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

[2024] SGHC 94

Originating Claim No 49 of 2024 (Summonses Nos 229 and 360 of 2024)

Between

MoneySmart Singapore Pte Ltd

… *Claimant*

And

Artem Musienko

… *Defendant*

JUDGMENT

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

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MoneySmart Singapore Pte Ltd
v
Artem Musienko

[2024] SGHC 94

General Division of the High Court — Originating Claim No 49 of 2024
(Summonses Nos 229 and 360 of 2024)
Tan Siong Thye SJ
29 January, 8 March 2024

2 April 2024 Judgment reserved.

Tan Siong Thye SJ:

Introduction

1 In this case, Mr Artem Musienko (the "defendant"), a former employee of MoneySmart Singapore Pte Ltd ("MoneySmart" or the "claimant") resigned and joined CAG Regional Singapore Pte Ltd ("CAGRS"), a subsidiary of MoneyHero Limited ("MoneyHero"), a rival firm of the claimant. The claimant seeks to stop the defendant from working for CAGRS.

2 The claimant took out an *ex parte* summons *vide* HC/SUM 229/2024 ("SUM 229") seeking two interim injunctions to effectively stop the defendant from working for CAGRS on the basis of two covenants in the employment agreement between the claimant and the defendant. On 29 January 2024, at the *ex parte* hearing, I granted the claimant the interim injunctions with a caveat that the interim injunctions must not be enforced until I have heard the defendant

at the *inter partes* hearing for SUM 229 and determined that the injunctions should be maintained. In the meantime, the defendant took out an application to set aside the interim injunctions *vide* HC/SUM 360/2024 ("SUM 360"). The central issue is whether the interim injunctions should continue or be set aside.

Facts

The parties

3 The claimant is MoneySmart and its main business is to provide online financial product comparison services for consumers to review, compare and purchase financial products from financial institutions such as banks or insurers through its websites.[1] To this end, MoneySmart operates an online financial product comparison platform ("Financial Product Comparison Platform"). In late 2022, MoneySmart launched an in-house insurance brand called 'Bubblegum' which offers direct-to-consumer digital insurance products such as travel insurance and car insurance for the Singapore market.[2] MoneySmart has operations in Singapore, Hong Kong, as well as a presence in Taiwan and the Philippines. There are plans to expand within and outside of the Southeast Asia region.[3]

4 The defendant is a Russian national,[4] and is presently employed by CAGRS as the Head of Engineering, Insurance. Prior to this, from July 2022 to

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1 Affidavit of Massimiliano Del Vita dated 25 January 2024 ("Aff1 MDV") at para 1.2.2.

2 Aff1 MDV at para 1.2.4.

3 Aff1 MDV at para 1.2.9.

4 Aff1 MDV at para 1.3.1.

12 January 2024, the defendant was employed by the claimant as the Head of Technology at MoneySmart's Bubblegum division.[5]

5 MoneyHero is a public listed company on NASDAQ and has numerous subsidiaries in Singapore, Hong Kong, Taiwan, Malaysia and the Philippines.[6] According to the claimant, MoneyHero's main business is similar to that of the claimant in that it also provides online financial product comparison services via its platforms for consumers to review, compare and purchase financial products, and these products substantially overlap with the products also offered by MoneySmart.[7] Like MoneySmart, MoneyHero launched its own in-house insurance brand known as Seedly Travel Insurance, which is distributed by one of MoneyHero's subsidiaries in Singapore.[8] The claimant also alleges that MoneyHero has operations in Singapore, Hong Kong, and a presence in Taiwan, the Philippines and Malaysia.

6 As for CAGRS, the defendant's current employer, it is not clear what this company does precisely, although both parties accept that this company provides technology support services to the other MoneyHero group entities.[9]

Background to the dispute

7 The defendant entered into an employment agreement with the claimant dated 26 May 2022 ("the employment agreement") as the Head of Technology

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5 Affidavit of Artem Musienko dated 8 February 2024 ("Aff Df") at para 16; Aff1 MDV at para 1.3.2.

6 Aff Df at para 1; Aff1 MDV at para 1.4.1.

7 Aff1 MDV at para 1.4.2.

8 Aff1 MDV at para 1.4.3.

9 Claimant's Written Submissions dated 29 February 2024 ("CWS") at para 6.2.4

for MoneySmart's Bubblegum division from 4 July 2022.[10] During his employment with the claimant, the defendant led the Design, Product and Technology department for MoneySmart's Bubblegum division to create the Bubblegum platform and mobile application, and to ensure that this platform was functioning.[11] The defendant reported directly to the claimant's chief product officer, Mr Massimiliano Del Vita ("Mr Del Vita"), who in turn reported to the claimant's chief executive officer ("CEO"), Mr Vinod Nair ("Mr Nair").[12]

8 The defendant resigned from the claimant on 23 November 2023,[13] and this was accepted by the latter the next day.[14] The parties mutually agreed that the defendant's last day of service with the claimant would be 12 January 2024.[15]

9 On 15 January 2024, the defendant commenced employment as Head of Engineering, Insurance with CAGRS.[16] The defendant is presently on paid garden leave for a period of 12 months,[17] although it is not clear when exactly this period commenced.

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10 Aff1 MDV at pp 79–90.

11 Aff1 MDV at para 1.3.2; Aff Df at para 39.

12 Aff Df at para 16; Aff1 MDV at para 2.2.1.

13 Aff Df at para 38, p 85; Aff1 MDV at para 2.3.1.

14 Aff Df at para 38, p 86; Aff1 MDV at para 2.3.2.

15 Aff Df at p 86; Aff1 MDV at para 2.3.2.

16 Aff Df at para 45; Aff1 MDV at para 2.4.1

17 Aff Df at para 64; Affidavit of Massimuliano Del Vita dated 23 February 2024 ("Aff2 MDV") at p 65.

The relevant clauses of the employment agreement

10 Two clauses of the employment agreement are relevant to the present proceedings. First, the relevant portions of cl 8 of the employment agreement, which I shall refer to as the "Non-Compete Clause", states:[18]

> 8. Non-Competition and Non-Solicitation
>
> 8.1 Non-Competition. The Employee covenants and agrees that during the term of the Employee's employment with the Company and for the following Restraint Period, the Employee shall not directly or indirectly engage with any business or organisation in South-East Asia or any other country where MoneySmart (or associated companies) operates which provides *online financial product comparison services* (the "Business") and thereby engages in competition with the Company or the Company's holding companies or subsidiaries (if any).
>
> …
>
> 8.3 For the purposes of clauses 8.1 and 8.2, "Restraint Period" means:
>
> (a) a period of twelve (12) months from the date of termination of your Employment; but if a court of competent jurisdiction determines that any restriction in this clause 8 is unenforceable for such a period, then
>
> (b) a period of six (6) months from the date of termination of your Employment; but if a court of competent jurisdiction determines that any restriction in this clause 8 is unenforceable for such a period, then
>
> (c) a period of three (3) months from the date of termination of your Employment.
>
> [emphasis in original]

11 Second, cl 9 of the employment agreement, which I shall refer to as the "Confidentiality Clause", states:[19]

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18 Aff1 MDV at pp 85–86.

