

Advantest Corporate Office (Singapore) Pte Ltd and Another v SL Link Co Ltd (also known as Solar Link Co Ltd) and Another
[2005] SGHC 75

Case Number : Suit 10/2004
Decision Date : 22 April 2005
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : Thio Shen Yi, Adrian Tan and Dean Cher (TSMP Law Corporation) for the plaintiffs; Leo Cheng Suan and Teh Ee-Von (Infinitus Law Corporation) for the defendants
Parties : Advantest Corporate Office (Singapore) Pte Ltd; Advantest (S) Pte Ltd (formerly known as Advantest Asia Pte Ltd) — SL Link Co Ltd (also known as Solar Link Co Ltd); SL Link (S) Pte Ltd

Contract – Parties to contract – Identity of parties – First defendant identified in contract as another company which shared the same premises – Contract providing non-competition clause to protect plaintiffs' interests – Plaintiffs seeking to enforce non-competition clause against defendants – Whether non-competition clause enforceable against defendants

Tort – Inducement of breach of contract – Contract between first defendant and first plaintiff containing non-competition clause – First and second defendants entering into negotiations to deal directly with first plaintiff's customers – Whether second defendant liable for inducing breach of contract

22 April 2005

Judgment reserved.

Lai Kew Chai J:

1 The central issue of fact in this action is whether the first defendant, *ie*, SL Link Co Ltd ("SL Link"), is a party to a manufacturing agreement, as asserted by the plaintiffs, or Solar Link Co Ltd, as asserted by the defendants.

2 The party which on the face of the manufacturing agreement had entered into the agreement with the first plaintiff was "Solar Link Co Ltd" which, according to the defendants, was registered in Taiwan as 追日润工科技股份有限公司 (Zhui Ri Run Gong Ke Ji Gu Fen You Xian Gong Si) bearing Taiwanese company registration no 16991864 on 18 November 1999.

3 On the face of the agreement, therefore, SL Link is not a party to the agreement. SL Link is a company incorporated in Taiwan. It was incorporated in February 2001. As it is a company incorporated in Taiwan, it is known only by its Chinese name in Taiwan. It would have been conclusively identified if it had been correctly identified by its Chinese name and by its company registration number issued by the Taiwan Ministry of Economic Affairs. Its Taiwanese registration number was RC No 12737841. Its name in Chinese is 追日润股份有限公司 (Zhui Ri Run Gu Fen You Xian Gong Si).

4 The dispute as to the identity of the party to the agreement with the first plaintiff had come about because the first defendant was not identified in the agreement either by its name in Chinese or by its registration number. It was simply identified as "Solar Link Co Ltd" of a certain address, which was shared by SL Link.

5 There are several other issues which have to be determined should SL Link be found to be a party to the agreement. The first such issue is whether SL Link has breached its obligations under the agreement. The second issue is whether cl 7 of the agreement providing for non-competition is enforceable. Thirdly, have both defendants breached their duty of confidence owed to the plaintiffs? Fourthly, had both defendants conspired to cause harm to the plaintiffs and/or alternatively, had the second defendant induced SL Link to breach its obligations under the agreement? Fifthly, as alleged by the defendants, had the first plaintiff entered into the agreement in bad faith? Sixthly, the defendants raised the issue whether one Alex Wang, who had signed the agreement for ostensibly "Solar Link Co Ltd", had the authority to enter into the contract on behalf of SL Link. Finally, the issue arises whether the defendants are entitled to counterclaim for damages against the plaintiffs for allegedly causing them loss.

The facts

6 The following facts were established by the evidence led. For the plaintiffs, the evidence was given in the main by Cheng Sui Yoong ("Mr Cheng"), the managing director of both plaintiffs. He was at all material times in charge of the operations of the Advantest Group in Southeast Asia. Mr Wang Ching Dong Alex William ("Mr Alex Wang") gave the bulk of the evidence on behalf of the defendants. He was founder of Solar Link Co Ltd in Taiwan, registration number 16991864, whose Chinese name is as stated above at [2]. He was the substantial shareholder of the company and was the general manager from 1999 to 2004. This company's main business was in the manufacture of an "interface" between the tester machine and the chips to be tested. But it was in liquidation before the manufacturing agreement was signed.

