

Tempcool Engineering (S) Pte Ltd v Chong Vincent and others
[2015] SGHC 100

Case Number : Suit No 437 of 2013
Decision Date : 09 April 2015
Tribunal/Court : High Court
Coram : Edmund Leow JC
Counsel Name(s) : Ronnie Tan and Beitris Yong (Central Chambers Law Corporation) for the plaintiff;
Eddie Koh (S H Koh & Co) for the defendants.
Parties : Tempcool Engineering (S) Pte Ltd — Chong Vincent and others

Employment Law – Employees’ duties

Tort – Confidence

Tort – Conspiracy – Unlawful means conspiracy

Tort – Conversion

Tort – Inducement of breach of contract

9 April 2015

Edmund Leow JC:

Introduction

1 This case arose from an action that the Plaintiff took against two former employees and the competing business that they were working for, alleging that they had acted together to “steal” its confidential information and trade secrets. Having discovered the alleged wrongdoings on 2 May 2013, the Plaintiff obtained an interim injunction on 30 May 2013. This restrained the Defendants from using the Plaintiff’s drawings and other documents that had been taken pending the main action, which I heard over 8 ½ days. Prior to trial, I granted a bifurcation order, which meant that the trial was limited to the issue of liability, with damages to be assessed later. I delivered my oral judgment to the parties on 8 January 2015. The Defendants were dissatisfied with my decision and filed an appeal.

Facts

Background of the parties

2 The Plaintiff, Tempcool Engineering (S) Pte Ltd (“Tempcool”), is a company in the engineering, supply and design of refrigeration and air-conditioning systems. It has operated since 1973 and is led by its managing director, Mr Tan Gek Suan (“GS Tan”) and executive director, Mr Tan Kok Tong. The 2nd Defendant, Mr Woon Wee Seng (“Woon”), joined Tempcool in 1983 as an assistant engineer and rose through the ranks to become the manager of its commercial refrigeration division. Woon said that he was the main person developing refrigeration solutions for the Plaintiff’s customers. However, he resigned in February 2013 after almost three decades of service to join the 3rd Defendant, a company

called U.B. Zanotti System Pte Ltd ("UBZ"). He was a director who held half its shares. Woon said that he started UBZ's refrigeration division after he left Tempcool.

3 The first defendant, Mr Vincent Chong ("Vincent"), joined Tempcool in June 2012 after receiving his polytechnic diploma. He was an assistant engineer in the commercial refrigeration division. This means that Vincent and Woon were colleagues for about eight to nine months. But I found that their superior-subordinate relationship continued even after Woon left Tempcool.

Background to the dispute

4 On 2 May 2013, a Tempcool employee made a startling discovery. Ms Teng Lee Hoon Catherine ("Catherine"), the personal assistant to the Tempcool directors, received a message from Vincent. He had left his iPad unattended on his desk and wanted her to put it in his drawer. Catherine said that the iPad's screen was unlocked when she saw the device. Hence, she saw messages that had been sent from Woon's mobile number, which she instantly recognised. Her suspicions were sufficiently aroused for her to scroll through the messages and alert her directors, [\[note: 1\]](#) who eventually took action against Vincent, Woon and UBZ ("the Defendants"). Besides text messages, the iPad also had various emails exchanged between Vincent and Woon in April 2013, copies of drawings and other documents. Much of the dispute at trial centred around the drawings for three projects ("the Disputed Drawings"):

(a) Two drawings showing proposed changes to a food factory [\[note: 2\]](#) for Ken Ken Food Manufacturing Pte Ltd ("the Ken Ken Drawings").

(b) A proposed refrigerated merchandiser layout plan [\[note: 3\]](#) for Toko Warisan Trading ("the Toko Warisan Drawing"); and

(c) A proposed supermarket refrigerated merchandiser layout [\[note: 4\]](#) for Shop & Save Sdn Bhd in Sandakan, Malaysia ("the Sandakan Drawing").

5 The Disputed Drawings' title blocks (the area in technical drawings that conveys information such as titles, projects and dates) carried UBZ's name. However, Tempcool's draughtsperson, Loke Yuet Chan Anna ("Anna"), reviewed them and said that the drawings were copied from Tempcool's drawings that she had plotted for the three projects.

6 Tempcool also alleged that the Defendants had taken its pricing information ("the Pricing Information"). Based on the text messages in the iPad, this included a quotation that Tempcool had obtained from Arneg, a manufacturer of supermarket showcases ("the Arneg Quotation"). The Pricing Information also included a pricing summary that revealed, *inter alia*, the price mark-ups for the components of a showcase and cold-room system ("the Pricing Summary"). [\[note: 5\]](#) The Pricing Summary was in the iPad.

7 Finally, Vincent's iPad contained a document that comprised filing labels for project-related files ("the Filing Labels"). These labels carried the UBZ name. Tempcool alleged that the document was adapted from its own document, which comprised filing labels that carried Tempcool's name.

The parties' positions

8 To Tempcool, the Disputed Drawings, Pricing Information and Filing Labels were confidential information and/or trade secrets. After leaving Tempcool, Woon entered into an agreement with

Vincent, pursuant to which Vincent took Tempcool's confidential information for the use of Woon and/or UBZ. It asserted that Vincent and Woon had breached their employment agreements, the duty of good faith and fidelity and the duty of confidence. Tempcool also alleged that there was an unlawful conspiracy among the Defendants. Four witnesses gave evidence for Tempcool – its two directors, Anna (the draughtsperson) and Catherine (the personal assistant).

9 The Defendants sought to show that there was no misuse of confidential information. None of the disputed information was even confidential. There was no unlawful conspiracy among the Defendants and no loss or damage. Hence, they urged me to set aside the interim injunction (see [1] above) and dismiss Tempcool's claim with costs. Vincent, Woon and Mr Tan Peng Koon, a former employee of the Plaintiff, testified for the Defendants.

