated 15 August 2016 with the plaintiff ("Employment Contract"), the defendant covenanted that six months after his termination (for whatever reason), he would not compete or participate in businesses that compete against the business of the plaintiff, and would not solicit the patronage of customers, or any brokers, traders, managers or directors employed by the plaintiff. The exact terms are found in the long and detailed clause 5 of the Employment Contract. The terms and details were not in dispute before me.

4 What was before me was the application filed by the plaintiff on 15 January 2019 to enjoin the defendant from commencing employment under CAO SG. It was an application to enforce clause 5 as well as clause 4 of the Employment Contract. Clause 4 imposes duties of confidentiality on the defendant.

5 Miss Lee submitted that the contract terms in question were clear and reasonable. The defendant need only abstain from joining CAO SG for six months. The revenue that the plaintiff may lose runs to US$40m a year, in contrast, the defendant will be paid S$10,400 a month with unspecified bonuses, and an additional sign-on bonus of S$10,400.

6 The plaintiff's main concern was that the defendant had contacts with its suppliers in China and knew the prices that the plaintiff bought and sold its aviation oil. The plaintiff submitted that this constituted clear confidential information that was useful to a competitor, of which CAO SG is one, as CAO SG and its subsidiaries would tender for aviation oil contracts alongside the plaintiff. The information would enable the competitor to negotiate prices for the purchase and sale of aviation oil to the disadvantage of the plaintiff.

7 Miss Megan Chia, counsel for the defendant, challenged the plaintiff's application on several grounds. She said that the plaintiff had not shown that there was a legitimate proprietary interest to be protected. She said that the defendant had no access to the final contracts made by the plaintiff and its suppliers and customers. Furthermore, she asserted that it was no secret who the plaintiff's customers were, and the defendant did not deal directly with the plaintiff's customers. Miss Chia argued that as CAO SG is merely a holding company, it was not a customer nor a reseller of aviation oil and therefore, the defendant was not joining a competitor. He had been offered a job as a senior aviation marketing manager in CAO SG specifically on the condition that he was not subject to all the restrictive covenants in his Employment Contract.

8 Here, we have yet another clash between two ideals — the sanctity of contract against the freedom to work. It is not a clash of absolutes but it exemplifies competing rights and expectations, and security and hardship. Which man enters upon a contract not expecting that the person he contracts with intends to fulfil all that he had promised to do? Agreements that are enforceable at law are no different from agreements outside the purview of the law in that all agreements are nestled in good faith and honesty. The expectation of fulfilment is mutually held. It is the reason people go to court in aid. They seek judicial recognition of their contractual rights and pray to the court for relief. This is what the plaintiff wants.

9 The defendant undertook not to be employed in this area of work, all defined in minute and explicit detail in clauses 4 and 5 of his Employment Contract. He challenged the plaintiff's claim on the broad ground that the conditions imposed on him by those clauses were unreasonable and against public policy. No employer should be entitled to restrain an ex-employee from employment elsewhere. Miss Chia submitted that the defendant had no special

confidential information and his job insofar as it brought him to CNAF or other suppliers in China, was virtually a public relations exercise; a way for the plaintiff to keep in touch with its suppliers. It did seem like a serious and important job for the defendant to fly to China regularly to meet the plaintiff's suppliers. From the affidavits and submissions of counsel, it seemed that as a supply manager for the plaintiff, the defendant had access to important and confidential information such as the price that the suppliers sold to the plaintiff, and the price the plaintiff sold to its customers. Miss Lee submitted, that the defendant sourced supplies of aviation oil from seven countries for the plaintiff but Miss Chia said that 80% of the defendant's work was in China.

10 Miss Chia further submitted that clause 4 adequately protects the plaintiff's interests. Clause 4 enjoins the defendant from disclosing confidential information. She submitted that the defendant had given his undertaking in clause 4 and would honour his promise. If so, why was he not honouring the promise he made in clause 5?

11 The defendant will be paid S$10,400 a month with unspecified bonuses, along with a sign-on bonus of S$10,400. The plaintiff has a US$40m annual trading turnover derived from the aviation oil contracts. Miss Chia argued that if enjoined from working for CAO SG for six months, the defendant may lose his job. This claim was not supported by evidence, but assuming that it was true, the balance of convenience as between the quantification of the loss of his new job, was easily quantifiable, even taking into account the difficulty, if any, in his finding another job. Whereas, the loss of business by reason of price adjustments by the plaintiff's competitors including CAO SG would be a more difficult exercise.

12 The defendant's experience must surely have been an important

consideration for CAO SG to employ him. It was also obvious that he carried all his knowledge of the plaintiff's connections and business with its suppliers and customers in the store of that experience. It would be impossible to separate confidentiality from a detached discharge of his duties with his new employer, CAO SG.

13 For the reasons above, the plaintiff's application was allowed.

- Sgd -
Choo Han Teck
Judge

Lee Ping and Swah Yeqin, Shirin (Shook Lin & Bok LLP) for plaintiff
Megan Chia and Benedict Teong (Tan Rajah & Cheah) for defendant.