7 Based on Mr Cheng's Affidavit of Evidence-in-Chief, which is not disputed, the plaintiffs are part of the Advantest Group of companies ("Advantest") which has its headquarters in Japan. Advantest was the largest supplier of automatic test systems in the world in 2003. It had a 30% market share. Some of Advantest's customers include big names in the semiconductor industry such as AMD, Micron Semiconductor Asia Pte Ltd ("MSA"), Motorola, NEC, ST Micro-electronics and Infineon Technologies Sdn Bhd.

8 Automatic test systems are used to test the functionality of integrated circuit chips ("IC chips"). The test system produced by Advantest consists of three main components, namely the test system, the handler and the device interface. The test system consists of computers designed to create and simulate different conditions to test the IC chips. The handler is a mechanism which places the IC chips into the device interface (known as "Hi-Fix") which is connected to the test system. Hi-Fix is a form of adaptor between the test system and the IC chips. In parenthesis, it may be noted that the Hi-Fix together with the other accessories of the test system are known as the "tooling". By applying a different Hi-Fix, different types of IC chips can be tested on the same test system.

9 Advantest is divided into three main regional groups, namely, Advantest America, Advantest Europe and Advantest Asia. Advantest Asia (the second plaintiff) is a holding company for all of the Advantest wholly-owned subsidiary companies in Asia, amongst which are Advantest Taiwan Incorporated ("ATI") and Advantest Korea. They are autonomous and are run by their own managing directors. In 2001, ATI started a new subsidiary, Advantest Taiwan Engineering Incorporated ("ATEI") which is involved in the manufacture of tooling such as Hi-Fix. ATI is the majority shareholder of ATEI, holding more than 50% of the shares in ATEI. Advantest companies do on occasion subcontract work to local companies in Taiwan, Korea and Singapore to assemble and solder some parts of the equipment required by their customers.

10 I turn to the history of SL Link. In 2001, SL Link was incorporated in Taiwan. Mr Alex Wang was part of the mind and management of this company. The name was used to benefit from what he alleged was the substantial goodwill of the name "Solar Link". In capitalising on the reputation of Solar Link Co Ltd, it was important, in the interest of fair dealing, for Mr Alex Wang to ensure that the two companies, namely Solar Link Ltd and SL Link, were kept distinct and separate so that foreign parties negotiating with him, wearing different hats, did not confuse one for the other. This was especially necessary, seeing that companies in Taiwan are identified by their Chinese names and by their registration numbers. In a perfect world, of course, such foreign parties or those professionally acting for them could have made an official search at the Ministry of Economic Affairs, Taiwan, to ensure that any agreement is entered into with the right corporate party by stating a party's name in Chinese and its registration number.

11 Mr Alex Wang found some investors, who were interested in Solar Link Co Ltd's technology, to invest in SL Link. From February 2001 to October 2002, he was the general manager of SL Link. He was also a director until he resigned as director on or about 22 August 2003.

12 SL Link is involved in the Taiwanese local market in the soldering business. In contrast, Solar Link Co Ltd was in liquidation at all material times.

13 Mr Cheng gave evidence of his first contact with SL Link. SL Link was previously known as "追日润工企业设" (Zhui Ri Run Gong Qi Ye She). It also referred to itself as "Solar Link" in English. Sometime in February 2001, SL Link sent a memo to all its customers (including ATI) informing them that it had changed its name to its present name, 追日润股份有限公司 (Zhui Ri Run Gu Fen You Xian Gong Si). I refer to an instance where SL Link had referred to itself as "Solar Link Co Ltd". In November 2000, ATI entered into a contract with SL Link ("the Taiwanese Agreement") for it to assemble for ATI tooling such as Advantest's T5581 and T53xx test systems. SL Link provided a quotation in October 2001. Its Mandarin name, "追日润股份有限公司" (Zhui Ri Run Gu Fen You Xian Gong Si) was set out in large font while its English name, "Solar Link Co Ltd" was set out in much smaller font. The company registration was stated on the quotation as "12737841" which has always been its identification number. The address stated in the quotation was "2F, No 64 Kuang Hua Street, Hsin-Chu City", which up to 22 July 2002 has been the address of SL Link.