The issues

10 The central issue was whether Vincent misused Tempcool's confidential information by sending Woon the Disputed Drawings. I answered this in the affirmative. I also found that Woon had knowingly procured Vincent's breaches of confidence; he was also liable for misusing confidential information. UBZ was also liable as Woon's knowledge was imputed to it.

11 Having found for Tempcool on the Disputed Drawings, I distilled the following issues for determination:

- (a) Whether the Defendants were liable for misusing Tempcool's Pricing Information and Filing Labels;
- (b) Whether Vincent and Woon had breached their duty of good faith and fidelity; and
- (c) Whether the Defendants were liable for unlawful conspiracy.

12 I should emphasise that my findings of fact were reached on a balance of probabilities, given the absence of conclusive evidence on most issues.

Whether Vincent's sending of the Disputed Drawings to Woon amounted to the misuse of confidential information

The applicable legal principles

13 The elements for an action in breach of confidence are as follows (see *Coco v A N Clark (Engineers) Ltd* [1969] RPC 41 ("Coco") and *Invenpro (M) Sdn Bhd v JCS Automation Pte Ltd* [2014] 2 SLR 1045 ("Invenpro") at [129]):

- (a) First, the information must possess the necessary quality of confidentiality.
- (b) Second, the information must have been imparted (or received) in circumstances such as to import an obligation of confidentiality.
- (c) Third, there must be unauthorised use of the information and detriment.

14 After the trial, I found that Vincent had copied the Disputed Drawings from Tempcool and sent them to Woon on his instructions. All this was done in circumstances that amounted to a misuse of the Disputed Drawings. This was established from, *inter alia*, the messages in Vincent's iPad. But the Defendants also made a number of arguments, based on whether the information was confidential,

and whether the Defendants owed an obligation of confidentiality. I dealt with these arguments in turn.

The Disputed Drawings possessed the necessary quality of confidentiality

15 Tempcool asserted that the Disputed Drawings belonged to its repository of past drawings, details and specifications. Drawings generated in recent years were stored in Anna's computer. They essentially showed the configuration of cooling systems in projects that Tempcool had implemented for its customers over the years. When a new project came in, Tempcool's engineers would refer to drawings from previous projects to assist them in coming up with the optimal solution for the new project. [\[note: 6\]](#)

16 Tempcool said its drawings were products of labour and effort. [\[note: 7\]](#) To plot her drawings for supermarkets and cold rooms more efficiently, Anna tapped a "library" of project designs that she had created and accumulated over time. She called these "smart templates". The Disputed Drawings comprised these templates, which allowed her to work faster to implement the "various revisions, layers and requirements in each drawing and plan". [\[note: 8\]](#) The templates included modifiable representations of equipment and structures that went into Tempcool's drawings, such as showcases and gondolas. Anna explained that the templates allowed her to create the "several available permutations of designs at one click of the mouse". [\[note: 9\]](#) However, the Defendants contended that the Disputed Drawings were not confidential and were of little or no value as they could easily be reproduced. Anna's library of project designs were not "solutions" but simple templates where "changing the size of the items or equipment within a drawing can be easily done". [\[note: 10\]](#)

17 I disagreed with the Defendants. There was no denying that without the benefit of past drawings and "smart templates", engineers could still come up with solutions to meet their clients' commercial refrigeration needs. But it would be a cumbersome process as they would have to start from scratch. The previous drawings therefore gave them a head start, and that was their value. If they were of no value, then there would be no reason for Woon to ask Vincent to send them to him (a finding that I had made and explain below).

18 In finding that the Disputed Drawings were sufficiently valuable to be confidential, I noted that there is no necessity for confidential information to be patentable or inventive to have a quality of confidentiality (*Invenpro* at [130]). The Disputed Drawings were products of professional effort and labour, and were of some value. That was sufficient for the purpose of liability. However, the air of confidentiality is dissipated depending on the degree of exposure to the public domain (*Invenpro* ([at 130])). On that, the Defendants argued that Tempcool's drawings were not well-protected, and were available to various employees in the office. GS Tan did not even seem to know the location of all the drawings created since 1973. [\[note: 11\]](#) Hard copies of drawings, layouts and plans could be found all over the office, on the tables and in the meeting room, in plain sight of all visitors, including contractors to Tempcool's office. As drawings were sent to clients on project completion, with nothing to stop clients from disclosing them to other parties, they were not closely-guarded secrets. All customers for completed projects received as-built drawings and were not told that they were confidential or that they were not allowed to deal with them in any way they chose. [\[note: 12\]](#)

19 Tempcool explained that drawings that were generated over the past decade or so were stored in Anna's computer, and she gave evidence to that effect. In other words, they were not freely available to the public. In reply, the Defendants alleged that the precautions taken were inadequate for drawings that were allegedly so confidential. They pointed out that there was only one password

for logging into Anna's computer, which was connected to the office network. Through a shared folder, office network users could, from their computers, access drawings that Anna had shared in that folder. They also referred to Tempcool's treatment of other information: tender documents were inside a computer with double passwords and share certificates kept in a safe.

20 The question of whether information retains a necessary quality of confidentiality is ultimately a question of fact and degree (*Invenpro* at [130]). If hard copies of drawings were made available in the office, they were for the purposes of the personnel working on the projects. To facilitate discussions, the drawings would have to be on the tables in the conference and meeting rooms. But this did not mean that they were handed out to uninterested persons outside Tempcool, which used a "Transmittal Form" to record the issuance of project drawings to customers and sub-contractors. [\[note: 13\]](#) This indicated that Tempcool's drawings and plans were not given out in an uncontrolled environment. Anna agreed that recipients of as-built drawings were not warned against giving the drawings to other parties (nor would Tempcool know if they did). [\[note: 14\]](#) But this did not mean that the drawings were given to "a whole sundry of people", which the Defendants claimed. The drawings remained relatively inaccessible to the public.

