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

[2024] SGHC 29

Originating Claim No 814 of 2023 (Summons No 3619 of 2023)

Between

Shopee Singapore Private Limited

… *Claimant*

And

Lim Teck Yong

… *Defendant*

JUDGMENT

[Employment Law] — [Contract of service] — [Restrictive covenants] — [Enforceability of restraint of trade clauses]
[Injunctions] — [Interlocutory injunction] — [Applicable test for interlocutory injunctions giving effect to restraint of trade clauses]
[Contract] — [Illegality and public policy] — [Restraint of trade]

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v
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11 January 2024

31 January 2024 Judgment reserved.

Kwek Mean Luck J:

Introduction

1 The Claimant is Shopee Singapore Pte Ltd ("Shopee"). Its primary business is running an e-commerce platform, *Shopee,* which operates in various markets, including Southeast Asia, Taiwan and Brazil.[1] The Defendant, Lim Teck Yong ("Lim"), was Shopee's former employee from 17 August 2015 to 31 August 2023.[2] On 11 September 2023, Lim commenced employment with ByteDance Pte Ltd ("ByteDance") as the "Leader for TikTok Shop Governance and Experience ("**GNE**"), Middle Platform"

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1 1st Affidavit of Su Jing dated 21 November 2023 ("SJ1") at para 5.

2 Statement of Claim filed 24 November 2023 ("SOC") at para 4; Defence filed 28 December 2023 ("Defence") at para 5.3; SJ1 at para 27.

[emphasis in original].[3] TikTok Pte Ltd ("TikTok") operates the social media platform *TikTok*, which launched an e-commerce platform under the label *TikTok Shop*.[4]

2 In Summons 3619 of 2023 ("SUM 3619"), Shopee seeks interim injunctions to restrain Lim from accepting employment with ByteDance, and to restrain Lim from soliciting Shopee's clients and employees, in reliance on several contractual clauses that Lim had agreed to with Shopee. In the alternative, Shopee seeks a springboard injunction to restrain Lim from accepting employment with any of Shopee's competitors.

Facts

Lim's employment history with Shopee

3 It is undisputed that Lim was formerly a senior employee of Shopee.[5] Over the course of his employment with Shopee, Lim held the following positions:[6]

(a) Head of Regional Operations, HQ: 17 August 2015 to January 2021;

(b) Head of Regional People Team, Shopee: June 2016 to January 2021;

(c) Senior Director of Regional Operations, HQ: January 2019 to November 2020;

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3 Affidavit of Lim Teck Yong dated 13 December 2023 ("LTY") at para 31.

4 SJ1 at para 37, 44.

5 SOC at para 4; Defence at para 5.3.

6 SJ1 at para 27.

(d) Executive Director of Regional Operations, HQ: December 2020 to January 2021; and

(e) Executive Director, Head of Operations for *Shopee Brazil*: January 2021 to 31 August 2023 (Lim was on unpaid leave of absence between 18 July 2023 to 31 August 2023).

4 Lim resigned from his position as Executive Director, Head of Operations for Shopee *Brazil* in mid-May 2023. He proceeded to serve his notice period of two months before terminating his employment with Shopee on 31 August 2023.[7] Lim joined ByteDance on 11 September 2023.[8]

5 The parties dispute the scope of Lim's responsibilities while employed by Shopee, and the extent of the similarities between Lim's roles while employed by Shopee and ByteDance.

6 Shopee's case is that Lim's role in ByteDance is substantially similar to the roles he undertook in Shopee, as Lim continues, in his role in ByteDance, to: (a) manage user experience, such as customer satisfaction; (b) manage the designing of policies relating to seller and listing management; (c) manage the publishing of external-facing policies of *TikTok Shop* to sellers and creators; (d) manage after-sale services such as return and refund; and (e) manage and hold responsibilities in respect of the Southeast Asia market (albeit allegedly to a lesser extent than the US and UK markets).[9]

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7 LTY at para 29.

8 LTY at para 31.

9 Claimant's Written Submissions dated 5 January 2024 ("CWS") at para 21.

7 Lim avers that his current position is the "Leader for TikTok Shop Governance and Experience ("GNE"), Middle Platform". In the key markets in which *TikTok Shop* operates, the Middle Platform team has a primarily supporting role, which includes assisting with conducting data analysis and root cause analysis to enhance operational metrics. *TikTok Shop* operates in the US, the UK and various parts of Southeast Asia . The Southeast Asia market is the most established. Lim's role and responsibilities entail managing five sub-teams in the areas of: (a) creator and content management; (b) seller and listing management; (c) buyer, seller and creator experience; (d) policy and education; and (e) emergency response.[10] Lim claims that the scope of his work in ByteDance is different from that of his last role as Executive Director, Head of Operations for *Shopee Brazil*, which was geographically confined to Brazil, in which *TikTok Shop* does not currently operate.[11]

The relevant clauses of the Restrictive Covenants Agreement and Employee Confidentiality Agreement

8 When Lim was first employed by Shopee as Head of Regional Operations, HQ on 17 August 2015, he agreed to and signed a Restrictive Covenants Agreement ("RCA") dated 17 August 2015.[12] The relevant clause of the RCA on non-solicitation and non-competition states:[13]

> 2. NON-SOLICITATION AND NON-COMPETITION
>
> 2.1 The Employee acknowledges that he/she will during the course of his/her employment be privy to confidential and sensitive information and that he/she will make, maintain

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10 LTY at paras 31–33.

11 LTY at paras 34, 36 and 38.

12 SJ1 at para 3.

13 Claimant's Bundle of Documents dated 5 January 2024 ("CBOD") at p 407.

> and develop valuable personal contacts with clients, suppliers, staff and other third parties and further that it would be unfair for him/her, after he/she has left Shopee's employment, to be free to exploit such knowledge and contacts immediately. He/she therefore covenants with and undertake [*sic*] to Shopee that he/she will not (save with the prior written consent of Shopee) do any of the following things in the Restricted Territories for a period of 12 months after the Termination Date:
>
> > (a) seek or accept employment with or engagement by or otherwise perform services for or engage in business as or be in any way interested in or connected with a Competitor [the "Non-Competition Restriction"];
> >
> > …
> >
> > (c) seek, solicit, or endeavour to entice away from Shopee all or part of the account of any business of any Client [the "Client Non-Solicitation Restriction"];
> >
> > …
> >
> > (e) solicit or procure the services of or endeavour to entice away from Shopee or employment or assist in or procure the employment by another of any officer, employee or consultant of Shopee where that person is someone with whom he/she has had material dealings or contact during the twelve (12) months immediately preceding the Termination Date (and whether or not such person would commit any breach of his/her contract of employment or engagement by reason of leaving the service of Shopee) [the "Employee Non-Solicitation Restriction"],
>
> in each case whether directly or indirectly and whether on his/her own behalf or with or for or on behalf of any other person, concern, undertaking, firm or body corporate.
>
> …

9 The terms referred to in cl 2.1 of the RCA are defined in cl 1.1 of the RCA as follows:[14]

> …

[14] CBOD at pp 406–407.