14 I therefore accept the evidence of Mr Cheng, a Malaysian comfortable with Mandarin, that in his mind SL Link was known as "追日润股份有限公司" in Mandarin and "Solar Link Co Ltd" in English. He said that before August 2003 he had never heard of a company named "SL Link Co Ltd" or a company named "追日润科技股份有限公司" (Zhui Ri Run Gong Ke Ji Gu Fen You Xian Gong Si).

15 I refer to the Taiwanese Agreement. ATI entered into a contract with SL Link who was then known as "追日润工企业社" (Zhui Ri Run Gong Qi Ye She) in November 2000 for the latter to assemble tooling such as Advantest's T5581 and T53xx test systems. SL Link could not, under the Taiwanese Agreement, solicit Advantest's customers without prior approval from ATI.

16 In October 2001, Mr Cheng learned from his colleagues from ATI that MSA had placed a purchase order for five sets of Hi-Fix with SL Link. MSA had previously always ordered its Hi-Fix from the first plaintiff. He was concerned that SL Link did not seek the consent of ATI when it solicited the order from MSA, as it was obliged to do under the Taiwanese Agreement.

17 Since MSA appeared satisfied with the quality of SL Link's work, and eschewing confrontation, Mr Cheng decided that the first plaintiff should co-operate with SL Link. He decided to engage SL Link as a subcontractor of the first plaintiff, to assemble and manufacture Hi-Fix sets for the first plaintiff to on-sell to its customers. He contacted Mr L A Tang of the second defendant

whom he knew. Mr Tang arranged for Mr Alex Wang to meet Mr Cheng in Singapore.

18 The meeting took place on 28 November 2001 at the first plaintiff's office at Alexandra Technopark. As Mr Alex Wang is Taiwanese, Mr Cheng spoke to him in Mandarin. Mr Alex Wang introduced himself as the general manager of 追日润股份有限公司 (Zhui Ri Run Gu Fen You Xian Gong Si) or SL Link. He also handed Mr Cheng a name card which showed SL Link's English name as "Solar Link Co Ltd" on the one side while the other side described SL Link's Mandarin name as 追日润股份有限公司 (Zhui Ri Run Gu Fen You Xian Gong Si). The address on the name card was 2F, No 64 Kuang Hua Street, Hsin-Chu City.

19 The meeting was fruitful. On 4 December 2001, Mr Cheng sent a proposal. Mr Alex Wang replied on the following day accepting the proposal. On 11 December 2001, they signed a memorandum of understanding in broad terms confirming the co-operation.

20 In January 2002, Mr Cheng flew with his colleague, Mr Kenneth Ng, to Taiwan and met with their colleagues from ATI and ATEI and with Mr Alex Wang to further discuss Advantest's co-operation with SL Link. While in Taiwan, Mr Alex Wang invited Mr Ng and Mr Cheng to visit SL Link's office and factory. Mr Cheng was introduced to a Mr Roger Lo, one of SL Link's managers and Mr Vincent Lo. They gave Mr Cheng their name cards which, like the name card of Mr Alex Wang, showed SL Link's Mandarin name as 追日润股份有限公司 (Zhui Ri Run Gu Fen You Xian Gong Si) on one side and described the company's English name, "Solar Link Co Ltd" on the other side. The address on these cards was 2F, No 64 Kuang Hua Street, Hsin-Chu City.

21 I turn to the explanation of Mr Alex Wang about the names on the name cards. His evidence is that during "the transition period, for convenience (instead of carrying multiple cards), [he] carried name cards bearing the name of SL Link Co Ltd in Mandarin on one side, and Solar Link Co Ltd in English on the reverse side. This is because SL Link Co Ltd's business was in Taiwan, and Solar Link Co Ltd was dealing in overseas market. As Solar Link Co Ltd was in liquidation, [he] used the address, telephone number and registration number of SL Link Co Ltd for ease of contact".