21 On the "glaring admission" that Anna's computer had only one password [\[note: 15\]](#) and that greater protection was given to tender documents and share certificates, my view was that Tempcool took some precautions, but any precautions had to be commercially practical. Perhaps the precautions were inadequate, but that did not, on their own, mean that the drawings were not confidential. Nor did it mean that anyone was authorised to take them. Indeed, Anna's evidence was that no drawing was put up on the shared folder without her permission.

22 Lastly, information can be confidential as a whole even though the component parts are in the public domain: see *Invenpro* at [130(e)]. I accepted Tempcool's submission that while commercial refrigeration equipment and other components were freely available in the public domain, the drawings that detailed, *inter alia*, the selection of the equipment and how they were laid out in a particular project were not. There was no evidence that just because the refrigeration system had been installed in a shopping mall, anyone, even an engineer, would be able to deconstruct the detailed specifications that was set out in the Disputed Drawings. Hence, I found that the Disputed Drawings possessed the necessary quality of confidentiality.

The Disputed Drawings were imparted (or received) in circumstances such as to import an obligation of confidentiality

23 I found that the Defendants owed obligations of confidence. Even without an express contractual term in an employment contract, an obligation against the use or disclosure of confidential information will be implied for employees. See, eg, *Faccenda Chicken Ltd v Fowler* and others [1987] 1 Ch 117 ("*Faccenda*") Vincent did not sign an employment contract when he joined Tempcool, but there could be no question that he was contracted as an employee, with the essential terms agreed upon. [\[note: 16\]](#) There was an employer-employee relationship. In this context, I was of the view that he was properly subject to an implied obligation of confidentiality.

24 The situation as regards Woon, a former employee, was different. Tempcool relied on an agreement that Woon signed in 19 August 1993 ("the 1993 Letter") to show that he had an obligation of confidentiality, which he tried to circumvent by using Vincent to gain access to its confidential information. [\[note: 17\]](#) Clause 3 of the salary increment letter stated: [\[note: 18\]](#)

3. Confidentiality

You shall keep secret all the data/affairs of the Company, and shall NOT divulge any information relating thereto, and shall NOT at any time in any way use such information to the detriment directly or indirectly of the Company. This applies not only during your term of employment with the Company, but also after you leave our employ.

25 There is suggestion that post-employment, such clauses can relate only to the use and disclosure of confidential information that is a trade secret or is so highly confidential as to amount to a trade secret (see, eg, *Faccenda*, per Neill LJ at 137). In *Employment Law in Singapore* (Ravi Chandran, LexisNexis, 4th Ed, 2014 at [5.37]), it was explained that post-employment, courts are reluctant to prevent an employee from using mere confidential information which was part of the total job experience. While I doubted that the Disputed Drawings and the other confidential information were so highly confidential, I am of the view that the question of degree of confidentiality did not apply. This was not a situation that required the balancing of an employer's interests in protecting confidential information against its former employee's interests to use the skills and knowledge that he had gained in the course of employment. Rather, this was a situation of a third-party recipient, ie Woon, who obtained a company's confidential information from a serving employee with the knowledge that the employee had obtained the information in breach of confidence. In such a situation, an equitable duty of confidence would be imposed on anyone in Woon's position based on good faith and conscience. The only relevance of Woon being a former employee was his intimate knowledge of the information that could be extracted from Tempcool; he then instructed Vincent to obtain it in breach of the latter's duty of confidence.

26 The general test for the equitable obligation of confidence was stated in *Coco* (at 48). This duty would be imposed where the circumstances are such that a reasonable man in the shoes of the recipient of the confidential information would have realised that upon reasonable grounds, the information was being given to him in confidence. I found that both Woon and Vincent knew that the Disputed Drawings were confidential, and they were received and imparted in circumstances such as to import an obligation of confidentiality. So even if Vincent was not bound by an implied duty, an equitable duty would nevertheless be imposed on him.

The Defendants had knowledge of confidentiality

27 I could not accept that Vincent did not know that Tempcool's drawings were confidential. In my view, this would have been obvious to an employee in his position – even one relatively new to the workforce. The Defendants said that Vincent joined Tempcool straight out of school and did not know what to expect and how to behave as an employee. They claimed that no one ever mentioned the confidentiality of documents at Tempcool. The lack of discussion and security led him to assume that he did not act in breach of any duties. [\[note: 19\]](#) The Defendants seemed to be suggesting that Vincent would not know that information was confidential if it was not highly protected. However, I had found that the measures taken by Tempcool were not so inadequate that he would have been led to assume that there was nothing confidential about the information at all. Vincent's diploma was in intelligent building technology, which included classes on security systems in buildings that protect the premises, and data and information within the working areas. The lessons would have impressed on him that a company has confidential information that employees cannot disclose to unauthorised parties. I found it ironic that Vincent took issue that Tempcool had stolen his "information without my consent", [\[note: 20\]](#) although he had left his iPad unattended with the screen unlocked. Clearly, Vincent understood that confidentiality does not necessarily entail information that is protected by passwords and locked doors.

28 Woon could not have missed the confidentiality clause in the 1993 Letter, which was only two

pages long. As a Tempcool employee for 29 years, he had worked long enough to know that employees in Vincent's position would be in breach of confidence by sharing confidential information with unauthorised parties. Despite his knowledge, I found, on a balance of probabilities, that he had instructed Vincent to send him the Disputed Drawings and other confidential information.

29 Most significantly, the subterfuge surrounding the Disputed Drawings and other confidential information persuaded me that Vincent and Woon knew that they were under a duty of confidentiality. All this was clear from the messages in Vincent's iPad, such as the email exchange on the "Peak Suite Layout" on 23 April 2013:

Vincent: Hi Mr Woon, This is clear enough for me but I do not have the sectional view for the showcases except multideck chiller Santiago.

Woon: Maybe you need to do scanning and sectional view from the catalogue and "cut & paste" into the shop drawing. Perhaps you could check with Anna how she do it. Please be cautious when you ask her, you can just joke with her that when she is not around, you can do it by yourself.