19 Aff1 MDV at p 86.

> 9. Confidential Information
>
> 9.1 Non-Disclosure. The Employee agrees not to use other than for the benefit of the Company and to keep confidential, at all times during the term of the Employee's employment and thereafter, all information about the Company ("Confidential Information"), including information relating to the business, operations (financial or otherwise), capital and operating budgets, business plans, research and development activities, product designs and operating characteristics, products, manufacturing and production costs for materials and labour, field labour costs, product pricing and gross margins, product inventories, properties or employees or the Company's relationships with its representatives, customers, subcontractors and suppliers, including information relating to the business, operations and properties of such, representatives, customers and suppliers to the extent known to him. The Employee shall not, except in the performance of his duties hereunder, at any time, directly or indirectly, without the prior written consent of the Company, use or disclose to any third party any Confidential Information.
>
> …

Procedural history

12 On 25 January 2024, the claimant filed HC/OC 49/2024 ("the Suit"), seeking (a) an injunction for a period of 12 months commencing from 12 January 2024 to restrain the defendant from acting in breach of the Non-Compete Clause "by directly or indirectly engaging with any business or organization in Singapore and Hong Kong where the Claimant or its associated companies operates which provides online financial product comparison services (the "Business"), including but not limited to MoneyHero Limited and/or its associated companies"; and (b) an injunction to restrain the defendant from acting in breach of the Confidentiality Clause "by using and/or disclosing to any third party including but not limited to MoneyHero Limited and/or its associated companies, all information about the Claimant … to the extent known to the Defendant". Further and/or in the alternative, the claimant seeks damages from the defendant in respect of all loss it has suffered as a result of

the defendant's breach of the Non-Compete Clause and the Confidentiality Clause.

13 On the same day, the claimant filed an *ex parte* application *vide* SUM 229, seeking interim relief in the form of injunctions on the same terms as the Suit. The claimant requested an urgent hearing and appeared before me on 29 January 2024. At the conclusion of the hearing, I granted the interim injunctions on the claimant's undertaking *not* to enforce the injunctions against the defendant until after I have heard full arguments from the parties in the *inter partes* proceedings and determined that the injunctions should continue.

14 Subsequently, on 8 February 2024, the defendant filed SUM 360 to set aside the interim injunctions granted in SUM 229. The defendant also sought an inquiry into the damages sustained by the defendant which the claimant ought to pay in accordance with its undertaking given to the court for the grant of the interim injunctions.

15 Given that SUM 229 and SUM 360 deal with the same issue, namely whether the interim injunctions should be sustained, I shall address both summonses together.

16 For completeness, parallel to the present action, MoneyHero and CAGRS have commenced an originating application by way of HC/OA 98/2024 against the claimant for, *inter alia*, a declaration that they are not liable for inducing a breach of the employment agreement because the Non-Compete Clause is null and void and unenforceable for being an unreasonable restraint of trade.

The parties' cases

The claimant's case

17 The claimant prays for the interim injunctions already granted to continue, save that enforcement proceedings may be taken out against the defendant upon breach of the interim injunctions, and/or for fresh interim injunctions to be granted.[20] The claimant submits that the Non-Compete Clause protects the claimant's legitimate proprietary interests.[21] The Non-Compete Clause is also reasonable as it is limited in scope of activity, geographical area and time.[22] The defendant is bound by the Non-Compete Clause. The claimant asserts that the defendant had breached his obligations under the employment agreement upon his employment with CAGRS.[23] Thus, the low threshold of "a serious question to be tried" for an interim injunction to be granted is satisfied.[24] Finally, the claimant submits that the balance of convenience need not be considered, and in any case lies in favour of the claimant.[25]

The defendant's case

18 Conversely, the defendant argues that the Non-Compete Clause is unenforceable as it is too wide in scope[26] and does not protect any legitimate proprietary interest of the claimant.[27] Even if the threshold of "a serious question

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20 CWS at para 2.2.1.

21 CWS at paras 4.1.1–4.3.3.

22 CWS at paras 5.1–5.42.

23 CWS at paras 6.1–6.2.6.

24 CWS at paras 7.1.1–7.1.4.

25 CWS at paras 8.1.1–8.4.1.

26 Defendant's Written Submissions dated 29 February 2024 ("DWS") at paras 23–43.

27 DWS at paras 44–59.

to be tried" in respect of the validity and enforceability of the Non-Compete Clause has been met, the balance of convenience lies in favour of the defendant.[28] With respect to the Confidentiality Clause, the defendant submits that the claimant has not demonstrated that there is a serious question to be tried such that the defendant has even accessed the claimant's confidential information, much less that the Confidentiality Clause has been breached or is likely to be breached.[29] Lastly, the defendant argues that the interim injunctions should be set aside in any case due to the claimant's lack of full and frank disclosure in SUM 229.[30]

The law

The law in respect of interim injunctions

19 The test concerning the grant of an interlocutory injunction as stated in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 ("*American Cyanamid*") is: (a) whether there is a serious question to be tried; and (b) whether the balance of convenience lies in granting the injunction: see *RGA Holdings International Inc v Loh Choon Phing Robin and another* [2017] 2 SLR 997 ("*RGA Holdings*") at [28].

20 The Court of Appeal in *RGA Holdings* at [30] and [32]–[33] held that the *American Cyanamid* principles do not apply in a situation where the defendant is about to breach or has already breached *a negative covenant* in a contract. Instead, an interim prohibitory injunction will readily be granted to restrain a prospective breach or a further breach. Thus, the court does not ask

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28 DWS at paras 61–67.

29 DWS at paras 46–48, 68–70.

30 DWS at paras 71–75.

itself whether there is a serious question to be tried and whether the balance of convenience is in favour of granting such an interim injunction. An injunction will only be refused if a defendant shows hardship over and above that which results from having to observe the contract.

21 The Court of Appeal in *Oro Negro Drilling Pte Ltd and others v Integradora de Servicios Petroleros Oro Negro SAPI de CV and others and another appeal (Jesus Angel Guerra Mendez, non-party)* [2020] 1 SLR 226 ("*Oro Negro*") at [101]–[103] applied the approach in *RGA Holdings* and found that since there was *a good arguable case* that the negative covenant there had been breached, the interim injunctions should have been maintained to restrain any continuing breach of that negative covenant.

22 Based on the precedent cases, especially *RGA Holdings*, it appears that an interim injunction to enforce a negative covenant should be granted or maintained if there is a good arguable case that the negative covenant has been breached or is likely to be breached, absent any hardship or special circumstances over and above compliance with the contract. In such circumstances, the court need not contemplate the *American Cyanamid* test, namely whether there is a serious issue to be tried and whether the balance of convenience lies in favour of granting the interim injunction. The court in *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 ("*Shopee*") at [27] clarified that this approach applies to restraint of trade cases as well.

The law in respect of restraint of trade clauses

23 Restraint of trade clauses, particularly those in the context of employment, are *prima facie* void and unenforceable: see *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]–[48]. The Court of Appeal in *Man Financial* at [70] and [79] identified a two-step test for determining whether a restraint of trade clause is enforceable, namely:

> (a) first, the court will consider whether the restraint of trade protects a legitimate interest of the employer; and
>
> (b) if so, then the restraint of trade will be enforceable if it is reasonable in the interests of the parties *and* reasonable in the public interest.

The Court of Appeal recognised that an employer can have a legitimate proprietary interest 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/or (c) maintaining a stable, trained work force: *Man Financial* at [94] and [121]. However, where the protection of confidential information or trade secrets is already addressed by another contractual clause, the covenantee (*ie*, the employer) 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: *Man Financial* at [92]; see also *Stratech Systems Ltd v Nyam Chiu Shin (alias Yan Qiuxin) and others* [2005] 2 SLR(R) 479 at [48]–[49]. It is important to note that the Court of Appeal has also recognised that this proposition is a general one and would apply equally in the context of other legitimate proprietary interests: *Man Financial* at [92].