"**Competitor**" means any person, concern, undertaking, firm or body corporate which as at the Termination Date is engaged in or carries on within any part of the Restricted Territories any business of a kind carried on by Shopee or any Group Company thereof and with which the Employee has been involved on behalf of Shopee or such Group Company at any time within twelve (12) months immediately preceding the Termination Date.

"**Confidential Information**" means all information and data (whether recorded or not and, if recorded, in whatever form on whatever media and by whomsoever recorded) relating to all or any part of the business, organisation, operations, dealings, property, assets, technology, activities, services, financial affairs, management and administration of Shopee or any Group Company or treated as confidential to Shopee or any Group Company including, without limitation, trade secrets, technical information, businesses, services, client lists, trade names, trademarks, service marks or other proprietary business designations used or owned by Shopee or any Group Company but shall not include information or material already in the public domain through none of his/her default or omission.

…

"**Restricted Territories**" means Singapore and such other countries within which Shopee or any Group Company thereof operates at the Termination Date and in relation to such country, during the twelve (12) months immediately preceding the Termination Date, the Employee:

(a) undertook duties for Shopee or any Group Company thereof with respect to the business of Shopee or any Group Company;

(b) had a degree of management responsibility for the business of Shopee or any Group Company or a material part thereof; and/or

(c) was privy to Confidential Information regarding the business of Shopee or any Group Company.

…

"**Termination Date**" means the date on which the Employee's employment with Shopee terminates.

10 On 17 August 2015, Lim also entered into an Employee Confidentiality Agreement ("ECA") with Shopee.[15] Clause 2.3 of the ECA states:[16]

> The Employee undertakes to at all times, both during his/her employment by Shopee and after his/her termination, (a) hold in the strictest confidence and will not disclose any Proprietary Information except to other Shopee Group employees, agents and representatives who need to know, or to third parties who are bound by written confidentiality agreements to the extent necessary to carry out his/her responsibilities as an employee of Shopee and in a manner consistent with any such third party confidentiality agreements; (b) use Proprietary Information only for the exclusive benefit of Shopee Group as may be necessary in the ordinary course of performing his/her duties as an employee of Shopee; and (c) will cooperate with Shopee and use his/her best efforts to prevent the unauthorised disclosure, use or reproduction of any Proprietary Information.

Procedural history

11 On 6 October 2023, Shopee's solicitors sent a letter to Lim. The letter alleged that Lim was in flagrant breach of the Non-Competition Restriction. It demanded that Lim immediately cease his employment with ByteDance, and amongst other things, required Lim to provide undertakings to comply with the Non-Competition Restriction and Lim's obligations under the ECA.[17]

12 On 26 October 2023, Lim's solicitors replied that Lim disagreed with Shopee's allegations made in the 6 October 2023 letter. Lim's position was that Shopee had not demonstrated that it had any legitimate proprietary interest in respect of the "confidential information" protected under the RCA

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15 LTY at para 8(a).

16 SJ1 at pp 47–48.

17 SJ1 at para 57 and pp 220-225.

that was not already protected under the ECA. Clause 2 of the RCA was also unreasonable in scope and duration and amounted to an unlawful restraint of trade. In the circumstances, Lim refused to provide the undertakings and responded that he would not be acceding to Shopee's demands.[18]

13 On 24 November 2023, Shopee brought Originating Claim 814 of 2023 ("OC 814"), seeking a declaration that cl 2.1 of the RCA and cl 2.3 of the ECA are valid and enforceable and that Lim has breached them, as well as damages to be assessed. At the same time, Shopee brought SUM 3619, seeking in the main, the following orders against Lim:

(a) until the final determination of OC 814 or 30 August 2024 (inclusive), whichever is the earlier, an injunction to prohibit Lim from, in respect of Brazil, Indonesia, Malaysia, the Philippines, Singapore, Taiwan, Thailand and Vietnam:

(i) seeking or accepting employment with any of Shopee's "Competitors" (as defined in the RCA);

(ii) soliciting or endeavouring to entice away from Shopee all or part of the account of any business of any of Shopee's "Clients" (as defined in the RCA); and/or

(iii) soliciting any of Shopee's employees, officers or consultants with whom Lim had material dealings or contact during the twelve months preceding the termination of his employment with Shopee;

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18 SJ1 at p 232.

(b) further and/or in the alternative, until the final determination of OC 814 or 30 August 2024 (inclusive), whichever is the earlier, a springboard injunction to prohibit Lim from seeking or accepting employment with any of Shopee's competitors so as to give them an unfair competitive advantage over Shopee.

14 SUM 3619 also contained a prayer for all documents filed in respect of the application to be sealed. However, Shopee did not advance any evidence or submissions in support of this prayer and confirmed at the hearing before me that it was not proceeding with this prayer.[19]

Parties' cases

Shopee

15 Shopee submits that Lim has breached or is about to breach cl 2.1 of the RCA and cl 2.3 of the ECA, which I shall refer to collectively as the "restraint of trade clauses". Interim injunctions should therefore be granted as Lim has not shown that he will suffer hardship over and above observing his contractual obligations. In any event, there is a serious case to be tried in respect of the validity, enforceability and breach of the restraint of trade clauses, and the balance of convenience lies in favour of granting the interim injunctions. Further or in the alternative, Shopee submits that a springboard injunction should be granted as Lim has misused confidential information to give ByteDance an unfair advantage.

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19 Notes of Evidence dated 11 January 2024 ("NE") at p 1.

Lim

16 Lim submits that there is no serious question to be tried with respect to his alleged breach of the restraint of trade clauses. Shopee has failed to show that the Non-Competition Restriction protects any legitimate proprietary interest, or was reasonable in the interests of the parties and the public. Shopee has also failed to show that the Client Non-Solicitation Restriction and the Employee Non-Solicitation Restriction, which I shall refer to collectively as the "Non-Solicitation Restrictions", are about to be breached. Furthermore, the springboard injunction should not be granted as Lim was not privy to confidential information, and in any event, has not obtained an unfair "head start" as a result of his unlawful acts.