Vincent: Noted.

30 There was also the text messages exchanged on the Arneg Quotation:

Woon: Bring along copy of quote from Arneg.

Vincent: Quotation from Arneg for Bedok Mall tender?

Woon: Yes. Peak Suite layout need changes, will talk later. Please delete all SMS after read it.

31 Had they truly thought their dealings were not in breach of confidence, there would have been no reason for secrecy and deception. The behaviour gave the lie to Woon's assertion in cross-examination that nothing, aside from business plans, accounting records and pricing details, was confidential.

32 In relation to the text messages, Vincent said that he did not delete the messages precisely because he found nothing wrong with retaining them. But it was more likely that he did not delete them as he had no reason to think that his actions would be discovered. On the email exchange, Vincent claimed that he did not know why Woon had asked him to be secretive. When similar questions were posed to Woon, Woon's replies were that women (*ie*, Anna) were "very sensitive" and he wanted to avoid any misunderstanding with the Plaintiff's directors. I did not find these explanations convincing. To me, the more likely reason was his awareness of the clause in the 1993 Letter.

Woon and Vincent had an employment agreement

33 In fact, in all the steps taken before the discovery of the iPad contents, the surreptitious behaviour said much about their awareness of the consequences of their actions. While Vincent admitted to freelancing for Woon, it was only during the trial that the fact that Woon had offered in April 2013 to hire Vincent emerged. Vincent himself admitted that he had accepted Woon's offer of a job as an assistant engineer with UBZ for \$2,200 a month. [\[note: 21\]](#) The only hurdle was the Ministry

of Manpower's (MOM) approval for an S-Pass as Vincent was Malaysian. In effect, Vincent was already working for Woon, and not just on a freelance basis. Woon tried his best to hide this fact, but given that he had already applied for a work pass, it must be the inference that an employment agreement had been entered into between them. Woon sought to explain that in view of the S-Pass quota, what he had told Vincent was that his appointment would be discussed *after* MOM approved the work pass. Woon denied that salary had been agreed upon – he had meant that the minimum salary for an S-Pass holder under the law was \$2,200. But employers only apply for an employment pass after they have made an offer to the prospective employee, and the offer has been accepted. Such an offer and acceptance is typically made conditional on the employment pass being approved by MOM, but there would nevertheless be an offer and acceptance, and the agreed salary has to be stated in the application. So I could not accept the Defendants' story that they were only going to negotiate the salary later.

34 As UBZ was the corporate vehicle through which Woon intended to use the confidential information, his knowledge was also imputed to UBZ, which therefore owed an equitable obligation of confidence.

There was unauthorised use of the information and detriment

35 The Defendants must be shown, largely as a question of fact, to have made unauthorised use of the confidential information imparted or received under a duty of confidence (*Invenpro* at [136]). Where the information has been appropriated without the owner's consent, any form of use or disclosure will constitute unauthorised use: see *eg, Intellectual Property Law of Singapore* (Susanna H S Leong, Academy Publishing, 2013) at [40.154].

Vincent misused the Ken Ken Drawings

36 The Ken Ken Drawings were the only drawings that Vincent admitted to taking, although the Defendants denied their misuse. They said that Woon needed the Ken Ken Drawings to refresh his memory [\[note: 22\]](#) before speaking with Ken Ken Food Manufacturing Pte Ltd's ("Ken Ken") Chinese suppliers and contractors about insulation panels. This was at Ken Ken's request. So Woon asked Vincent to provide drawings showing the insulation panels. However, Woon wanted them done from scratch. [\[note: 23\]](#) As such, there was never any agreement for Vincent to retrieve Tempcool's drawings. [\[note: 24\]](#) Vincent explained during cross-examination that he "decided to go to the [sic] Anna's computer and take the drawing, change the title block and give it to Mr Woon" of his "own accord" because he did not have enough time to work on the drawings. [\[note: 25\]](#)

37 I noted that this was further evidence that Tempcool's drawings were of value (see [17] above). Despite his admission, Vincent denied using Anna's computer; he said that he had accessed the shared folder through his computer. [\[note: 26\]](#) He then clicked on the drawings, printed them out and changed the title blocks. [\[note: 27\]](#) Apart from the shared folder, Vincent agreed that he did not have consent to look at the contents of Anna's computer or print them out. [\[note: 28\]](#) In submissions, the Defendants contended that "it must be clear now that the drawing CAN be downloaded or printed from the shared folder of Loke's standalone computer." [\[note: 29\]](#) But to me, whether the Ken Ken Drawings were taken from Anna's computer or the shared folder was immaterial. Either way, he had no permission to copy them and pass them to Woon. In any case, the Defendants had not convinced me on why I should not accept Anna's evidence, which was that she put up documents in the shared folder only upon request. [\[note: 30\]](#) At other times, there were no drawings to be viewed. [\[note: 31\]](#)

38 On a balance of probabilities, I found that Vincent had copied the Ken Ken Drawings by using Anna's computer. At trial, Anna recounted an occasion when she allowed Vincent to use her computer after she left for the day. [\[note: 32\]](#) When asked about that, Vincent's reply was that he could not remember such an episode, although he conceded that it was possible. [\[note: 33\]](#) Moreover, it seemed more likely that Vincent had amended soft copies of the Ken Ken Drawings to insert UBZ's name in the title blocks than to have printed them from the shared folder. As Anna pointed out: "[A] [h]ard copy won't be so sharp – cut and paste from paper page to computer page. [If] [i]t's a paste, there will be a mark of the pasting there. And the printout won't be as sharp as the original". [\[note: 34\]](#)

39 The fact that Vincent admitted to taking the Ken Ken Drawings and changing the title blocks was also relevant to whether he had misused the rest of the confidential information, including the other Disputed Drawings.