22 SL Link, ATEI and the first plaintiff then arranged to meet MSA. They gave MSA a presentation on a proposal where the design interface department of Advantest Japan would manufacture and design high-end Hi-Fix sets for Advantest's latest models such as the T5593 and T5585 series of testers. During the presentation, SL Link was referred to as "Solar Link Co Ltd". ATEI could subcontract the assembly and soldering of these high-end Hi-Fix sets to SL Link. SL Link could be engaged to assemble and solder Hi-Fix sets for older model Advantest test sets such as T5581 and T53xx. MSA would still issue the purchase orders to the first plaintiff who would then issue a purchase order to SL Link.

23 Mr Cheng continued to describe the developments between the first plaintiff and SL Link. Based on the understanding, according to Mr Cheng, ATEI and SL Link entered into an appointment agreement on 1 February 2002 ("the Appointment Agreement"). The Appointment Agreement was drafted in Mandarin and SL Link's Mandarin name as stated above (Zhui Ri Run Gu Fen You Xian Gong Si) was used by ATEI to describe SL Link. The Appointment Agreement was signed by Ms Luo Wen Ling, who was the chairperson of SL Link's board of directors as well as Mr Alex Wang's wife. In the Appointment Agreement, the address of SL Link was stated to be 2F, No 64 Kuang Hua Street, Hsin-Chu City, Taiwan.

24 The first plaintiff continued to negotiate with SL Link and entered into a manufacturing service agreement with SL Link on 12 March 2002 ("the Manufacturing Agreement"). The Manufacturing Agreement was drafted in English. As SL Link also referred to itself as "Solar Link Co

Ltd", the first plaintiff used "Solar Link Co Ltd" to denote SL Link in the Manufacturing Agreement. In the Manufacturing Agreement, the address of SL Link was stated to be 2F, No 64 Kuang Hua Street, Hsin-Chu City, Taiwan.

25 In my view, it is noteworthy that both the Appointment Agreement and the Manufacturing Agreement arose from the MSA presentation in which SL Link participated in its Mandarin name. Also noteworthy is the fact that Solar Link Co Ltd was in liquidation at all material times. Such a company would only transact to dispose of its assets and I am convinced that such a company is not permitted under Taiwanese law to undertake the manufacture, assembly and supply of Hi-Fix sets over a period of three years.

26 According to the evidence of Mr Cheng, which I accept, Mr Alex Wang had always traded and represented to him that the English name of SL Link was "Solar Link Co Ltd". The first plaintiff therefore described SL Link as "Solar Link Co Ltd".

The manufacturing agreement

27 Under the Manufacturing Agreement, it would be recalled, SL Link was to assemble and sell the products, ie the Hi-Fix sets, to the first plaintiff who would purchase the products. The first plaintiff would then on-sell the products to the eventual customer. SL Link also undertook in cl 2 of the Manufacturing Agreement that it and its agents would:

2.2.1 not directly or indirectly supply, sell, market, promote or distribute the Products or any other goods to any other person whether for use or resale or appoint a representative anywhere in the Restricted Territory (i.e. any country, the world over) without the prior written consent of the Company (i.e. the plaintiff) (such consent may be withheld at the sole discretion of the Company);

2.2.2 not solicit any business from or enter into any business relationship with any existing or potential Customer without prior written consent of the Company (such consent may be withheld at the sole discretion of the Company);

2.2.3 not engage in any business with any other person without the prior written consent of the Company (such consent may be withheld at the sole discretion of the company); ...

28 SL Link further irrevocably and unconditionally covenanted in cl 7 that it and its agents would not at any time while the Manufacturing Agreement was in force and for three years thereafter, whether or not the Manufacturing Agreement had been terminated by the first plaintiff or otherwise:

7.1.1 be directly or indirectly engaged or concerned in (whether as an agent, independent contractor or otherwise) the conduct of any business competing directly or indirectly with the Affected Business within the Territory;

7.1.2 carry on for its own account either alone or in partnership or be concerned as a director or shareholder in any company engaged in any business competing directly or indirectly with the Affected Business within the Territory;

7.1.3 assist any person, firm or company with technical advice in relation to any business competing directly or indirectly with the Affected Business within the Territory;

7.1.4 solicit or entice away or attempt to solicit or entice away from the Company or any

other Advantest Group Company any person, firm, company or organisation who shall at any time have been a customer, client, distributor or agent of the Company or any other Advantest Group Company or in the habit of dealing with the Company or any other Advantest Group Company;

...