The law

The* American Cyanamid *test in respect of restraint of trade interim injunctions

17 In *Reed Exhibitions Pte Ltd v Khoo Yak Chuan Thomas and another* [1995] 3 SLR(R) 383 at [14], the Court of Appeal held that in considering the grant of an interlocutory injunction to enforce a restraint of trade covenant, the principles set out in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 ("*American Cyanamid*") should be applied. In *RGA Holdings International Inc v Loh Choon Phing Robin and another* [2017] 2 SLR 997 ("*RGA Holdings*") at [28], the Court of Appeal characterised the *American Cyanamid* test as containing the following considerations, on which I further elaborate:

(a) Whether there is a serious question to be tried with a real prospect of success. The threshold is a low one. All it requires is that the claim is not frivolous or vexatious. The court will only investigate the prospects of success to a limited extent – "[a]ll that has to be seen

is whether [the applicant] has prospects of success which, in substance and reality, exist": *Singapore Civil Procedure 2022* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2022) ("*Singapore Civil Procedure 2022*") at para 29/1/12.

(b) If there is a serious question to be tried, whether the balance of convenience lies in favour of granting the injunction. The court proceeds on a two-stage analysis:

(i) If damages would be an adequate remedy and the respondent is in a financial position to pay them, an injunction should normally not be granted. On the other hand, if damages would not be an adequate remedy, the court should consider whether, if the injunction was granted, the respondent would be adequately compensated under the applicant's undertaking as to damages: *Re Fineplas Holdings Pte Ltd (formerly known as Tasinder Pte Ltd)* [2001] 1 SLR(R) 192 at [7].

(ii) If damages would not be an adequate remedy, or if the court is doubtful about the adequacy of damages, the court considers where the balance of convenience lies: *Leong Quee Ching Karen v Lim Soon Huat and others* [2023] SGHC 359 at [42], citing *Singapore Civil Procedure 2022* at paras 13/1/14–13/1/16. The court should take whichever course appears to carry the lower risk of injustice if that course should ultimately turn out to have been the "wrong" course. This principle is necessary as the court is asked to assess the balance of convenience at an early stage and based only on affidavit evidence: *Maldives Airports Co Ltd and another v GMR Malé*

International Airport Pte Ltd [2013] 2 SLR 449 ("*Maldives Airports Co Ltd*") at [53].

18 An additional point of consideration in this case is that restraint of trade clauses, particularly those in the context of employment, are *prima facie* void and unenforceable. This is to give effect to the public policy that frowns upon attempts to unreasonably proscribe freedom of trade: *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 ("*Man Financial*") at [45]. In *Man Financial*, the Court of Appeal cited with approval at [70] and [79] a two-stage test for determining whether a restrictive covenant in restraint of trade is enforceable, namely:

(a) the court will first consider whether the restrictive covenant protects a legitimate interest of the employer;

(b) if the answer to (a) is "yes", the restrictive covenant will be enforceable if it is in addition: (i) reasonable in the interests of the parties; and (ii) reasonable in the public interest.

The court recognised at [94] and [121] that an employer can have legitimate proprietary interests in: (a) restraining an employee from misusing any trade secrets (*ie*, confidential information); (b) protecting the special trade connections established by the employee with the employer's customers; and (c) maintaining a stable, trained work force.

19 In *Smile Inc Dental Surgeons Pte Ltd v Lui Andrew Stewart* [2012] 4 SLR 308 ("*Smile Inc Dental*"), the Court of Appeal held at [20] that the courts adopt a stricter approach when considering restrictive covenants in the context of a contract of employment as compared to the situation where such a clause

is contained in a contract for the sale of a business. This is because of the differing nature of the legitimate proprietary interest to be protected and the greater inequality of bargaining power in an employment context.

20 Where the protection of confidential information or trade secrets is already covered by another contractual clause, the covenantee will have to demonstrate that the restraint of trade clause in question covers a legitimate proprietary interest over and above the protection of confidential information or trade secrets. This proposition is a *general* one and would apply equally in the context of other legitimate proprietary interests, for example, that of trade connections: *Man Financial* at [92].

21 Therefore, applying the *American Cyanamid* principles to an interim injunction in respect of a restraint of trade clause, an applicant must show:

(a) a serious question to be tried that the restraint of trade clause is valid and enforceable, namely that it protects a legitimate proprietary interest and that it is reasonable in the interests of the parties and the public;

(b) a serious question to be tried that a restraint of trade clause has been breached; and

(c) if there are serious questions to be tried, that the balance of convenience lies in favour of granting the interim injunction.

22 In *RGA Holdings*, the Court of Appeal held at [33] that the *American Cyanamid* test does not apply to an application for an interim prohibitory injunction where the respondent is about to breach, or has already breached, a negative covenant in a contract. The court in such a case does not ask whether

there is a serious question to be tried and whether the balance of convenience is in favour of granting such an injunction. Instead, an interim prohibitory injunction will readily be granted to restrain a prospective breach or a further breach. It will only be refused if the respondent shows that he will suffer hardship over and above that which results from having to observe the contract. One of the issues in this case is whether this holding in *RGA Holdings* applies to trade restraint cases generally and to this particular trade restraint case, such that the *American Cyanamid* test does not apply.

The law applicable to springboard injunctions

23 In respect of the grant of springboard injunctions, the High Court accepted in *Goh Seng Heng v RSP Investments and others and another matter* [2017] 3 SLR 657 ("*Goh Seng Heng*") at [67] that the following requirements need to be satisfied: (a) confidential information had been misused or is at risk of being misused; (b) such misuse of confidential information had given an unfair competitive advantage to the respondent; (c) the "unfair advantage" was still being enjoyed by the respondent at the time the injunction was sought; and (d) damages would be inadequate to compensate the applicant.

Issues to be determined

24 The issues for determination are:

(a) Whether the holding at [33] of *RGA Holdings* is generally applicable to restraint of trade cases.

(b) Whether there are serious questions to be tried that the restraint of trade clauses are valid and enforceable, and were breached by Lim.

(c) If there are serious questions to be tried, whether the balance of convenience lies in favour of granting the interim injunctions.

25 I shall address each issue in turn.

Issue 1: Whether the holding at [33] of *RGA Holdings* is applicable to restraint of trade cases

26 Shopee submits that in this case, the *American Cyanamid* principles are inapplicable and that *RGA Holdings* applies instead. *RGA Holdings* held at [33] that the *American Cyanamid* test does not apply to an application for an interim prohibitory injunction where the respondent is about to breach, or has already breached, a negative covenant in a contract (see [22] above). Lim in turn submits that *RGA Holdings* does not apply to restraint of trade cases, given the public policy that restraint of trade clauses are *prima facie* invalid.

27 I am unable to agree with Lim's submission that *RGA Holdings* does not apply to restraint of trade cases because of the public policy against restraint of trade clauses. It was stated by the Court of Appeal in *RGA Holdings* at [40] that the rule "applies to restrain all manner of breaches of negative contractual obligations". The court went on to cite with approval the English case of *Vefa Ibrahim Araci v Kieren Fallon* [2011] EWCA Civ 668, which concerned an interim prohibitory injunction which was granted to restrain a jockey from acting in breach of a negative covenant in his contract with a racehorse owner not to ride a rival owner's horse.