Severance

24 The doctrine of severance may be invoked to cut down an objectionable promise as to its scope, but not to cut it out of the contract altogether, such as an unreasonably wide restraint of trade clause: see *National Aerated Water Co Pte Ltd v Monarch Co, Inc* [2000] 1 SLR(R) 74 at [40]. In such a case, severance occurs within the clause itself according to the "blue pencil" test, which requires that the court concerned must be able to run, as it were, a "blue pencil" through the offending words in that clause without altering the meaning of the provision and, of course, without rendering it senseless (whether in a grammatical sense or otherwise): *Man Financial* at [127].Therefore, the court will not *rewrite* the contract for the parties.

The law in respect of interim injunctions enforcing a restraint of trade

25 Pulling the threads together, an applicant for an interim injunction in respect of a restraint of trade clause must fulfil a composite test that incorporates the above-mentioned principles. This has been comprehensively distilled by the court in the recent case of *Shopee*:

> 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. …
>
> …
>
> 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.

Issues to be determined

26 The issues for determination are:

(a) Whether there is a good arguable case that the Non-Compete Clause is valid and enforceable, and has been breached by the defendant;

(b) Whether there is a good arguable case that the Confidentiality Clause has been breached or is likely to be breached by the defendant;

(c) Whether the balance of convenience lies in favour of maintaining the interim injunctions;

(d) Assuming that there is a case for the interim injunctions, whether they should nevertheless be set aside due to the claimant's lack of full and frank disclosure.

Whether there is a good arguable case that the Non-Compete Clause is valid and enforceable, and has been breached by the defendant

27 To recapitulate, the Non-Compete Clause prohibits the defendant from (a) directly or indirectly engaging with any business or organisation in Southeast Asia or any other country where MoneySmart (or its associated companies) operates (b) which provides online financial product comparison services and thereby engages in competition with MoneySmart (or its associated companies) (c) for a period of 3–12 months from the date of termination of the defendant's employment (see above at [10]).

Whether the Non-Compete Clause protects a legitimate proprietary interest

28 I shall begin by considering the question of whether the Non-Compete Clause protects a legitimate proprietary interest, which corresponds to the first of the two-step test in *Man Financial*.

29 The claimant's case is that it has legitimate proprietary interests warranting protection by the Non-Compete Clause, namely its confidential information and trade secrets which the defendant had access to while in the claimant's employment and the maintenance of a stable and trained workforce.[31] The claimant argues that even if the defendant does not disclose such confidential information to third parties, he may use it in the course of his

[31] CWS at para 4.1.1.

current employment at CAGRS to improve upon the existing insurance technology at MoneyHero.[32]

30 With regard to the claimant's interest in maintaining a stable and trained workforce, the claimant points to the fact that the defendant had acknowledged that he obtained a "business education" during the course of his employment with it,[33] and that all the skills the defendant would bring to MoneyHero are attributable to the claimant since the defendant had no prior experience in the fintech industry prior to his employment with the claimant.[34]

31 The defendant denies the allegation that he had access to the claimant's confidential information and maintains that the claim in this respect is not made out because either the information identified is not confidential or it is not proven that the defendant actually had access to such information.[35] Further, any issue of confidentiality is already addressed and protected by the Confidentiality Clause.[36] The claimant must prove another legitimate proprietary interest above and beyond the confidential information and/or trade secrets protected under the Confidentiality Clause.[37] Moreover, the claim that there is a legitimate proprietary interest in maintaining a stable and trained workforce is unsustainable because the present case does not concern a relatively small and

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32 CWS at para 4.2.6.

33 CWS at para 4.3.1.

34 CWS at para 4.3.2.

35 DWS at paras 44–49.

36 DWS at para 50.

37 DWS at para 51.

specialised industry and the defendant was not a beneficiary of extensive specialised training by the claimant.[38]

The protection of confidential information

32 I shall first assess whether the claimant can even allege the protection of confidential information as a legitimate proprietary interest. As I have noted (see above at [23]), it is settled that where the protection of confidential information or trade secrets is already covered by another clause in the contract (*ie*, the employment agreement), the covenantee (*ie*, the claimant) will have to demonstrate that the restraint of trade clause in question (*ie*, the Non-Compete Clause) covers a legitimate proprietary interest *over and above* the protection of confidential information or trade secrets: *Man Financial* ([23] *supra*) at [92]. The court in *Shopee* at [60]–[61] confirmed that while there have been decisions critiquing this proposition, *Man Financial* has not been overturned and remains binding on the High Court. Further, this principle has been applied in other cases such as *HT SRL v Wee Shuo Woon* [2019] 5 SLR 245 ("*HT SRL*") and *Shopee*.

33 The employment agreement includes the Confidentiality Clause, which the claimant acknowledges.[39] This places the present case squarely within the proposition set out in *Man Financial* at [92]. Be that as it may, the claimant argues that there is a legitimate proprietary interest *over and above* the protection of confidential information or trade secrets "given the difficulty of policing any breach of the [C]onfidentiality [C]lause".[40] With respect, this argument is unsustainable. However difficult it may be to police the breach of the Confidentiality Clause, it remains the case that the legitimate proprietary

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38 DWS at paras 54–56.

39 CWS at para 4.2.5.

40 CWS at para 4.2.5.

interest to be protected by the Non-Compete Clause is that of the protection of confidential information or trade secrets. In fact, the claimant's argument itself accepts this premise. Put another way, the argument is that because the claimant may be unable to obtain the desired protection over its confidential information through the Confidentiality Clause (since a breach is hard to police), the Non-Compete Clause should be allowed to operate to deliver greater protection over its confidential information. This, therefore, means that the legitimate proprietary interest is ***not*** *over and above* the protection of confidential information or trade secrets.

Maintaining a stable and trained workforce

34 I turn to the claimant's allegation that the Non-Compete Clause protects its legitimate interest of maintaining a stable and trained workforce. The claimant relies on *PH Hydraulics & Engineering Pte Ltd v Intrepid Offshore Construction Pte Ltd and another* [2012] 4 SLR 36 ("*PH Hydraulics*") at [64], where the court held as follows:

> The Court of Appeal in *Man Financial* observed at [79] that bare and blatant restrictions of the freedom to trade were not allowed and the employer had to have a legitimate proprietary interest requiring protection in order for non-competition clauses to be upheld. Here, I found such interest on the plaintiff's part. The marine winch industry is *a relatively small and specialised one*. This was accepted by the second defendant himself during the trial. In the course of his employment with the plaintiff, the second defendant *received training in this specialised field to build up his expertise in this area*. It would not be too far-fetched to point out that the plaintiff would have *invested much time and resources in this training*. Thus the interest of the plaintiff requiring protection by the non-competition clause was that of maintaining employees well-versed and skilled in the plaintiff's system of work such that it can pursue its commercial activities successfully. If due protection of this legitimate interest was not given, *it would see the employees of the plaintiff, upon receiving extensive specialised training by the plaintiff, leaving it soon thereafter for its competitors*. [emphasis added]

35 In my view, the claimant has not made out its case for a legitimate proprietary interest of maintaining a stable and trained workforce. First, I am unable to accept the claimant's averment that the claimant and MoneyHero operate in a small and highly consolidated industry.[41] In *PH Hydraulics* at [64], the court noted that the marine winch industry was a "relatively small and specialised one". The same cannot be said for the digital insurance industry that Bubblegum operates in, which is not small in size or number of market participants. In this respect, the defendant pointed out that Bubblegum's competitors include other insurance providers such as FWD, Allianz, AIG and Direct Asia, as depicted in the claimant's own slide presentation during a company-wide meeting which included updates on Bubblegum.[42]

36 I pause to note that while MoneySmart and MoneyHero are in fact competitors that offer rivalling online financial product comparison services, the relevant industry is that of the digital insurance industry which corresponds to the defendant's role as the Head of Technology of Bubblegum. Even if I were to define the relevant industry more charitably in favour of the claimant, I would not, in any case, find the relevant industry to be that of online financial product comparison services since the defendant was *not* involved in that area of the claimant's business.