Vincent misused the Toko Warisan Drawing

40 The Defendants explained that the Toko Warisan Drawing had been built from scratch from the basic layout that Woon had bought from the Housing & Development Board. To support their case that it had not been amended from Tempcool's drawing, they produced a printout that purported to show that their drawing had been created on 2 April 2013. [\[note: 35\]](#) The Defendants also took pains to demonstrate that there was at least an 80% to 90% difference between the two drawings. To me, if Vincent had extracted the Ken Ken Drawings, there was little reason why he would not do the same for the other Disputed Drawings, and to amend them rather than to expend effort to reinvent the wheel. My conclusion was buttressed by the following reasons.

41 To say that Vincent drew the Toko Warisan Drawing from a basic layout plan was asking too much for a first-year assistant engineer who was not even a draughtsman, especially when he had a day job (which involved dealing with tenders, calculations and pricing). Despite Vincent's evidence that he had taken an AutoCad module and could generate drawings and floor plans for a house or buildings, I doubted that he had the ability, experience and time to produce the drawing after being taken through the steps involved. If Anna was right that the basic layout plan was usually provided in hard copy, more work would have been in order. If Vincent really possessed the ability, why would he have to copy the Ken Ken Drawings for lack of time?

42 In relation to the printout, I accepted Anna's explanation that the timing could be re-calibrated. On 15 April 2014, Tempcool's lawyers asked the Defendants for documents, including time logs (reflecting the creation and the last update times) for the Disputed Drawings ("the 15 April Letter"). [\[note: 36\]](#) Defendants' counsel replied on 29 April 2014 that they were "unable to produce the time log of each of the ... drawings and plans ... as our clients do not presently have any access and/or to (*sic*) not know how to obtain them". I agreed with Tempcool that since the printout was not produced then, it was either not in existence at that time or concealed. I did not agree that Tempcool's letter could be construed as a request for documents and drawings that were used only for tender purposes.

43 I found that the differences, however substantial, between the Toko Warisan Drawing and Tempcool's drawing did not necessarily give rise to an inference that the former was independently created. I was satisfied by Anna's explanation that the Toko Warisan Drawing could be derived from her drawing and her library of project designs. [\[note: 37\]](#) I am no expert on technical drawings, but I observed similarities including the representations [\[note: 38\]](#) and the title blocks, which Vincent himself admitted were highly similar. [\[note: 39\]](#)

44 One further point remained. At trial, counsel for the Defendants informed me that the Toko Warisan drawing had not been particularised in the statement of claim before proceeding to cross-examine Anna on the drawing. [\[note: 40\]](#) The case of *Abdul Latif bin Mohammed Tahiar (trading as Canary Agencies) v Saeed Husain s/o Hakim Gulam Mohiudin (trading as United Limousine)* [2003] 2 SLR(R) 61 stands for the proposition that “parties stand by their pleaded case and any defect in the pleadings cannot be cured by any averments in affidavits” (at [7]). For breach of confidence, the plaintiff must provide all the particulars sought of the allegations in their statement of claim as it is only fair for the defendants to know the information they are alleged to have used (G P Selvam, *Singapore Civil Procedure 2015* (Sweet & Maxwell, 2015 at Paragraph 18/12/6). I was of the view that the pleading was sufficiently particularised. The confidential information referred to the plans, drawings and photographs that were discovered when Catherine accessed Vincent’s iPad. [\[note: 41\]](#) Hence, the Defendants would have known from the pleading that they had to answer for the drawings and documents in Vincent’s iPad. That included the Toko Warisan Drawing.

45 The 15 April Letter, dated four days after the Statement of Claim, would have made this even more obvious. In the letter, Tempcool’s lawyer had also asked for copies of UBZ’s drawings and plans “which were used for the Tender of the refrigerated merchandiser display at the Toko Warisan Project” and copies of any “award of Tenders for the Shop & Save Sandakan Project, Ken Ken Project and/or Toko Warisan Project”. [\[note: 42\]](#)

Vincent misused the Sandakan Drawing

46 I also found that Vincent had copied Tempcool’s drawing before amending the shelving layout to produce the Sandakan Drawing. The Defendants submitted that while Woon was still at Tempcool, he had given Shop & Save Sdn Bhd a copy of the drawing, which Anna had copied into his thumbdrive. The Defendants suggested that Shop & Save Sdn Bhd later gave Woon the drawing so that he could help reconfigure the shelving layout. Anna denied that the as-built drawing had been given to the customer. [\[note: 43\]](#) However, she could not recall if Woon had asked her for the drawing, although she said that even if she had done so, the copy would not be the final version. [\[note: 44\]](#)

47 I resolved the question in Tempcool’s favour. Even if Vincent had produced the Sandakan Drawing using the customer’s copy, there was no need to change the title block to reflect UBZ’s name. In fact, all the Disputed Drawings carried UBZ’s name, including the Ken Ken Drawings, which Vincent took. This spoke to the origins of the Sandakan Drawing.

48 Woon claimed that Vincent changed the names on the title blocks because of a misunderstanding over his messages. All he wanted was for Vincent to print UBZ’s name on projects that were unrelated to Tempcool’s. In Woon’s text message on 12 April 2013 at 9.27pm, he said: “All drawing [*sic*] you do need to *change* to my co name. Thanks.” [emphasis added]. In his email on 30 April 2013 titled “Put in our company name in the drawing title block”, he wrote: “Put in UB company full name and address into the title block, keep in your library. ... Convert into pdf file, email back to me.” Based on the text message, it was clear that Woon wanted UBZ’s name on all the drawings that he instructed Vincent to work on. These included the Disputed Drawings. Woon would not have to remind Vincent to print UBZ’s name on unrelated project drawings as he would have done so as a matter of course. Instructions were only necessary if Vincent had to change a pre-existing name on a title block. And “change” was the word that Woon used.