28 In my view, the force of the public policy that restraint of trade clauses are *prima facie* invalid, comes through the two-stage test set out in *Man Financial* for determining whether a restrictive covenant in restraint of trade is

enforceable, rather than through the inapplicability of the holding at [33] of *RGA Holdings* to restraint of trade clauses.

29 It should be borne in mind that the principles in *RGA Holdings* are only applicable where an applicant has shown that the respondent is about to breach, or has already breached, a negative covenant. In the context of a restraint of trade clause, the applicant must first show that the restraint of trade clause is valid and enforceable, in that it protects a legitimate interest of the applicant and in addition is reasonable in the interests of the parties and the public. Where an applicant is unable to show that there is a serious question that the restraint of trade clause is valid and enforceable, it is highly doubtful that the applicant could show that the respondent has breached or is about to breach the negative covenant. Hence, the applicability of [33] of *RGA Holdings* in a particular case is closely interwoven with whether there is a serious question to be tried, that the restrictive covenant in question is valid and enforceable.

30 With this in mind, I will consider the issue of whether there are serious questions to be tried, that the restraint of trade clauses are valid and enforceable, and were breached by Lim, before providing my views on the applicability of [33] of *RGA Holdings* to the case here.

Issue 2: Whether there are serious questions to be tried that the restraint of trade clauses are valid and enforceable, and were breached

31 Shopee submits that the interim injunction should be granted as the test in *American Cyanamid* is satisfied. It relies on *Buckman Laboratories (Asia) Pte Ltd v Lee Wei Hoong* [1999] 1 SLR(R) 205 ("*Buckman Laboratories*"). There, the High Court noted at [28] that while it had grave doubts about the enforceability of the restrictive covenants, the plaintiffs' case was not

obviously frivolous or vexatious and the facts disclosed did satisfy the low threshold of "serious question to be tried". The court in determining whether there is a "serious question to be tried" should not attempt to resolve conflicts of evidence on affidavit pertaining to facts on which the claims of either party may ultimately depend, as these should be properly dealt with at trial: *Jardine Lloyd Thompson Pte Ltd v Howden Insurance Brokers (S) Pte Ltd and others* [2015] 5 SLR 258 at [6]. Shopee submits there is a "serious question to be tried" in respect of:

(a) whether the restrictions are valid and enforceable; and

(b) if so, whether Lim breached and/or threatened to breach the restrictions.

32 I will first consider whether there are serious questions to be tried in relation to the Non-Competition Restriction, before considering this in relation to the Non-Solicitation Restrictions (collectively "Non-Solicitation Restrictions").

Non-Competition Restriction

33 Shopee bears the burden of showing that there is a serious case that the Non-Competition Restriction is valid and enforceable, in that it protects a legitimate proprietary interest and is reasonable in the interests of the parties and the public, and that Lim has breached the restriction.

Shopee's case on the Non-Competition Restriction

34 First, Shopee submits that the Non-Competition Restriction protects two legitimate interests:[20]

(a) Trade connections: In his positions as Head of Regional Operations, HQ and Executive Director, Head of Operations for *Shopee Brazil*, Lim had to manage and cultivate strong professional relationships with key representatives of potential and existing vendors, partners and stakeholders of Shopee's business. Lim was given unrestricted access to the precise commercial terms of the agreements which Shopee entered into with these trade connections.

(b) Maintenance of a stable and trained workforce: This contains two elements: (i) Shopee's interest in not losing its existing employees due to Lim's solicitation; and (ii) Shopee's significant investment in training Lim and building up his expertise.[21]

35 Shopee's counsel later clarified that based on Shopee's submission in relation to "Restricted Territories", as defined under cl 1.1 of the RCA, the legitimate proprietary interest it seeks to protect with the Non-Competition Restriction is that of confidential information.[22] I set out the implications of this below at [57] to [60].

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20 CWS at paras 58–67.

21 CWS at paras 64–67;NE at p 6.

22 NE at p 3.

36 Second, Shopee further submits that the Non-Competition Restriction is reasonable in terms of: (a) the geographical area of the restraint; (b) the activity restrained; and (c) the duration of the restraint.

37 Shopee's case is that the "Restricted Territories" as defined under cl 1.1 of the RCA would include Singapore, and all other countries where *Shopee* operated:

(a) during the 12 months immediately preceding the cessation of Lim's employment; and

(b) for which Lim was privy to confidential information regarding the business of Shopee.[23]

38 The geographical area of restraint under Shopee's case comprises Brazil, Indonesia, Malaysia, the Philippines, Singapore, Taiwan, Thailand and Vietnam. The confidential information includes: (a) immediate and long-term growth and business plans; (b) seller and listing management, customer satisfaction and pricing and marketing strategies; and (c) detailed statistics on orders, financial metrics, users and gross merchandise value, that Lim continued to have access to up until July 2023.[24]

39 Shopee submits that in light of Lim's extensive involvement in matters of strategy in the "Restricted Territories" until 17 July 2023, and the fact that the e-commerce industry is a specialised industry with a limited number of

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23 CWS at para 70.

24 CWS at para 71.

industry players, the geographical area of restraint of the Non-Competition Restriction is not unduly wide.[25]

40 Shopee further submits that the activity restraint is reasonable as it is limited to "Competitors" of Shopee which operate in the "Restricted Territories" the same type of operations which Lim managed on behalf of Shopee during the 12 months immediately preceding the termination of Lim's employment.[26] It would not prevent Lim from participating in e-commerce companies which carry on business in markets outside the Restricted Territories (such as in the US and UK).[27]

41 Shopee avers that a duration of 12 months cannot be considered unduly long, considering that e-commerce is a highly specialised industry, and in light of Lim's "very senior" position in Shopee and the extensive training he received during his long tenure in Shopee.[28]

42 Third, Shopee submits that as Lim currently carries out for ByteDance similar roles and responsibilities as those performed while he was employed by Shopee, and these duties are carried out in the "Restricted Territories", there is a serious question to be tried in respect of whether Lim has breached the Non-Competition Restriction.[29]

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25 CWS at para 75.