37 Second, I am also unable to accept that the claimant had offered training in the "specialised field" of the digital insurance industry to build up the defendant's expertise in that area such that it can be said that the claimant invested much time and resources in the defendant's training. To begin with, it is relevant to consider the defendant's existing expertise to establish the

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41 CWS at para 4.3.1.

42 Aff2 MDV at para 3.5.7, p 122.

defendant's baseline skills, which is hotly disputed by the parties. The claimant argues that the defendant has no prior experience in the *fintech industry*.[43] I am satisfied that, based on the defendant's *curriculum vitae*[44] and his affidavit evidence,[45] he does possess relevant experience in the technology industry and even in the area of fintech. The fact that his experience in relation to fintech was accrued in a company outside of the fintech *industry* does not, at least in this case, make that experience any less valuable. Further, at least in relation to the defendant's technical skills, it is also telling that the defendant was hired as the Head of Technology of Bubblegum and was essentially tasked with, *inter alia*, leading the software development of the platform.[46] There is no evidence that the claimant expended substantial resources and money to train the defendant to develop Bubblegum. It appears that the claimant and the defendant initially embarked on integrating and optimising a third-party platform known as Coherent for MoneySmart's Bubblegum platform.[47] Subsequently, the defendant suggested to develop Bubblegum in-house and cease using Coherent, which was approved by Mr Del Vita and Mr Nair.[48] The defendant created and led the team to launch the Bubblegum platform within three months after he joined MoneySmart.

38 Having established this baseline, I shall now consider the claimant's allegation that it had contributed towards building up the defendant's expertise in the digital insurance industry. The claimant alleges to have invested

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43 CWS at para 4.3.2.

44 Aff Df at p 32.

45 Aff Df at paras 5–14.

46 Aff1 MDV at para 2.1.1.

47 Aff2 MDV at paras 3.1.1, 3.1.3.

48 Affidavit of Artem Musienko dated 29 February 2024 ("Aff2 Df") at para 4.

significant time, "including by management, product management and product experience design teams, in collaborating and sharing information with the [d]efendant on the specialised fintech industry, MoneySmart's business and products".[49] In my view, this is a bare, unsupported assertion that the claimant has indeed provided *specialised* training and invested significantly in the development of the defendant's skills and expertise. Simply sharing about the industry, business or products of the employer, a practice that I expect would be common among virtually all employers, certainly cannot amount to *specialised* training. Further, the defendant required the information in order to understand the user requirements for the development of the Bubblegum platform. This is similar to knowing the business and processes before the development of a software to digitalise any product or service.

39 The claimant also refers to a "business education" that the defendant admits to having acquired during his employment with the claimant.[50] The defendant in this respect clarified that his reference to "business education" was an online course that the defendant undertook at his own initiative and expense without any support by the claimant.[51] It is the claimant's burden to demonstrate that this "business education" was a result of the claimant's *specialised* training. Based on the equivocal evidence, the claimant has not satisfied this burden.

40 Therefore, the present circumstances are materially and significantly different from *PH Hydraulics*. The claimant has neither shown that its digital insurance business operates in a small and specialised industry, nor has it demonstrated that it had invested much time and resources by providing the defendant with specialised training. Hence, the claimant has not made out its

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49 CWS at para 4.3.2.

50 CWS at para 4.3.1.

51 Aff Df at para 43.

case for a legitimate proprietary interest of maintaining a stable and trained workforce.

41 I reject the claimant's arguments that first, the Non-Compete Clause can protect a legitimate proprietary interest in the form of its confidential information and/or trade secrets, and second, the claimant has established a legitimate proprietary interest in maintaining a stable and trained workforce. Thus, the claimant has failed to show that the Non-Compete Clause protects a legitimate proprietary interest of the claimant. Hence, on this basis, the Non-Compete Clause does not satisfy the first of the two-step test in *Man Financial* ([23] *supra*) and accordingly, cannot be enforced.

Whether the Non-Compete Clause is reasonable

42 As I have found that the Non-Compete Clause does not satisfy the first of the two-step test in *Man Financial* relating to the requirement of a legitimate proprietary interest, it is not strictly necessary to consider if the clause is reasonable. Nevertheless, I shall address this question for completeness.

Scope of Activity of the Non-Compete Clause

43 I shall start by considering whether the Non-Compete Clause is reasonable with respect to its scope of activity. To recapitulate, the Non-Compete Clause prohibits the defendant from directly or indirectly engaging with any business or organisation which provides online financial product comparison services and thereby engages in competition with MoneySmart (or its associated companies) (see above at [10]). The claimant submits that the Non-Compete Clause is indeed reasonable because it only restricts participation in online financial product comparison services, a niche market which is

dominated by MoneySmart and MoneyHero that together held 95% of the market share in 2022.[52]

44 The defendant submits that the Non-Compete Clause is plainly unreasonable since it prohibits the defendant's participation in online financial product comparison services even though the defendant was not involved in MoneySmart's online financial product comparison services or the Financial Product Comparison Platform, and was, at all material times, the Head of Technology for MoneySmart's Bubblegum division.[53] Therefore, there is no close connection between the defendant and online financial product comparison services.[54] Additionally, the prohibition against "directly or indirectly engag[ing] with any business or organisation" is unreasonably wide because it will prohibit a broad variety of activities apart from the information technology skill in which the defendant was employed for. For instance, acquiring an interest in a business or organisation or transacting with the same would constitute "direct or indirect engage[ment]) with any business or organisation". This, the defendant argues, extends the prohibition to cover activities outside of the defendant's job scope in MoneySmart and even outside of the employer-employee nature of the relationship with the claimant.[55]

45 The court in *HT SRL* at [80] held that "[w]here an employer seeks to proscribe the types of business in which an employee may become engaged once employment is over, he can do so if he can establish *a close connection between the restriction and the work done by the employee prior to leaving*"

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52 CWS at para 5.2.1

53 DWS at para 31.

54 DWS at para 33.

55 DWS at para 34.

[emphasis added]. Applying this principle to the present case, I agree with the defendant that the scope of the Non-Compete Clause is far too wide. There is, at best, a *very tenuous* connection between the restriction against engaging with any business which provides online financial product comparison services and the work done by the defendant while employed by the claimant, much less a *close* connection. This is because the defendant's employment primarily concerned Bubblegum and digital insurance-related matters, rather than MoneySmart's provision of online financial product comparison services.

46 In *Powerdrive Pte Ltd v Loh Kin Yong Philip and others* [2019] 3 SLR 399 ("*Powerdrive*") at [40]–[46], the court held that a clause which prohibited an employee from working for a rival company regardless of the scope of the employee's work with his new employer (*ie*, a prohibition that was not confined to working for a rival company in the same or similar capacity as that in which the employee was working when employed by the previous employer) was too wide and therefore not reasonable as between the ex-employer and ex-employee or in the interest of the public. This can be analogised to the present case. The Non-Compete Clause prohibits the defendant from engaging with *any* business which provides online financial product comparison services, *ie*, a rival of MoneySmart. This prohibition is *not* confined to engaging with any business in the same or similar capacity as that in which the defendant was working when employed by the claimant, namely as the Head of Technology of Bubblegum, Moneysmart's digital insurance platform. Therefore, similar to *Powerdrive*, the clause is too wide and unreasonable as between the parties and is clearly not in the interests of the public.