7.1.6 in relation to any trade, business or company, use any name in such a way as to be capable of or likely to be confused with the name of the Company or any other Advantest Group Company and shall use all reasonable endeavours to procure that no such name shall be used by any person, firm or company;

7.1.7 assist with technical advice any person, firm or company engaged in manufacture and/or marketing of any product(s) or service(s) in competition with the Company or any other Advantest Group Company which is likely to involve the disclosure or use by the Manufacturing Service Provider of trade secrets of the Company or any other Advantest Group Company; and

7.1.8 otherwise be interested, directly or indirectly, in any business competing with the Affected Business within the Territory;

...

29 Confidential information is defined at cl 8 of the Manufacturing Agreement as follows:

8.1 The Manufacturing Service Provider (i.e. SL Link) hereby unconditionally and irrevocably agrees and undertakes to the Company and the other Advantest Group Companies, and undertakes to procure its Agents (collectively referred to as "**Recipients**") to preserve and maintain in utmost confidence all Confidential Information and use the Confidential Information only in the performance of its obligations in accordance with this Agreement.

...

8.5 Except to the extent if such information is public knowledge or becomes public knowledge other than by breach of the provisions of this Agreement, "**Confidential Information**" shall mean for the purposes of this Agreement:

...

8.5.2 information from time to time in the possession or custody of the Company (i.e. the plaintiff), or any other Advantest Group Company belonging to its customers or other users of services from time to time provided by the Company, including without limitation the names of customers;

...

30 The anti-competition and confidentiality clauses were added to protect Advantest's technology, technical expertise, trade secrets and confidential information which ATI through its Taiwanese companies had or might have passed to SL Link to facilitate their assembly process. Socket files of some of Advantest's customers and the circuit diagrams of a Hi-Fix for the Advantest T5585 test programs were furnished to SL Link. Socket files are documents containing information of customers. The socket files enabled SL Link to wire the sockets to the respective tester pins allowing the sockets to be compatible and able to interface Advantest's customers' (such as MSA's) devices

such as memory chips. The socket is an essential component of the Hi-Fix product as it is the interface between the customer's device and the Hi-Fix product.

31 On or about 18 March 2002 SL Link provided the first plaintiff with a quotation for a full set of Hi-Fix at S\$43,500. The quotation was issued in the English name of "Solar Link Co Ltd." The first plaintiff ordered two full sets of Hi-Fix in order to supply them to MSA, one of Advantest's major customers. The goods were supplied to the first plaintiff. Again, the invoice was issued under the English name of "Solar Link Co Ltd". However, a Government Uniform Invoice chop was affixed on the invoice with SL Link's Mandarin name 追日润 股份有限公司 (Zhui Ri Run Gu Fen You Xian Gong Si) and its registration no 12737841 stamped on the invoice. Its address was stated as "2F, No 64 Kuang Hua Street, Hsin-Chu City" which is the address of SL Link set out in both the Appointment Agreement and the Manufacturing Agreement.

32 In breach of the Manufacturing Agreement, SL Link solicited business from MSA by providing MSA with a quotation for Hi-Fix sets on or about October 2002. As admitted by Mr Tang of the second defendant, SL Link was in the process of "negotiating a large order of US\$3m with Advantest's [customers]". Both Mr Wang and Mr Tang had informed MSA that the Manufacturing Agreement was no longer binding on SL Link and that both defendants were free to deal with the customers of Advantest.

33 The benefits of the Manufacturing Agreement were assigned to the second plaintiff on or about 1 October 2003. Notice of the assignment was said to have been given by the first plaintiff but the defendants allege that they did not receive notice of the assignment. As both the plaintiffs are in any event parties in this action, nothing would turn on the issue whether notice was given or not.

Findings

34 In the light of the facts established by the evidence, I am satisfied that the first plaintiff had entered into the Manufacturing Agreement with SL Link.

35 On the issue whether SL Link had breached the Manufacturing Agreement, I find that it had breached the agreement on two occasions. It provided MSA with the equipment, as stated earlier, in the knowledge that it was for a project which the first plaintiff had tried to secure. Secondly, on the evidence, both defendants through their employees approached and solicited business from MSA and Infineon (M) Berhad, both customers of Advantest.