26 CWS at para 77.

27 CWS at para 78.

28 CWS at para 79.

29 CWS at para 83.

Lim's case on the Non-Competition Restriction

43 First, Lim submits that he has not breached the Non-Competition Restriction as both the scope and geographical range of his work at *Shopee Brazil* and *TikTok Shop* are different.[30] In *TikTok Shop*, he does not handle payment, fraud, logistics, customer service and warehousing, as he did as Head of Regional Operations, HQ and Executive Director, Head of Operations for *Shopee Brazil* at Shopee.[31] He currently focuses mainly on the US and UK markets, dedicating much of the time and resources of the Middle Platform team to that region.[32]

44 Lim avers that he was in Brazil in the 12 months preceding the termination of his employment with Shopee on 31 August 2023, *ie*, the "Termination Date" as defined by cl 1.1 of the RCA. His scope of duties and responsibilities was restricted to the Brazil market and did not concern Shopee's operations in the other markets.[33] Based on the plain wording of cl 1.1 of the RCA, the definitions of "Competitor" and "Restricted Territories" could not have included the non-Brazilian markets.[34] In addition, *TikTok Shop* was not available in Brazil as at the Termination Date.[35] Therefore, as a matter of construction, *TikTok Shop* cannot be construed as a "Competitor" of Shopee in Brazil under cl 1.1 of the RCA.[36]

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30 Defendant's Written Submissions dated 5 January 2024 ("DWS") at para 12.

31 LTY at para 34.

32 LTY at para 34.

33 LTY at para 36.

34 DWS at paras 36 and 38.

35 LTY at para 38.

36 DWS at para 39.

45 Hence, cl 2.1 of the RCA does not prohibit Lim from being employed by ByteDance. Given this, there can be no real prospect of success on Shopee's part to stop Lim from working with ByteDance.

46 Second, Lim's case is that Shopee has failed to show that the Non-Competition Restriction protects a legitimate proprietary interest. Clause 2.1 of the RCA states that the purpose of the Non-Competition Restriction is to protect Shopee's "confidential and sensitive information". However, Shopee has not demonstrated that its legitimate proprietary interest in protecting the confidential information covered under the RCA went over and above its interest in protecting the confidential information protected under the ECA.[37]

47 Lim submits that as the RCA also contains the Non-Solicitation Restrictions, it is doubtful whether there is any legitimate proprietary interest covered under the Non-Competition Restriction: *HT SRL v Wee Shuo Woon* [2019] 5 SLR 245 ("*HT SRL")* at [77]. Given the above, the main function of the Non-Competition Restriction was to inhibit competition in business, which will not be recognised by the courts.[38]

48 Lim further disputes that he was privy to commercially sensitive information.[39] He avers that Shopee has also not demonstrated in any of their affidavits that Lim had breached the Non-Solicitation Restrictions or his confidentiality obligations under the ECA, or that the confidential information is at risk of misuse by Lim.[40] Although Shopee relies on Lim not providing

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37 DWS at para 45.

38 DWS at paras 46–47.

39 DWS at para 8.

40 DWS at para 49.

Shopee with the undertakings demanded by them, there was never any basis for Lim to provide such a confirmation, more so when he had not breached the Non-Competition Restriction.[41] In any event, Lim's refusal to provide the written confirmation, especially when he is under no duty to do so, does not mean that Lim had committed those breaches.[42]

49 Third, Lim argues that in any event, the Non-Competition Restriction is too wide and unenforceable.[43] By Shopee's interpretation, cl2.1 of the RCA would restrict Lim from being employed in relation to the Restricted Territories, notwithstanding that the markets concerned went beyond Lim's job scope in the 12-month period preceding the Termination Date. This would prevent Lim from accepting any employment with any of Shopee's competitors, notwithstanding that Lim is working in a different department with different duties or in a different market from what Lim was involved in while in Shopee. The 12-month period of restraint is also unreasonable in the fast-changing e-commerce industry.

My decision on the Non-Competition Restriction

50 Under cl 2.1 of the RCA, Lim undertook not to accept employment with a "Competitor" in the "Restricted Territories" for a period of 12 months after the Termination Date.

51 Shopee seeks the interim injunctions in relation to Brazil, Indonesia, Malaysia, the Philippines, Singapore, Taiwan, Thailand and Vietnam. Whether

41 DWS at para 49.

42 DWS at para 49.

43 DWS at para 44.

these countries fall under the definition of "Restricted Territories" is thus material to whether Lim undertook employment with a "Competitor" in the "Restricted Territories".

52 The ambit of "Restricted Territories" is also material to whether Lim is working for a "Competitor". A "Competitor" is defined under cl 1.1 of the RCA as including any firm which as at the Termination Date: (a) is engaged within any part of the "Restricted Territories"; (b) in any business of a kind carried on by Shopee; and (c) with which the employee has been involved on behalf of Shopee at any time within 12 months preceding the Termination Date.

53 The material definition of "Restricted Territories" as defined in cl 1.1 of the RCA is:

> (a) meaning Singapore and such other countries within which Shopee operated as at the Termination Date; and
>
> (b) in relation to such country, during the 12 months immediately preceding the Termination Date, the employee:
>
> (i) undertook duties for Shopee with respect to the business of Shopee;
>
> (ii) had a degree of management responsibility for the business of Shopee or a material part thereof; and/or
>
> (iii) was privy to "Confidential Information" regarding the business of Shopee.

I shall refer to (b)(iii) above as "Limb (C)".

54 Hence, the material period for the consideration of Lim's involvement in Shopee under cl 2.1 of the RCA is the 12 months preceding the Termination Date, which is 31 August 2023. During this period, Lim only held the position of Executive Director, Head of Operations for *Shopee Brazil*.

55 Shopee initially submitted that Lim concurrently undertook duties or had managerial responsibilities as Executive Director of Regional Operations even whilst his title was that of Executive Director, Head of Operations for *Shopee Brazil*. When asked if this was in evidence, Shopee pointed to para 31 of the first affidavit of Su Jing, the Senior Manager of Shopee's People Team. However, para 31 of Su Jing's first affidavit does not substantiate this submission, since it simply states: "in the [Lim's] most recent positions (i.e. Executive Director of Regional Operations, HQ and Executive Director, Head of Operations for *Shopee Brazil*), his main duties and responsibilities included the following …". In other words, the duties and responsibilities listed at para 31 are not limited to those connected to Lim's role as Executive Director, Head of Operations for *Shopee Brazil*. Counsel for Shopee ultimately accepted that there is no language in para 31 of Su Jing's first affidavit which suggests that Lim continued to take on duties as Executive Director of Regional Operations, when his title was Executive Director, Head of Operations for *Shopee Brazil*, and informed that there is nothing else in Shopee's affidavits which testifies to this.[44]

56 Hence, Shopee has not provided any evidence that Lim was undertaking duties or having a degree of managerial responsibility outside of

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[44] NE at p 2.

Brazil, when he was Executive Director, Head of Operations for *Shopee Brazil*.