Geographical Scope of the Non-Compete Clause

47 I next consider whether the Non-Compete Clause is reasonable in relation to its geographical scope. In this respect, the Non-Compete Clause prohibits the defendant from directly or indirectly engaging with any business or organisation in South-East Asia or any other country where MoneySmart (or its associated companies) operates (see above at [10]). The claimant submits that while the geographical scope of the clause extends to "any business or organisation in South-East Asia or any other country where MoneySmart (or its associated companies) operates", the scope of the obligation sought to be enforced only extends to Singapore and Hong Kong, where the claimant and/or its associated entities operate, and is thus not more than is required to protect the claimant's legitimate proprietary interests.[56] This is because the products listed on MoneySmart's Financial Product Comparison Platform are localised and available in Singapore and Hong Kong while the digital insurance products on Bubblegum are available only to Singapore residents.[57]

48 The defendant argues that the geographical scope of the Non-Compete Clause is unreasonably wide because first, the defendant was employed for the Bubblegum division, which has products only available in Singapore, and there is no evidence that the defendant had any substantive duties outside of Singapore.[58] Second, the scope of the Non-Compete Clause, as expressly stated, extends to all countries within Southeast Asia regardless of whether MoneySmart has operations there. This is notwithstanding that MoneySmart only has, with respect to South-East Asia, operations in Singapore, a presence

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56 CWS at para 5.3.1.

57 CWS at para 5.3.2.

58 DWS at para 28(a).

in the Philippines and *plans* to expand within South-East Asia. The defendant argues that this is an attempt to "safeguard MoneySmart's potential business interests in huge swathes of jurisdiction and inhibit competition".[59]

49 In my view, it is crucial that there is a close connection between the geographical scope of the restriction and the work done by the employee prior to leaving. This is consistent with the approach in relation to assessing the reasonableness of the scope of prohibited activity of the restraint (see above at [45] as well as the precedent cases).

50 In *Buckman Laboratories (Asia) Pte Ltd v Lee Wei Hoong* [1999] 1 SLR(R) 205 ("*Buckman*") at [24], the court found that the geographical area covered by the restraint was extensive in that it prevented the ex-employee from working for any competitor of the employer in most of Asia, including countries wherein the employer did not directly assert having customers but instead was trying to "establish a permanent presence". The court recognised this as an attempt to protect the employer's potential business rather than its actual business in those countries. Additionally, the court noted that the ex-employee had done most of his work for the employer in Singapore and did not have exposure to the employer's customers in a number of Asian countries which the employer was trying to restrain the employee from working in. Ultimately, the court noted that "[a] more reasonable clause would have limited the restriction to countries in which the defendant had actual and significant customer contact": *Buckman* at [24].

51 Similarly, in *Lek Gwee Noi v Humming Flowers & Gifts Pte Ltd* [2014] 3 SLR 27 ("*Lek Gwee Noi*") at [100], the court was concerned with a

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[59] DWS at para 28(b).

non-competition covenant that extended to Singapore, Malaysia and any other countries the employer has offices at the date of the termination of employment. However, the court found that including Malaysia in the geographical scope of the restriction was unreasonable as the employer had no business presence or ongoing business in Malaysia, and only had plans to expand into Malaysia: *Lek Gwee Noi* at [104].

52 Applying these principles, the Non-Compete Clause is evidently too wide, and therefore unreasonable as between the parties. The defendant's scope of work was only in respect of Bubblegum, which offered products to Singapore residents only. The defendant was not involved in MoneySmart's online financial product comparison services, covering products in Singapore and Hong Kong. Neither was the defendant involved in any other geographical market in Southeast Asia, which, similar to *Buckman*, appears to relate only to the potential business of the claimant. In these circumstances, it would be reasonable to only limit the defendant from participating in the Singapore market.

Temporal Scope of the Non-Compete Clause

53 Finally, I turn to the temporal scope of the Non-Compete Clause. The Non-Compete Clause imposes a "Restraint Period", which is defined as follows:

> For the purposes of clauses 8.1 and 8.2, "Restraint Period" means:
>
> (a) a period of twelve (12) months from the date of termination of your Employment; but if a court of competent jurisdiction determines that any restriction in this clause 8 is unenforceable for such a period, then
>
> (b) a period of six (6) months from the date of termination of your Employment; but if a court of competent jurisdiction determines that any restriction in this clause 8 is unenforceable for such a period, then

> (c) a period of three (3) months from the date of termination of your Employment.

54 The claimant submits that the restricted period of 12 months is reasonable as the defendant is "able to inflict the most damage to the [c]laimant in the year immediately following the termination of his employment, given his knowledge of the [c]laimant's business plans and strategy for the next 1–2 years, the fact that the [c]laimant is currently locked into terms for its agreements with its key commercial partners, and the [d]efendant's ability to use his experience with the [c]laimant to develop/enhance MoneyHero's platforms/products, which are in direct competition with the [c]laimant".[60] At the hearing on 8 March 2024, the counsel for the claimant clarified that the claimant was only seeking to enforce cl 8.3(a) of the employment contract, corresponding to a restraint period of 12 months, and it would agree for the other sub-clauses (*ie*, cll 8.3(b) and (c) of the employment contract) to be severed.

55 The defendant submits that the duration of the Non-Compete Clause is unreasonable since the claimant has not substantiated its claims that the defendant had access to Bubblegum's strategy, product and business roadmap, financial plans and projections for the next 1–2 years, including new products to be launched.[61] Further, the cascading durations only serve to inflict an *in terrorem* effect on the defendant by introducing an element of uncertainty as to the duration of the restriction.[62]

56 I observe that the clause has indeed been drafted in a cascading manner which appears to be calculated to accommodate, or even invite, the court to

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60 CWS at para 5.4.1.

61 DWS at para 38.

62 DWS at paras 37, 40, 42.

apply the doctrine of severance and arrive at the longest permissible restraint period. As the court noted in *Lek Gwee Noi* at [197], a clause containing cascading covenants "leaves the vulnerable employee uncertain as to which cascading restriction binds him in law until the issue is actually determined by a court". To that extent, such a covenant would have an *in terrorem* effect on a reasonable employee in the defendant's position. Further, cl 8.3(c) is plainly unjust in trying to impose the prohibitions in the Non-Compete Clause for three months, even if "a court of competent jurisdiction determines that *any* restriction in [the Non-Compete Clause] is unenforceable" for a period of six or 12 months. There is simply no room for cl 8.3(c) to operate if the Non-Compete Clause is determined to be unenforceable for such a period. It appears that the claimant will have multiple bites of the cherry in relation to determining the duration of the Non-Compete Clause. The counsel for the claimant agreed as much at the hearing on 8 March 2024. This is not fair to the defendant. Thus, for these reasons, the Non-Compete Clause cannot be said to be reasonable as between the parties or in the interests of the public.

57 To summarise, I find that the Non-Compete Clause is unreasonable in its scope of prohibited activity, geographical scope and temporal scope.

Severance

58 As a consequence of my finding that the scope of the Non-Compete Clause is unreasonable, a subsequent question arises, that being whether the doctrine of severance can operate to remove the unreasonable portions of the clause and leave only the reasonable prohibitions to apply to the defendant. In this regard, the claimant submits that "the doctrine of severance would in any

event allow an employer to seek to sever any portion of a restrictive covenant such that the remainder may be upheld against an ex-employee".[63]

59 The defendant challenges this position and submits that it would be inappropriate for severance to operate in these circumstances as it would "change the fundamental character of the restraint clause and allow the [c]laimant to rely on the unduly wide [Non-Compete Clause] to exert pressure on its previous employees, while securing a chance to amend the unreasonably broad [Non-Compete Clause] if and when an employee decides to bring this to be determined by the Court".[64] Further, particularly in relation to the geographical scope of the Non-Compete Clause, the defendant contends that it is not open to the claimant to "select jurisdictions" in which to enforce the Non-Compete Clause in an attempt to salvage an unenforceable restraint covenant with an unreasonably wide geographical scope.[65]

60 I digress to first address the related question of whether the claimant can elect to enforce certain parts of the Non-Compete Clause which, when put together, are reasonable. While this approach reaches the same outcome, it does not engage the doctrine of severance. In the event that a covenant is found to be too wide, it is not open to the employer to argue that he will not seek to enforce the unreasonable parts of the covenant: see R Chandran, *Employment Law in Singapore* (LexisNexis, 6th Ed, 2019) at para 3.61. This directly deals with the claimant's position that it seeks to enforce the Non-Compete Clause *only* in respect of Singapore and Hong Kong (see above at [47]). It is plainly not open

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63 CWS at para 5.4.2.