36 I turn to the questions whether the first plaintiff had entered into the Manufacturing Agreement in good faith and whether Mr Alex Wang had the authority to enter into the Manufacturing Agreement on behalf of SL Link. SL Link alleged that the Hi-Fix market in Singapore was worth US\$20m but the first plaintiff only gave SL Link an order of two Hi-Fix sets worth US\$85,000. The defendants have not led any evidence that the Singapore market for Hi-Fix sets was worth US\$20m. The Manufacturing Agreement does not provide for any minimum orders to be given to the defendants. The first plaintiff was obliged to give priority to SL Link in respect of the supply of one type of Hi-Fix, namely T5581. Notwithstanding the priority, factors such as competitiveness of the product price and lead-time could be taken into account. In truth and in fact, what happened was that between March 2002 when the agreement was signed and October 2002 when it was breached, the first plaintiff received only one order of the T5581 Hi-Fix, which was in respect of the order for two Hi-Fix sets the first plaintiff had placed with SL Link for US\$85,000.

37 The defendants put forward the alternative argument that SL Link was not bound by the Manufacturing Agreement because Mr Alex Wang was not authorised by SL Link. Mr Alex Wang had

earlier personally negotiated the Appointment Agreement. He admitted that the chairperson of SL Link, Ms Luo Wen Ling (his wife), was not involved in those negotiations. She was in court throughout the entire hearing but she did not give any evidence to say that only she as the chairperson of SL Link was authorised to sign the Manufacturing Agreement. Mr Alex Wang was the general manager of SL Link. SL Link had held out Mr Alex Wang as the person in charge.

38 Further, assuming that Mr Alex Wang had no authority to enter into the Manufacturing Agreement on behalf of SL Link, the first plaintiff did not know this. It was never put to Mr Cheng that the first plaintiff had this knowledge. I accept the plaintiffs' evidence that under Taiwanese law, a general manager is presumed to have the power and authority to act on behalf of the company. As Mr Alex Wang was the general manager of SL Link, unless the first plaintiff had knowledge that he was not authorised to act on behalf of SL Link (of which there was not an iota of evidence), the alleged lack of authority of Mr Alex Wang cannot be a defence against a claim by the plaintiffs under Art 36 of the Taiwanese Company Law of 2001 and Art 169 of the Taiwanese Civil Code 2000.

39 The defendants have also put in issue the enforceability of the non-competition clause (cl 7) of the Manufacturing Agreement. They assert that the terms contained in the Manufacturing Agreement restricted or prevented Solar Link Co Ltd or SL Link from doing business with others with no promise of any minimum orders in return. Clauses 7 and 8, they contend, are unnecessarily wide and they extend beyond protecting the Advantest's business or alleged confidential information. The defendants further allege that the first plaintiff has tried to use the Manufacturing Agreement to stifle competition and to prevent Solar Link Co Ltd and the two defendants from competing with Advantest. I am unable to accept these contentions. By the clauses the first plaintiff seeks to protect the legitimate interests of Advantest, which had invested heavily in its technology. The fact of the matter is that the first plaintiff had given the defendants confidential information contained in the socket files and the circuit diagrams.

40 Admittedly, cl 7 is a non-competition clause. However, in my view, it only restricts or prevents the defendants from doing business which is in competition with Advantest. It is not a blanket restriction.

41 In my view, SL Link is bound by cl 7. The contract between the first plaintiff and SL Link should not be re-written. In *Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd* [1968] AC 269, Lord Pearce said at 323:

If a man wishes to tie himself for his own good commercial reasons to a particular supplier or customer it may be no kindness to him to subject his contract to the arbitrary rule that the courts will always reserve to him a right to go back on his bargain if the court thinks fit. For such a reservation prevents the honest man from getting full value for the tie which he intends, in spite of any reservations imposed by the courts, to honour. And it may enable a less honest man to keep the fruits of a bargain from which he afterwards resiles. ... Where there are no circumstances of oppression, the court should tread warily in substituting its own views for those of current commerce generally and the contracting parties in particular. For that reason, I consider that the courts require on such a matter full guidance from evidence of all the surrounding circumstances and of relevant commercial practice.