57 Counsel for Shopee confirmed that Shopee's case that the definition of "Restricted Territories" in cl 1.1 of the RCA is triggered, is premised on Limb (C) of the definition of "Restricted Territories", in that Lim was privy to "Confidential Information" regarding the business of Shopee (outside of Brazil), in the 12 months preceding the Termination Date, by virtue of his being Executive Director, Head of Operations for *Shopee Brazil*.[45]

58 Given that Shopee's submission is that the definition of "Restricted Territories" under cl 1.1 of the RCA is triggered because of Limb (C), in that Lim was privy to "Confidential Information" regarding the business of Shopee, the legitimate proprietary interest it seeks to protect through the Non-Competition Restriction would be that of protecting confidential information. Counsel for Shopee confirmed that this was the case.[46]

59 However, it has been held by the Court of Appeal in *Man Financial* at [79] that there "must always – and this is a fundamental legal proposition in this particular area of the law – be *a legitimate proprietary interest* which the court will then seek to protect by way of the doctrine of restraint of trade" [emphasis in original]. Critically, *Man Financial* held at [92] that "where the protection of the confidential information or trade secrets is already covered by *another* clause in the contract, the covenantee will have to demonstrate that the restraint of trade clause in question covers a legitimate proprietary interest

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45 CWS at para 74; NE at p 3.

46 NE at p 3.

over and above the protection of confidential information or trade secrets" [emphasis in original].

60 In this case, the "Confidential Information" referred to in Limb (C) is already protected by the ECA. This places this case squarely within the proposition set out in *Man Financial* at [92]. Shopee's response was that there have been High Court decisions that critiqued this ruling in *Man Financial,* such as *Lek Gwee Noi v Humming Flowers & Gifts Pte Ltd* [2014] 3 SLR 27 at [70].

61 Nevertheless, *Man Financial* has not been overturned and remains binding on this court, as a Court of Appeal decision. There have also been more recent High Court decisions that have applied the principle set out in *Man Financial* at [92] in respect of non-competition and non-solicitation clauses: see, *eg*, *HT SRL* at [74]-[77].

62 While counsel for Shopee did confirm at the hearing that in relation to the Non-Competition Restriction, its case is premised on its legitimate proprietary interest in the protection of confidential information, I will for completeness deal with whether the protection of trade connections and the maintenance of a stable and trained workforce could be the legitimate proprietary interests protected, given that Shopee had earlier submitted in its written submissions that the Non-Competition Restriction also protects these interests.[47]

63 There are two difficulties with this. First, these are not the interests that Shopee asserts were protected through the Non-Competition Restriction, based

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47 CWS at para 58.

on its submission on how the definition of "Restricted Territories" is triggered. As Shopee's interpretation of "Restricted Territories" covers countries for which confidential information relating to the corresponding markets was allegedly available to Lim during his employment,[48] it would follow that the proprietary legitimate interest it seeks to protect is the protection of confidential information and not the protection of trade connections or the maintenance a stable workforce. Counsel for Shopee accepted that this would be the case.[49]

64 Second, it was held in *Man Financial* at [92] that the proposition expounded there is a general one and would apply equally in the context of other legitimate proprietary interests (for example that of trade connections). Given that trade connections are covered by another clause in the RCA, namely the Client Non-Solicitation Restriction, following *Man Financial*, Shopee would have to demonstrate that the Non-Competition Restriction covers a legitimate proprietary interest over and above the protection of trade connections. This principle was also referred to in *HT SRL* at [77], where it was expressed that given the scope of the non-solicitation restraint clause, the judge was doubtful that there was any legitimate proprietary interest in the protection of the trade connection covered by the non-competition clause.

65 This analysis applies equally to any argument that the legitimate proprietary interest covered by the Non-Competition Restriction is the maintenance of a stable, trained workforce, given that such an interest is already covered by the Employee Non-Solicitation Restriction.

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48 CWS at paras 70–71.

49 NE at p 3.

66 Counsel for Shopee accepted that *Man Financial* refers to the legitimate proprietary interest in maintaining a stable and trained workforce as referring to the need to retain other employees and restrain the solicitation of such employees: *Man Financial* at [95], [103] and [106]. It was however submitted that such an interest also extends to the interest of an employer in retaining a particular employee after training has been invested in that individual. The High Court's decision in *PH Hydraulics & Engineering Pte Ltd v Intrepid Offshore Construction Pte Ltd and another* [2012] 4 SLR 36 ("*PH Hydraulics*") at [64] was cited in support. I note that in another High Court decision, *3D Networks Singapore Pte Ltd v Voon South Shiong and another* [2023] 4 SLR 396 at [32], Chan Seng Onn SJ cited *Man Financial* at [121] in finding that "the maintenance of a stable, trained workforce is a legitimate proprietary interest that the employer is entitled to protect via a non-solicitation clause." This tracks more closely the conception of this legitimate proprietary interest, as explained by *Man Financial*.

67 I further note that in *PH Hydraulics* at [64], the court found that there existed such a form of proprietary interest on the facts as the marine winch industry is a relatively small and specialised one. In contrast, it could not be said that the e-commerce industry is small. Counsel for Shopee submitted that there are only a few big players and that it is specialised, but accepted that it could not be said that the e-commerce industry is small,[50] in terms of size and the number of players. That being the case, it would be difficult to say that Lim's skillsets are so specialised and hard to replace, such that there is a legitimate proprietary interest in maintaining a stable and trained workforce, by restraining Lim in a similar vein to what was found in *PH Hydraulics*.

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50 NE at p 7.

68 In any event, this point is hypothetical here and does not affect the substance of the assessment of the Non-Competition Restriction. This is because Shopee's case is that the restriction is triggered by Limb (C) of the definition of "Restricted Territories" and consequently is premised on a legitimate proprietary interest in the protection of confidential information, and not the maintenance of a stable and trained workforce. As set out above, given that such an interest in the protection of confidential information is already protected elsewhere by the ECA, there are serious doubts that Shopee would be able to rely on such an interest in asserting the validity of the Non-Competition Restriction.

69 I also observe that the confidential information that Shopee seeks to protect is set out along fairly generic categories, for example: (a) immediate and long-term growth and business plans; (b) seller and listing management, customer satisfaction, pricing and marketing strategies; and (c) detailed statistics on orders, financial metrics, users and gross merchandise value, that Lim continued to have access to up until July 2023.[51] Shopee did not plead or point to any specific confidential information.

70 Counsel for Shopee informed that this was because Shopee's concern was more with the general knowhow that Lim was exposed to, rather than any specific set of information.[52] Such general knowhow appears to be more akin to the "general character and principle" type of confidential information which the House of Lords in *Herbert Morris, Limited v Saxelby* [1916] 1 AC 688 ("*Herbert Morris*") considered at 703 could not be a trade secret meriting protection. *Herbert Morris* was cited in *Man Financial* at [89] and the court

51 CWS at para 71.

52 NE at p 6.

went on to state at [91] that any trade secrets or confidential information must be *specifically pleaded*, as a general assertion will obviously not pass muster.