49 The Defendants obtained a letter from Shop & Save Sdn Bhd on 20 March 2014 that confirmed that UBZ had not participated in any tender for the Sandakan project and it was never involved in its

refrigeration equipment. The letter went on to state: [\[note: 45\]](#)

We did however request Mr Woon to assist us to reconfigure the existing layout of the shelving at our premises to provide a better option in effective shoppers' traffic flow within the sales area. Mr Woon was kind enough to do that for us. But at no time did we ask Mr Woon or U.B. Zanotti System Pte Ltd to carry out the installation of the re-configured shelving layout for us.

Mr Woon had provided his service as a gesture of goodwill to our Company without having any payments paid to him for his effort.

50 The letter was provided by Shop & Save Sdn Bhd in response to the Defendants' request. However, the letter did not state that it had supplied the drawing to Woon for the reconfiguration, although this was a relevant fact.

Woon and UBZ had misused the Disputed Drawings

51 I should first elaborate on my conclusion that Woon instructed Vincent to obtain the Disputed Drawings and other confidential information from Tempcool, with the knowledge that he was breaching his duty of confidence.

52 It could be gleaned from the email on 29 April 2013 titled "Euro Cryor – Summer and Spring" that Woon wanted Vincent to develop a corner case layout plan. [\[note: 46\]](#) Woon advised Vincent: "Drawing dept may have the Summer data in saved." [\[note: 47\]](#) Vincent confirmed that Woon was telling him that Tempcool's drawing department had the required information for Vincent to produce the plan. [\[note: 48\]](#) Further, in an email on 30 April 2013, Woon asked Vincent if he had "any typical drawings on high warehouse coldroom insulation panels construction and flooring details." [\[note: 49\]](#) As Vincent was no draughtsman, the "typical drawings" would have had to come from Tempcool's collection. Woon therefore expected Vincent to tap Tempcool's resources.

53 The messages on 25 April 2013 for the Arneg Quotation was also relevant in showing that Woon instructed Vincent to take Tempcool's confidential information: [\[note: 50\]](#)

Woon: Bring along copy of quote from Arneg.

Vincent: Quotation from Arneg for Bedok Mall tender?

Woon: Yes. Peak suite layout need changes, will talk later. Please delete all SMS after read it.

Vincent: We didn't ask Arneg to quote for the tender but we got the quotation earlier for east village tender.

Woon: Bring it along.

54 While the messages showed that Woon had told Vincent to bring Tempcool's Arneg Quotation (which also helped me to conclude that Vincent had acted on instructions in taking Tempcool's other confidential information), the Defendants claimed that there was another misunderstanding: Woon was asking for the quotation that he had obtained from Arneg for the unrelated Peak Suite project. This was in a large, four-part email that he had sent to Vincent. However, Vincent mistakenly brought Tempcool's Arneg quotation instead. Woon explained that when he said "yes", he meant that the

Peak Suite project required changes in the layout. [\[note: 51\]](#) But no matter what the Defendants said, the words of the exchange were clear. The Defendants failed to credibly explain why Vincent would misunderstand Woon's intention if they were working on projects that did not impinge on Tempcool's confidential information. And as Woon already had the quotation that he sought from Arneg, he had no need to ask Vincent to bring it along.

55 Another instance that showed that Woon instructed Vincent to take Tempcool's information was in regard to the Filing Labels. Vincent told the court that Woon had instructed him to change the name on Tempcool's Filing Labels to UBZ's. [\[note: 52\]](#) However, Vincent insisted that the Filing Labels were the only documents that Woon had told him to take. [\[note: 53\]](#) But if Woon had asked Vincent to take a document as easily created as the Filing Labels, why would he not have asked for information such as the Disputed Drawings as well?

56 Hence, I concluded that Woon had solicited Vincent to breach his obligation of confidence by copying Tempcool's confidential information – including the Disputed Drawings – and sending them to him. It followed that Woon had, on the balance of probabilities, misused the confidential information – or he would have no reason to ask for them. As UBZ was the corporate vehicle that Woon used, UBZ was also liable for misuse. In fact, Woon did misuse the Sandakan Drawing in helping Shop & Save Sdn Bhd to reconfigure its shelving layout. This was also the case for the Ken Ken Drawings as he used them to speak with Ken Ken's suppliers. These two occasions reinforced my inference that Woon had misused the Toko Warisan Drawing, although I had no actual evidence of him having done so.

The question of detriment

57 The Defendants said that there was no evidence that Tempcool's information was used to tender for any projects. Woon asserted that UBZ did not use Tempcool's drawings and pricing information in competition with it to cause loss and damage. To that end, it tendered the Shop & Save Sdn Bhd letter (see [49] above). Another letter from Ken Ken on 18 March 2014 [\[note: 54\]](#) confirmed that UBZ had not participated in any tender for the Ken Ken Cold Storage Project.

58 Whether detriment is required depends on the circumstances of the case. See, eg, *Vestwin Trading Pte Ltd v Obegi Melissa* [2006] 3 SLR(R) 573 at [74]. In any event, detriment need not necessarily result from the use of confidential information to tender for specific projects in competition with Tempcool. The Disputed Drawings, which Woon used to help Tempcool's customers speak to suppliers and rearrange the shelving configuration, helped Woon and UBZ foster goodwill, which was beneficial to them and detrimental to Tempcool. With the drawings, Woon demonstrated UBZ's ability to serve Tempcool's customers well; they had no need to return to Tempcool for post-project help. The Pricing Information, which included the Arneg Quotation and Pricing Summary, was also detrimental to Tempcool. Even if UBZ could obtain its own Arneg quotations, [\[note: 55\]](#) it was valuable for Woon to know if Arneg quoted the same prices to Tempcool. It went without saying that the Pricing Summary, which showed price mark-ups, allowed UBZ to craft better bids in present or future project tenders.

Whether the Defendants were liable for misusing Tempcool's Pricing Information and Filing Labels

The Defendants misused Tempcool's Pricing Information

59 The reasons that led me to conclude that the Defendants had misused the Disputed Drawings also helped me to find, on a balance of probabilities, that they had misused the Pricing Information.