64 DWS at para 43.

65 DWS at para 30.

for the claimant to specify which countries in which it wishes to enforce the trade restriction within the much wider geographical scope.

61 Turning back to whether severance may operate in these circumstances, I first set out the three pre-requisites before severance or the 'blue pencil test' can be undertaken (see above at [24]), as summarised by the court in *Lek Gwee Noi* at [155]:

> (a) the unenforceable provision must be capable of being removed without adding to or modifying the wording of what remains with the remainder continuing to make grammatical sense;
>
> (b) the remaining contractual terms must continue to be supported by adequate consideration; and
>
> (c) the severance must not change the fundamental character of the contract between the parties.

To reiterate, the court will not rewrite the contract for the parties: *Man Financial* at [127]. Above all, the court must bear in mind the underlying policy considerations to prevent abuse on the part of the employer: *Lek Gwee Noi* at [172]. Fair play is a cardinal principle in construing an employment contract, especially when the employer is in an advantageous position compared to the employee who has not much choice but to sign the employment contract on an as-is basis.

62 In the present case, it is not possible to amend the scope of the prohibited activities in the Non-Compete Clause from a business which provides "online financial product comparison services" to one which provides "digital insurance products"; this is simply an entirely *different* scope and thus it is not a matter of

narrowing or limiting what is already in the Non-Compete Clause. This hurdle, therefore, means that the first requirement detailed in [61(a)] for severance to be undertaken is not satisfied. For completeness, the third requirement in [61(c)] would also not be satisfied since this would change the fundamental character of the restriction and convert it into something different in kind and not only extent. In addition, the primary focus of the claimant in relation to the Non-Compete Clause is to prohibit the defendant from engaging with online financial product comparison services and not with digital insurance products.

63 Further, and more crucially, allowing the doctrine of severance to operate in these circumstances would be contrary to the underlying public policy in employment contracts. It is vital that trade restraint clauses are drafted precisely, clearly and unequivocally with respect to the scope of the work of each employee. The practice of imposing wide and general restrictive clauses in employment contracts in a manner that would later support the "blue pencil test" should be discouraged as it is unfair and inequitable to the employee. Further, it is against public policy. This is especially because of the overriding principles of the individual freedom to trade and liberty of action. In this case, I cannot allow severance to rectify the Non-Compete Clause, which is an exceedingly wide trade restraint clause that was drafted strongly in favour of the claimant to the disadvantage of the defendant. Doing so would be an endorsement of the abusive process of imposing unreasonable restraints in employment contracts.

64 Thus, the unreasonable nature of the Non-Compete Clause cannot be saved either by the claimant's election of what to enforce or through severance. Accordingly, even if the Non-Compete Clause served to protect a legitimate proprietary interest of the claimant (which I have not found), the clause does not satisfy the second of the two-step test in *Man Financial* and hence cannot be

enforced. Having so determined, the question of a breach of the Non-Compete Clause does not arise. In summary, there is no good arguable case that the Non-Compete Clause is valid and enforceable, and that it has been breached. I, therefore, set aside the injunction in relation to the Non-Compete Clause.

Whether there is a good arguable case that the Confidentiality Clause has been or is likely to be breached by the defendant

65 To recapitulate, the Confidentiality Clause prohibits the defendant from using and disclosing, without the consent of the claimant, all information about the claimant ("Confidential Information"), "including information relating to the business, operations (financial or otherwise), capital and operating budgets, business plans, research and development activities, product designs and operating characteristics, products, manufacturing and production costs for materials and labour, field labour costs, product pricing and gross margins, product inventories, properties or employees or the [claimant's] relationships with its representatives, customers, subcontractors and suppliers, including information relating to the business, operations and properties of such, representatives, customers and suppliers to the extent known to [the defendant]" (see above at [11]).

66 The definition of "Confidential Information" in the Confidentiality Clause is incredibly wide such that, on the face of the provision, the information to be protected does not even have to be confidential *per se*. Instead, on a plain reading, the Confidentiality Clause stipulates that *all information* of the claimant should not be used or disclosed without prior consent of the claimant, without providing that the prohibition extends to confidential information only. This is contrary to the title of cl 9 of the employment agreement, namely "Confidential Information". It is, however, not disputed by the parties that the

Confidentiality Clause protects *only* ***confidential*** information of the claimant, as observed from the claimant's Statement of Claim dated 15 February 2024 ("SOC"),[66] as well as the parties' written[67] and oral submissions. Accordingly, I shall proceed on this same basis as well.

67 In addition, although the defendant does not appear to have challenged the validity of the Confidentiality Clause (unlike his position in relation to the Non-Compete Clause), the Confidentiality Clause as stated in the employment contract does not appear to be reasonable. Due to its extremely wide coverage, the Confidentiality Clause imposes unfair and inequitable obligations that are extremely onerous on the defendant. This puts the validity and enforceability of the Confidentiality Clause into serious doubt. Be that as it may, I shall proceed to consider whether there has been a breach of the Confidentiality Clause, *assuming the clause is valid and assuming that the clause covers only confidential information.*

Whether the defendant had breached or is likely to breach the Confidentiality Clause

68 The basic issue is whether the confidential information as alleged by the claimant in the SOC is indeed confidential information that falls within the ambit of the Confidentiality Clause. The claimant submits that given the defendant's job, he had access to confidential information and trade secrets belonging to the claimant, including but not limited to:[68]

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66 Statement of Claim dated 15 February 2024 ("SOC") at paras 2.3.1-2.3.2.

67 See, *eg*, CWS at paras 2.1.1, 2.1.3, 2.3.2, 2.3.7, 4.2.1, 4.2.3, 4.2.4, 4.2.6; DWS at paras 46–48, 70.

68 SOC at paras 2.3.1–2.3.2.

(a) pricing and marketing tactics which have been implemented and are planning to be implemented by Bubblegum (*ie*, rates and prices charged to customers, discounts/sales events);

(b) the underwriting logic and rationale behind insurance policies (*eg*, how insurers structure their policies, how premiums are determined, relevant factors to determine the premium calculations, *etc*);

(c) commercial and business strategies (in particular relating to the insurance industry, insights on how to handle partners and convince them to come onboard);

(d) terms of Bubblegum's contracts with key commercial partners such as insurance companies, particularly the fee arrangements which are made on a perpetual basis unless the fees are renegotiated;

(e) Bubblegum's business structure and operations (including financial information such as Bubblegum's revenue and gross profits);

(f) Bubblegum's strategy, product and business roadmap, financial plans and projections for the next 1–2 years and especially for 2024, including the new products to be launched; and

(g) the developer platform containing the coding of and other proprietary information on MoneySmart's Financial Product Comparison Platform and a working knowledge of the same.