42 Next, I deal with the issue whether the defendants had breached their duty of confidence owed to the first plaintiff. The first plaintiff has shown that ATEI and/or ATI had provided SL Link with the circuit programs (which are the instructional manuals or specifications of the Hi-Fix for the Advantest T5585 test system) and socket files of some of Advantest's customers. Socket files are documents that contain information of the customer. The defendants required these in order to be

able to wire the sockets to respective tester pins allowing these pins to be compatible and able to interface with the plaintiffs' customers' devices. Clearly, these sockets are an essential component of the Hi-Fix product as they are the interface between the customers' device and the Hi-Fix product.

43 The defendants argue that they do not require confidential information from the plaintiffs and assert that they are selling a patented product. They claim that they have registered and obtained a patent for a universal Hi-Fix product. This was later clarified to be a universal "inter-facer", which the defendants allege, is a "key component of the Hi-Fix Product" and not a "universal Hi-Fix product". I accept the plaintiffs' submission that the defendants' alleged patent is only a small component in the Hi-Fix product. The plaintiffs all along had managed without this universal "inter-facer".

44 I agree with the plaintiffs' assertion that if any breach of confidentiality continues, the plaintiffs would suffer irreparable damage. The defendants must be prevented from using the first plaintiff's confidential information to compete against Advantest. Under the agreement, SL Link agreed by cl 8.10 that damages and/or an account of profits would not adequately compensate the first plaintiff. This assent was not unexpected as the plaintiffs' loss of customers' goodwill and confidence will not be compensated by an award of damages.

45 The penultimate issue which I need to deal with has two parts. The plaintiffs have alleged that both the defendants have conspired to cause harm to the plaintiffs by unlawfully soliciting business from Advantest's customers and/or competing directly with Advantest in breach of the Manufacturing Agreement. The second part of the plaintiffs' case against the defendants is that the second defendant has induced SL Link to breach its obligations under the Manufacturing Agreement.

46 Mr Tang of the second defendant admitted that both defendants visited the Advantest's customers, namely MSA and Infineon. They provided those customers with a quotation, thereby suggesting that they could do better than the plaintiffs.

47 The defendants admitted in evidence that the second defendant is an agent of SL Link. According to Mr Tang of the second defendant, the agency was "for all business outside Taiwan". The second defendant was aware of the terms of the Manufacturing Agreement and the obligations of SL Link under it. It was aware that SL Link was obliged to procure and/or ensure that its agents did not compete with Advantest and did not solicit business from Advantest's customers.

48 As recited earlier, both defendants had run foul of the obligations of SL Link and clearly their conduct amounted to the torts of conspiracy and of inducing a breach on the part of the second defendant. There is ample evidence that they intend to continue to do so, asserting that the customers they had solicited were and always have been their own customers.

49 Finally, I will consider the question whether the defendants are entitled to counterclaim for damages against the plaintiffs for allegedly causing them loss. By para 34 of the Amended Defence and Counterclaim they assert that the plaintiffs had commenced these proceedings with the ulterior motive of deterring the defendants' potential customers from purchasing from the defendants. I agree with the plaintiffs' contention that the defendants have not pleaded a recognisable cause of action. They have also failed to adduce any evidence to show that the plaintiffs had commenced the proceedings to deter any of the defendants' potential customers from entering into further contracts with them. In the main, the defendants allege that the plaintiffs had spread rumours in the Singapore market that they had sued the defendants. As the fact remains that the plaintiffs have sued the defendants, there is no cause of action for disseminating what is fact. In any case, it was MSA and Infineon who sought clarifications from the plaintiffs whether SL Link continued to be bound by the Manufacturing Agreement. On the evidence, I am also not convinced that the defendants had

suffered any loss of business as a result of the institution of these proceedings.

Conclusion

50 In the premises, I will grant the declaration and costs sought by the plaintiffs. The defendants' counterclaim is dismissed with costs. As the Manufacturing Agreement may have expired by effluxion of time I will hear submissions on other reliefs. Parties are directed to appear before me to settle the orders.

Claim allowed. Counterclaim dismissed.

Copyright © Government of Singapore.