While the Arneg Quotation was misused (see above at [53]–[54]), the question was whether it had the quality of confidence. To me, a company’s pricing information such as quotations and pricing mechanisms is generally confidential. As the Arneg Quotation was part of Tempcool’s tender quotation, it was confidential too. Vincent agreed that tenders were so confidential that they could not be discussed with friends, much less Tempcool’s competitors. [\[note: 56\]](#) Despite that, he apparently saw nothing wrong with showing the Arneg Quotation to Woon as unlike a stranger, Woon knew Tempcool’s suppliers and the prices that they would quote. [\[note: 57\]](#) The distinction that Vincent drew was unacceptable. Perhaps Vincent meant that information such as the Arneg Quotation had become part of the store of skills and knowledge that Woon had gained in the course of employment. But if that were the case, Woon would not have to ask for the information.

60 The Pricing Summary was clearly confidential information. This was a template that itemised the equipment, price mark-ups and the final prices for a project at Bedok Mall. [\[note: 58\]](#) The eventual tender submission did not show the mark-ups. [\[note: 59\]](#) At trial, Vincent explained that he had sent the Pricing Summary to his iPad to “retrieve the data and just answer to my superior” whenever he was called upon. [\[note: 60\]](#) But the tender submissions had already been made by then. Vincent failed to credibly explain the sending of the Pricing Summary to himself if there was no further work to be done. In the context of Vincent having already agreed to work for Woon by then, and given their actions concerning the rest of Tempcool’s information, the Defendants were more likely than not to have misused the Pricing Summary.

The Defendants were not liable for the misuse of the Filing Labels

61 Vincent had created the Filing Labels [\[note: 61\]](#) from Tempcool’s on Woon’s instructions (see [55] above). But they had not been misused as they did not have the necessary quality of confidence. GS Tan claimed that the Defendants had planned a total duplication of Tempcool’s archive. [\[note: 62\]](#) At trial, he clarified that he was not saying that the Defendants were copying all the contents, but how the documents were filed and categorised. That was of little or no value.

Whether Vincent and Woon breached the duty of good faith and fidelity

62 It is trite law that there is an implied term that the employee will serve his employer with good faith and fidelity. See, eg, *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 at [193]. As Vincent was then a Tempcool employee, he had breached his duty of good faith and fidelity in sending the Disputed Drawings and other materials to Woon. This would also include the Filing Labels – notwithstanding that they were not confidential – as the duty requires an employee to act in the interests of the employer. Vincent was not doing that. In serving two masters, Vincent had already breached the duty. It was not unfair to say that Vincent had moonlighted just because he was not given any terms and conditions when he joined Tempcool and was not told that he could not work part-time for extra money. Vincent’s behaviour throughout the entire episode showed that he was no mere freelancer, as the tenor of the iPad messages on 25 April 2013 clearly showed:

Woon: Location check

Vincent: In the office attend RDM meeting. New monitoring system.

...

Vincent: He is teaching us how to program and wire up. Try up for one side. Seems like very tedious.

Woon: Good luck to Nick.....anyway, good for you to understand their system, so that we can compare with other system.

Vincent: Ya. Just learn as much as possible. Monitoring system got the demand in future.

Woon: You are correct. When you can leave from office?

Vincent: Tell you later. Nick might ask me to go to HYME to collect something.

Woon: Okay. HY office is near to my place.

Woon: What's the status now?

Vincent: Nick asked me to go to HY with him. Or you sketch the changes on the drawing and email me then I will amend accordingly.

Woon: May I suggest you ask him to drop you at Kallang station after HYME, then you meet me at Aljunied station.

Vincent: Okay I will tell him.

Woon: Are you on the way to HY?

Vincent: Yes.

Woon: What is the purpose of going there? Will you take long?

Vincent: Just collect letter from them.

Woon: My wife said you can take bus 65 from tampines bus inter- change dorect to my office.

Vincent: Okay I will check it. it's more convenient to me. Thanks

63 Woon was a former employee. As such, I could not accept Tempcool's proposition that he still owed Tempcool a duty of fidelity even if he was the manager of its commercial refrigeration division who had served Tempcool for 29 years, and he was privy to Vincent's breaches of confidence. [\[note: 63\]](#) However, I observed that Woon would have been liable for the tort of inducing breach of contract.

Whether the Defendants were liable for unlawful conspiracy

64 Tempcool had to prove the elements laid out in *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [112]:

- (a) there was a combination of persons to do certain acts;
- (b) the alleged conspirators had the intention to cause damage or injury to the plaintiff by those acts;
- (c) the acts were unlawful;
- (d) the acts were performed in furtherance of the agreement; and

(e) the plaintiff suffered loss as a result of the conspiracy.

The existence of a combination is often inferred from the circumstances and acts of the alleged conspirators (see *EFT Holdings* at [113]). The entirety of the circumstances showed that Vincent had agreed to take Tempcool's information and send them to Woon for his and/or UBZ's uses. Vincent would then resign and join UBZ after his S-Pass was approved. To recap, Vincent had in April 2013 accepted Woon's employment offer. Their messages revealed that after Woon left Tempcool, their working relationship persisted, albeit surreptitiously (see, eg, [29]–[30] and [62] above). There were also other facts, including Vincent's taking of Tempcool's filing labels on Woon's instructions. In the face of all the evidence, I could not accept the Defendants' submissions that Vincent did not transfer the Ken Ken Drawings under Woon's instructions and that the Toko Warisan Drawing and Sandakan Drawing were not obtained through Tempcool. It was also unnecessary to show that the agreement entailed the taking of Tempcool's confidential information for the particular purpose of tendering for specific projects in competition with it (see [58] above).