69 I note that the information particularised in the claimant's written submission and the affidavits in support of the claimant in SUM 229 and

SUM 360[69] is much wider than that found in the claimant's SOC. Where trade secrets or confidential information is sought to be protected, it must be *specifically pleaded* as a general assertion will obviously not pass muster: *Man Financial* at [91]. In view of this, it is crucial to focus on what the claimant has *specifically pleaded* in the SOC. This is notwithstanding that the SOC seems to suggest there may be more types of confidential information by the use of the term "including but not limited to".

70 The claimant further argues that the defendant had access to or knowledge of MoneySmart's Financial Product Comparison Platform,[70] and that the Confidential Information was not publicly available.[71]

71 The defendant submits that these are "bare assertions" that have not been substantiated with any evidence; he submits that the claimant has failed to specifically plead or identify any specific confidential information save for generic descriptions.[72] In addition, the information accessed was not confidential because it did not belong to the claimant,[73] or were routinely shared with all the claimant's staff[74] or the public.[75] Furthermore, the allegation that the defendant had accessed the claimant's information remains unsubstantiated.[76]

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69 CWS at paras 4.2.1, 4.2.3; see also Aff1 MDV at paras 2.2.5–2.2.11; Aff2 MDV at paras 3.4.4–3.4.5

70 CWS at para 4.2.2.

71 CWS at para 4.2.4.

72 DWS at para 47.

73 DWS at para 48(a).

74 DWS at paras 48(c), (e).

75 DWS at para 48(d).

76 DWS at para 48(f).

72 I am not satisfied that the information that the defendant allegedly had access to, as listed in the SOC, would fall within the ambit of the Confidentiality Clause. I am unable to accept that the information was confidential for two reasons. First, much of the information has already been shared publicly by the claimant. As the defendant has pointed out, MoneySmart's financial results and business plans had been reported in articles accessible online by the general public.[77] For example, the business performance of MoneySmart, including data about its revenues, growth and margins, as well as initiatives that the claimant was pursuing and general strategy for expansion had been shared in a publicly-accessible PR Newswire article dated 10 December 2023, republished on Yahoo! Finance.[78] This being the case, it does not lie in the mouth of the claimant to say that such information is confidential when their own officers, including Mr Nair, had facilitated the disclosure of such information in the public domain.

73 The second reason why the information the defendant allegedly had access to is not confidential is that the claimant has not treated the information as confidential until these proceedings. There is no evidence that the claimant had taken precautions to maintain the confidentiality of the information such as labelling the information as "confidential" or informing its staff that the information shared with employees in the course of business (such as at the company-wide meetings known as "All-Hands meetings") was confidential. It is also telling that this information was shared with all the staff of the claimant, including those that would not require such information in the performance of their duties. This should also be viewed in the context of the first reason: the fact that there has been public disclosure of sensitive business information like

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77 Aff2 Df at para 7, pp 17–20.

78 Aff2 Df at pp 19–20.

financial data and business plans also supports the fact that the claimant had not treated such information as confidential. Therefore, the manner in which the claimant had handled the allegedly confidential information demonstrates that it had not considered such information to be confidential to begin with. The reality is that the defendant would not know what information disclosed to him was confidential and what information was not, and accordingly what must not be shared with a third party. There is no evidence to suggest that he was expressly informed that certain information was confidential and must not be shared with third parties.

74 The only support for the confidentiality of the information is the claimant's bare assertion in its written submission and its supporting affidavits, that I find to be inconsistent with its general attitude towards the disclosure and dissemination of the information.

75 It is plainly inequitable for the claimant to now assert that the information was confidential in order to prevent the use or disclosure of it by the defendant. To some degree, it is hypocritical for the claimant to have actively shared and disclosed information about its business which it did not consider as confidential then, yet now claim that the information is confidential and must be protected.

76 In addition, it must be borne in mind that the defendant was Head of Technology of MoneySmart's Bubblegum platform. He was tasked to develop Bubblegum. Hence, he was primarily concerned about the technical aspects of Bubblegum. He also must have general knowledge of the travel insurance and motor insurance industry so as to scope the Bubblegum platform to meet the needs of MoneySmart. However, the defendant would not have been concerned about the business opportunities, strategy, or commercial and financial

prospects of Bubblegum. These business and strategic aspects of the insurance industry would have been the responsibility of a separate person, namely the person in charge of the insurance products to be offered through Bubblegum in MoneySmart.

77 The claimant submits that the defendant was in a very senior position as he was only two levels below Mr Nair, the claimant's CEO, in the company's hierarchy.[79] Hence, the claimant alleges that the defendant had the opportunity to possess confidential information. The defendant, on the other hand, submits that the operational structure of MoneySmart is flat with only four levels of hierarchy starting from the CEO to the individual staff.[80] The defendant was second from the bottom. Whatever the seniority of the defendant, it remains that he was only interested in the business aspects of Bubblegum in so far as they are relevant for the development of Bubblegum. Further, the defendant may have been included in the meetings in which purportedly confidential information about the claimant unrelated to the technical aspects of Bubblegum was shared. Such information plainly was not pertinent to his work at MoneySmart and he would not have paid attention to its significance from a business perspective.

78 As for the information about MoneySmart's Financial Product Comparison Platform (see above at [68(g)]), there is no proof that the defendant *actually* accessed the repositories containing the code and proprietary information of MoneySmart's Financial Product Comparison Platform.[81] Therefore, while the defendant had the opportunity to access such information,

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79 CWS at para 4.2.1; Aff2 MDV at para 3.5.2.

80 DWS at para 48(b).

81 Aff2 Df at para 8.

I am not satisfied that there is a good arguable case that the defendant *actually* accessed the information that was told to him to be confidential.

79 In addition, when the defendant was tasked to integrate the Bubblegum platform into MoneySmart's Financial Product Comparison Platform, he similarly would not have been interested in information pertaining to the business, financial and strategic developments of the Financial Product Comparison Platform that was important to the claimant. The defendant had to merely use his information technology expertise acquired over the years prior to his employment with the claimant to render value added services to the claimant.

80 The claimant cannot generalise all the information that the defendant had accessed when he was employed by MoneySmart as confidential. The claimant had not specified to the defendant which information was confidential as it had not categorised the information in such manner. There is no evidence that the claimant had differentiated the confidential information or documents from non-confidential information or documents. Further, there is no evidence that the claimant informed the defendant and the other staff of the confidentiality of the documents. What may seem to be confidential information was available on publicly-accessible websites (see above at [72]). Hence, this cannot be confidential information. The claimant cannot be allowed to now assert which information could have been confidential with the benefit of hindsight. This would be highly unfair to the defendant as he was not informed or knew of the confidentiality of the information when it was in his possession during his employment with MoneySmart.

81 I acknowledge that there may be instances that certain information by its nature and inherent characteristic is objectively and obviously confidential,

eg, trade secrets. In such an instance, there is no necessity to classify the information as confidential as the confidentiality is obvious to both the employer and employee. Therefore, the employee is not to disclose to a third party or use it for the benefit of the third party without the approval of the employer. In this instant case, the claimant has failed to specify such information but chose to generalise the information listed in the SOC as confidential.

82 Therefore, there is no good arguable case as there is no evidence that the information accessed by the defendant was confidential. There are very grave doubts that the defendant had breached the Confidentiality Clause.

Whether there is a breach or likely breach of the Confidentiality Clause

83 I next consider, on the assumption that the defendant had access to the Confidential Information as alleged, whether there is a good arguable case that the Confidentiality Clause has been breached or is likely to be breached. The claimant submits that "there is a real risk that [the Confidentiality Clause] has been breached or is intended to be breached (whether intentionally or inadvertently)".[82] The claimant relies on *Jardine Lloyd Thompson Pte Ltd v Howden Insurance Brokers (S) Pte Ltd and others* [2015] 5 SLR 258 ("*Jardine*") at [25] and [28] where the court had found that there was a serious question to be tried insofar as it could not be said that the claim there was frivolous or vexatious, even though the court had concurrently found that there did not seem to be sufficient evidence to suggest that there had been any misuse of confidential information or serious breaches of confidentiality, potential or otherwise.