71 While I am prepared to accept that it is Shopee's case that this is the nature of the confidential information that it seeks to protect, the generality of such information affects the geographical scope of the restraint that Shopee seeks in the Non-Competition Restriction. Shopee submits that Lim acquired the confidential information by participating "in regularly held regional operations meetings" where Shopee's "strategies and priorities for *all* markets would be shared and discussed" [emphasis added].[53] Based on this argument that the confidential information relates to general knowhow that Lim was exposed to during such meetings, this would exclude Lim from being employed in *all* the markets where Shopee was operating, even though these are markets Lim was *not* even working in or had *no* responsibilities for, or had *no* specific information about, in the 12 months preceding the Termination Date. In effect, Lim would simply be restrained from working for any competitor of Shopee who had been in Shopee's markets. I have serious doubts that it could be said that there is a serious question if this would be regarded as reasonable as between the parties or reasonable in the interest of the public.

Non-Solicitation Restrictions

72 I now turn to the Non-Solicitation Restrictions that Shopee seeks interim injunctions for. It is not disputed by Lim that Shopee has a legitimate interest in respect of the Non-Solicitation Restrictions.[54] Lim's contention is

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53 CWS at para 128.

54 DWS at paras 49–50.

that Shopee has not shown that there is a serious question that Lim is about to breach these restrictions.[55]

73 Shopee does not have any specific evidence that Lim has breached the Non-Solicitation Restrictions. Instead, it submits that there is a risk of breach, relying on *Tan Kok Yong Steve v Itochu Singapore Pte Ltd* [2018] SGHC 85 ("*Tan Kok Yong*"), where the court noted at [108] that there is a difference between an ex-employee who has threatened to breach the restrictive covenant and one who has not.[56] Shopee submits that there is a serious question to be tried in respect of whether Lim has threatened to breach the Non-Solicitation Restrictions, in that Lim has, by unreasonably refusing to provide the undertakings, shown a proclivity for breaching these restrictions.[57]

74 However, in my view, it is not apparent that Lim's refusal to provide the undertakings shows such a proclivity. By signing the RCA, Lim had already provided his undertakings. As acknowledged by counsel for Shopee, the undertakings requested for by Shopee on 6 October 2022 do not add anything legally, given that Lim has already committed to the same obligations in the RCA and ECA.[58] Nor it is apparent why Lim should have to provide further undertakings. Lim stated that he did not want to provide the further undertakings in relation to the Non-Competition Restriction as Shopee has not shown a legitimate proprietary interest and the trade restraint clause is unreasonable in scope and duration and amounts to an unlawful restraint of trade.[59] In the circumstances, it could hardly be said that he was unreasonable

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55 DWS at para 49.

56 CWS at para 93.

57 CWS at para 94.

58 NE at p 4.

in refusing to provide the undertakings, or that in so refusing, he has shown a proclivity to breach the restrictions. Counsel for Shopee submitted that the ECA and RCA, as well as Lim's statements on affidavit that he has not and will not breach the confidentiality restrictions and the Non-Solicitation Restrictions,,[60] are insufficient because they are mere words.[61] However, the undertaking that Shopee seeks would also involve "mere words" and they would only be between Shopee and Lim, whereas Lim has made his assurances on a sworn affidavit before the court.

75 I find this factually different from what is discussed in *Tan Kok Yong*, which Shopee relied on. There, the court referred at [102] to *Heller Factoring (Singapore) Ltd v Ng Tong Yang* [1993] 1 SLR(R) 495 ("*Heller*"). The ex-employee in *Heller* had issued a tacit assertion of entitlement and threatened to poach the former employer's customers. The ex-employee regarded the factoring business as a free and competitive one. To him it was "fair game" to poach the former employer's customers by using their proprietary information. Given the ex-employee's proclivity for breaching the restrictive covenant, the court held that an injunction would be warranted so as to better enforce it. In contrast, Lim has stated on affidavit that he has not and will not breach the confidentiality restrictions or the Non-Solicitation Restrictions. I therefore find that Shopee has not, on its bare assertions alone, shown a serious case to be tried that the Non-Solicitation Restrictions have been or are about to be breached by Lim.

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59 CBOD at p 418.

60 LTY at paras 25 and 44.

61 NE at p 4.

Applicability of RGA Holdings *to the facts*

76 Given that Shopee has not shown that there are serious questions to be tried that the Non-Competition Restriction is valid and enforceable or that there is a serious question to be tried that the Non-Solicitation Restrictions have been or are about to be breached, I do not find that it could be said that these negative covenants have been or are about to be breached. The prerequisite for applying [33] of *RGA Holdings* has thus not been met.

Springboard injunction

77 The above analysis is also pertinent to Shopee's case for a springboard injunction. Shopee's submission is that there is a real and material risk that Lim intends to misuse Shopee's restricted information, as Lim has unreasonably refused to provide the undertakings Shopee requested in its letter of 6 October 2023.[62] While Lim has stated that he has not breached and will not breach his confidentiality obligations under the ECA,[63] he has refused to give any undertakings in respect of the same.[64]

78 Shopee submits that Lim had access to Shopee's restricted information for all the markets in which *Shopee* operated throughout his employment with Shopee, and including while he was in *Shopee Brazil*. Even after Lim joined *Shopee Brazil*, he continued to have access to Shopee's up-to-date restricted information, and participated in regularly-held regional operations meetings

62 SJ1 at pp 220-222 and 232.

63 LTY at para 19.

64 CWS at para 117.

where Shopee's immediate and long-term operations strategies and priorities for all markets would be shared and discussed.[65]

79 Shopee avers that disclosure of the restricted information Lim possesses to ByteDance would give it an unfair advantage in its operation of *TikTok Shop.*[66] Therefore, a springboard injunction should be granted.

80 Lim submits that the springboard injunction would only be correctly sought against the party that obtained a head start from the use of the confidential information, in this case, his present employer ByteDance: *QBE Management Services (UK) Ltd v Dymoke and others* [2012] IRLR 458 at [240]–[241]. Here, the injunction is being sought against Lim who is only an employee, and who would not obtain any head start from the use of such confidential information. Lim also relies on his arguments, as set out above at [48], that Shopee has not shown that Lim had access to commercially sensitive information, nor that he had breached his confidentiality obligations, nor that he had misused confidential information.

81 In my view, it could not be said in the circumstances that there is evidence of a risk of Lim misusing confidential information. As analysed above, Lim has already signed the ECA. The additional undertakings requested for does not add anything legally. Lim has also stated on affidavit that he has not breached and will not breach his confidentiality obligations.

Summary

82 In summary, I find that:

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65 CWS at paras 126 and 128.

66 CWS at para 119.

(a) In relation to the Non-Competition Restriction, given the serious doubts about: (i) whether the restriction is valid under the *Man Financial* line of analysis because of the lack of a legitimate proprietary interest; and (ii) the reasonableness of the geographical restraint which extends to markets in relation to which which Lim did not have any duties or have any specific information about, Shopee has not shown how there are serious questions to be tried about whether the restriction is valid or breached.