65 I also found that the requisite intention was there – the injury “must have been intended as a means to an end or as an end in itself” (*EFT Holdings* at [101]). The damage to Tempcool was not incidental to their goals. Woon started UBZ's refrigeration division after resigning from Tempcool. From then on, both companies were direct competitors. Hence, any agreement for Vincent to extract Tempcool's information for Woon's uses was inextricably bound up with an intention to hurt Tempcool's business interests. For example, Woon's access to the Sandakan Drawings deprived Tempcool of the opportunity to help Shop & Save Sdn Bhd reconfigure its shelving, whether for monetary consideration or not. Woon's access to the Ken Ken Drawings also allowed him to cultivate his business relationship with Ken Ken on UBZ's behalf, at Tempcool's expense. And just because there was no evidence of UBZ using the Disputing Drawings in tenders against Tempcool, [\[note: 64\]](#) it did not mean that Tempcool suffered no loss. As GS Tan explained, the “information ... could be used to compete with us on similar jobs. So those are (*sic*) the likely damage ... over the longer term”. [\[note: 65\]](#)

Whether the tort of conversion was applicable

66 The Plaintiff urged me to recognise that this tort applied to the actions of Vincent and Woon, who had acted “inconsistently with [Tempcool's] rights as the true owner of the documents and information”. [\[note: 66\]](#) Tempcool itself noted the conventional view that the tort typically applies to chattels. It is unclear that confidential information can be protected by the tort. As I had already decided for Tempcool on other grounds, I did not decide on this point.

Conclusion

67 As the suit was bifurcated, I found for Tempcool in relation to the above matters and ordered that damages be assessed. I did not make any order as to costs as I thought it best that costs be determined after damages had been assessed.

[\[note: 1\]](#) Notes of Evidence (“NE”) Day 4 pp 20-25.

[\[note: 2\]](#) Teng Lee Hoon's AEIC pp 132 and 133.

[\[note: 3\]](#) Teng Lee Hoon's AEIC p128.

[\[note: 4\]](#) Teng Lee Hoon's AEIC p126.

[\[note: 5\]](#) Teng Lee Hoon's AEIC pp 139-143.

[\[note: 6\]](#) Bundle of AEICs at p4

[\[note: 7\]](#) Bundle of AEICs at p4

[\[note: 8\]](#) Plaintiff's closing submissions at [41].

[\[note: 9\]](#) Plaintiff's closing submissions at [41]. See, eg, NE Day 6 pp46-49.

[\[note: 10\]](#) Defendants' closing submissions at [23].

[\[note: 11\]](#) Defendants' closing submissions at pp 8-9.

[\[note: 12\]](#) Defendants' closing submissions at p66.

[\[note: 13\]](#) See, eg, NE Day p18 line 17.

[\[note: 14\]](#) NE Day 5 p47.

[\[note: 15\]](#) Defendant's closing submissions at [26].

[\[note: 16\]](#) See, eg, Agreed Bundle of Documents ("AB") at Tab 12 and P11.

[\[note: 17\]](#) Plaintiff's closing submissions at [43].

[\[note: 18\]](#) AB Tab 3.

[\[note: 19\]](#) Defendants' closing submissions at p47.

[\[note: 20\]](#) NE day 7 p17 at line 2.

[\[note: 21\]](#) NE Day 7 p54

[\[note: 22\]](#) Woon's AEIC at [31]-[34].

[\[note: 23\]](#) Defendants' closing submissions at [76].

[\[note: 24\]](#) Defendants' closing submissions at [82].

[\[note: 25\]](#) NE Day 8 p75 line 23.

[\[note: 26\]](#) NE Day 8 p75 at line 9.

[\[note: 27\]](#) NE Day 7 p42 at line 29.

[\[note: 28\]](#) NE Day 7 p42 at line 19.

[\[note: 29\]](#) Defendants' closing submissions at [81].

[\[note: 30\]](#) NE Day 5 p87 at line 24.

[\[note: 31\]](#) NE Day 5 p84 at 31.

[\[note: 32\]](#) NE Day 6 p82 at line 28.

[\[note: 33\]](#) NE Day 8 p12 at line 20.

[\[note: 34\]](#) NE Day 5 at p72.

[\[note: 35\]](#) Exhibit D1A.

[\[note: 36\]](#) Exhibit D1B.

[\[note: 37\]](#) NE Day 6 p12-24 and p66-68.

[\[note: 38\]](#) AB p42 and p43. See also Exhibit P7.

[\[note: 39\]](#) NE Day 8 at p43.

[\[note: 40\]](#) NE Day 6 p11

[\[note: 41\]](#) Statement of Claim (Amendment No. 1) paras 10(ii)-(iii).

[\[note: 42\]](#) Exhibit D1B.

[\[note: 43\]](#) NE Day 6 p32.

[\[note: 44\]](#) NE Day 6 p33.

[\[note: 45\]](#) AB at p61.

[\[note: 46\]](#) NE Day 8 p15

[\[note: 47\]](#) AB p40.

[\[note: 48\]](#) NE Day 8 p16 at line 8.

[\[note: 49\]](#) AB p39.

[\[note: 50\]](#) AB pp25- 26.

[\[note: 51\]](#) NE Day 9 p43-44.

[\[note: 52\]](#) AB 48.

[\[note: 53\]](#) NE Day 7 p73-74.

[\[note: 54\]](#) AB p60.

[\[note: 55\]](#) Bundle of AEICs p172.

[\[note: 56\]](#) NE Day 7 p21.

[\[note: 57\]](#) NE Day 7 pp96-97.

[\[note: 58\]](#) AEIC p143.

[\[note: 59\]](#) AEIC p145.

[\[note: 60\]](#) NE Day 8 p23.

[\[note: 61\]](#) AB p48-49.

[\[note: 62\]](#) AEIC of GS Tan at [36].

[\[note: 63\]](#) Plaintiff's closing submissions at [53].

[\[note: 64\]](#) Defendants' closing submissions at [87]-[88].

[\[note: 65\]](#) NE Day 3 p33-34 at lines 17-21.

[\[note: 66\]](#) Plaintiff's closing submissions p76.

Copyright © Government of Singapore.