(b) In relation to the Non-Solicitation Restrictions, Shopee has not shown a serious question to be tried that Lim is about to breach these restrictions, simply because he declined to provide the undertakings demanded by Shopee.

(c) In relation to the springboard injunction, Shopee has not shown that there is a serious question to be tried of whether there is risk of misuse of such information, simply by referring to Lim's refusal to provide the undertaking.

83 In coming to the above view, I am cognisant of the low threshold in relation to "a serious question to be tried". However, given the above analysis and findings, I find that Shopee has not shown that it has any prospects of success which, in substance and reality, exist. Its prospects are so small that they lack substance and reality. Shopee is not able to point to a question to be tried which can be called "serious", and no prospects of such success which can be called "real": *Singapore Civil Procedure 2022* at para 13/1/13.

Issue 3: Whether the balance of convenience lies in favour of granting the interim injunctions

84 Nevertheless, bearing in mind the low threshold for "a serious question to be tried", I proceed to consider, for completeness, *if* Shopee has a case for the injunctions sought, *assuming* that there are serious questions to be tried. I set out below my assessment of this in relation to the Non-Competition Restriction, which I understand to be Shopee's main concern.

Adequacy of damages

85 The first sub-issue that arises is the adequacy of damages.

86 Shopee submits that damages would not be an adequate remedy to compensate Shopee for the losses it would sustain, in the event that an interim injunction is not granted and Shopee succeeds at trial.[67] The principal losses which Shopee would suffer would be the loss of customer connections and goodwill, and disruptions to Shopee's workforce.[68] Such losses have been recognised as difficult or potentially impossible to compensate in damages: *Hi-P International Ltd v Tan Chai Hau and others* [2020] SGHC 128 at [11].[69] The loss of confidential information would cause harm that cannot be adequately compensated by damages.[70] Conversely, Shopee submits that if the interim injunction were to be granted and Lim were to succeed at trial, any loss that he might suffer would be adequately compensated for in damages. The potential loss of salary is easily quantifiable. Shopee avers that it is in a

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67 CWS at para 108.

68 CWS at para 109.

69 CWS at para 109.

70 SJ1 at para 81.

financial position to pay damages and has confirmed that it is willing and able to provide an undertaking as to damages.[71]

87 In my view, it appears that a large part of the reason why Shopee presently has difficulty assessing what damages could adequately compensate it for its losses is that it has framed its potential losses in very generic terms. For example, it does not set out which potential client or area of business it could lose. If Shopee is able to do this, it does not seem that it would be impossible to derive an estimate of the value of the business lost by reason of Lim working for ByteDance during the one-year restraint period. Counsel for Shopee explained that the potential losses are framed generically, because the concern is that Lim's knowhow can be used by TikTok to gain an unfair advantage and it is difficult to say how Lim might use the information.[72] That being the case, it appears that the issue is not that there is conceptual difficulty in quantifying the loss, but that Shopee is not clear what would be its loss, a point which counsel for Shopee accepts.[73]

88 Even if I accept that Lim brought to ByteDance advantages that cannot be quantified, it also appears that damages may not be an adequate remedy for Lim.

89 In *Buckman Laboratories*, Judith Prakash J (as she then was) recognised at [32] that while monetary loss during the period where a defendant is unable to work could be easily quantified, what would be more difficult to assess would be the impact on his future career development.

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71 2nd Affidavit of Su Jing dated 28 December 2023 at para 20.

72 NE at p 8.

73 NE at p 8.

Prakash J cited *Fellowes & Son v Fisher* [1976] QB 122 ("*Fellowes*"), where Lord Denning stated at 134:

> If the clause is invalid, and yet an injunction is granted, it would be difficult to assess the damages recoverable by the defendant upon the undertaking in damages. He would have lost a good job with excellent prospects. Even if he gets another job with like wages, it would be difficult to assess the difference in terms of prospects and happiness.

90 While I recognise that the above *dicta* may not necessarily be applicable to all restraint of trade injunction cases, I find Prakash J and Lord Denning's *dicta* to be persuasive here, on the facts. Shopee's submission is that "the e-commerce industry is a specialised industry with only a few industry players".[74] This was subsequently clarified by counsel for Shopee, that the e-commerce industry is an industry with only a few big players.[75] It is also Shopee's contention that Lim held a very senior position.[76] It may be difficult to quantify the impact on Lim's career development if he loses the ByteDance job in an industry with only a few big players, for someone of his seniority.

91 Counsel for Shopee submitted that *Buckman Laboratories* has to be squared with an employee's voluntary acceptance of the trade restraint obligation. In *Buckman Laboratories,* although the employee originally refused to sign the employment contract as he was not happy with the terms, he subsequently signed after five months of employment, upon being told that it was a standard contract for all employees, irrespective of their responsibilities and functions (see [10]). However, there is nothing in

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74 CWS at para 75.

75 NE at p 7.

76 CWS at para 79.

Buckman Laboratories that indicates that the ex-employee accepted the contract involuntarily, outside of the ex-employee's initial reluctance in *Buckman Laboratories*. Nor does the case indicate that an employee's involuntary acceptance of the restriction was in any way germane to the reasoning behind the *dicta*. Shopee also submitted that the above *dicta* arose because of concerns that the injunctions there were too wide,[77] but again, there is nothing in the *dicta* that suggests that this was the underlying concern when Prakash J was considering the adequacy of damages.

Balance of convenience

92 In assessing the balance of convenience, the court should take whichever course appears to carry the lower risk of injustice if that course should ultimately turn out to have been the "wrong" course: *Maldives Airports Co Ltd* at [53]. In *Buckman Laboratories*, the court took into account at [33] the relative strength of the parties' case and the status quo. In this case, as set out above, Shopee's case is very weak. The status quo is that Lim has already started work for ByteDance. This would be disturbed if the interim injunction is granted. Given the serious doubts over the possibility of Shopee's eventual success, in my judgment, it would be in the interests of justice not to disturb that status quo.

93 Hence, after consideration of the *American Cyanamid* test in full, I find that even if there are serious questions to be tried in relation to the Non-Competition Restriction, I would not have granted the interim injunction, on the balance of convenience.

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[77] NE at p 9.

Conclusion

94 For the reasons above, I dismiss SUM 3619. Parties are to file written submissions on costs, not exceeding five pages, within seven days of this judgment, if they are unable to agree on costs.

Kwek Mean Luck
Judge of the High Court

Clarence Ding Si-Liang and Ariane Kea Tong (JWS Asia Law Corporation) for the claimant;
Tham Wei Chern and Charis Wang (Fullerton Law Chambers LLC) for the defendant.