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[82] CWS at para 7.1.3(b).

84 With respect, *Jardine* did not have the benefit of the Court of Appeal's pronouncements in *RGA Holdings* or *Oro Negro*, and therefore the approach of the court there does not assist me as much as the claimant would hope. As clarified by *Oro Negro*, the claimant must establish *a good arguable case* that the Confidentiality Clause has been breached. Unfortunately, the claimant has only advanced a bare assertion that there is a real risk that the Confidentiality Clause has been or will be breached.[83] In my view, such a bare assertion is insufficient to establish a good arguable case.

85 Additionally, I note that the defendant has been placed on paid garden leave for a period of 12 months.[84] This is significant because the risk of disclosure of the alleged Confidential Information, at least to CAGRS or MoneyHero, is substantially diminished. While I accept that it is still *possible* for the defendant to use or disclose the alleged Confidential Information, this is insufficient to prove that there is a good arguable case that the Confidential Information has been, or will be, used or disclosed in breach of the Confidentiality Clause. Instead, with the defendant being put on paid garden leave, the likelihood of the defendant disclosing the Confidential Information becomes highly speculative.

86 Accordingly, in the absence of a good arguable case, there is no basis for the interim injunction in relation to the Confidentiality Clause to be maintained. I, therefore, set aside this interim injunction as well.

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83 CWS at para 7.1.3(b).

84 Aff Df at paras 64, 66.

Whether the balance of convenience lies in favour of maintaining the interim injunctions

87 For the sake of completeness, I shall consider whether the balance of convenience lies in favour of maintaining the interim injunctions, if the claimant had proven a good arguable case that the Non-Compete Clause is valid and enforceable, and that this clause and the Confidentiality Clause have been breached or are likely to be breached by the defendant. Strictly speaking, I do not have to deal with this issue. However, since the parties had placed significant emphasis on this in their submissions, I shall express my views on the issue of balance of convenience.

88 The claimant submits that the damage to the claimant cannot be quantified or compensated by damages because the loss is in the form of diminution of competitiveness and loss of revenue and/or business opportunities.[85] The claimant submits that the defendant can be compensated monetarily, and in any case, he has not suffered any damages to date given that he has been placed on paid garden leave.[86] Further, the defendant can seek employment with any other company that does not engage in the business of providing online financial product comparison services, which is effectively almost every other company save for MoneyHero.[87]

89 The defendant refutes this by submitting that even if damages would not be an adequate remedy for the claimant, it does not necessarily mean that the balance of convenience lies in its favour.[88] As for the defendant, he is at risk of

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85 CWS at paras 8.2.1–8.2.2.

86 CWS at para 8.3.1.

87 CWS at para 8.3.3.

88 DWS at para 62.

losing his job at CAGRS – a role which he considers to be an unprecedented personal opportunity for career development and growth[89] – and/or stagnation in skills and knowledge.[90] Further, despite being put on paid garden leave currently, there is no guarantee that CAGRS would keep the job open for the defendant for an extended period of time, especially considering that his technological skills may stagnate in the context of a fast-changing information technology industry.[91] At the hearing on 8 March 2024, the counsel for the defendant also argued that finding employment with an alternative employer would be difficult if the defendant is subject to interim injunctions. Finally, the defendant also bears the risk that is personal in nature in that he is on an employment pass and has three dependants; if the defendant is unemployed, he may have to return to Russia and is vulnerable to being mobilised by the Russian military.[92]

90 The court in *Shopee* at [17(b)] distilled the approach to be taken when considering where the balance of convenience lies:

> (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].

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89 DWS at para 63.

90 DWS at para 62.

91 DWS at para 64.

92 DWS at para 65.

> (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].

91 Taking this approach, the first question is whether damages are an adequate remedy. In my view, the principal reason why there is an inherent difficulty to determine the damages for the claimant's alleged potential loss lies in the generality of its particularised loss. The alleged loss of diminution of competitiveness and loss of revenue and/or business opportunities are all framed generically. This can be analogised to the case in *Shopee* where the court found that the generic framing of the losses – which in that case was the loss of customer connections and goodwill, and disruptions to Shopee's workforce – gave rise to the difficulty in assessing the potential damages: *Shopee* at [87]. In the same fashion here, it appears that the issue is not that there is a conceptual difficulty in quantifying the loss, but that the claimant is not sure what its precise loss would be. Hence, I reject the claimant's submission that damages would not be an adequate remedy.

92 Even if damages are not an adequate remedy for the claimant, I would find that damages are not an adequate remedy for the defendant if the injunctions were granted. 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: *Buckman* at [32]; *Shopee* at [89]. In this case, the defendant held and currently

holds what seems to be a senior position at MoneySmart and MoneyHero in relation to technical support for digital insurance services. Further, given the general pace of technological advancements, it is also expected that there is a real risk of stagnation of skills which would make the defendant a less marketable employee in the future.

93 As damages would be inadequate for both the claimant and the defendant, I turn to assess the balance of convenience, which requires me to determine which course appears to carry the lower risk of injustice if that course should ultimately turn out to be the "wrong" course: *Maldives Airports Co Ltd and another v GMR Malé International Airport Pte Ltd* [2013] 2 SLR 449 at [92]. The status quo is that the defendant has commenced employment with CAGRS in the MoneyHero group. Thus, given the critically weak case of the claimant, it would be in the interest of justice not to allow the interim injunctions to continue and become enforceable, which would be an interruption of the status quo.

94 I have grave doubts that there is a good arguable case that the Non-Compete Clause and the Confidentiality Clause are breached or likely to be breached, notwithstanding the low threshold burden of proof on the claimant at this stage of the proceedings. The injunctions should not be maintained on the balance of convenience.

Whether the interim injunctions should be set aside due to the claimant's lack of full and frank disclosure

95 Given that I have already decided to set aside the interim injunctions, the question of whether the interim injunctions should be set aside due to the lack of full and frank disclosure by the claimant at the *ex parte* hearing before

me is unnecessary. However, in the light of the defendant's submissions on this issue, I shall express my views on this.

96 The principles governing full and frank disclosure are trite. An applicant in an *ex parte* application is under a clear duty owed to the court to make full and frank disclosure of all material facts in its possession at the time of the application, even if they are prejudicial to its claim: see *Bahtera Offshore (M) Sdn Bhd v Sim Kok Beng and another* [2009] 4 SLR(R) 365 ("*Bahtera*") at [20]–[21]. "Material facts" cover both factual and legal matters, as well as facts which the court should take into account in making its decision: *Bahtera* at [23]. The manner of disclosure is also important: *Bahtera* at [24]. Finally, where the court finds that there has not been full and frank disclosure, it does not necessarily follow that the court must discharge the injunction: *Bahtera* at [25]–[27] and [29].

97 The defendant submitted that the claimant failed to provide full and frank disclosure of the material facts because:

(a) the claimant had mischaracterised the defendant's prior working experience when it stated that the defendant did not have any relevant experience in the fintech industry prior to joining MoneySmart;[93]

(b) the claimant failed to disclose the acrimonious circumstances surrounding the defendant's resignation from the claimant, particularly that the defendant was effectively asked to resign;[94] and

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93 DWS at para 74(a).

94 DWS at para 74(b).

(c) the claimant failed to highlight that the scope for the interim injunctions sought is inconsistent with the broader scope of the Non-Compete Clause.[95]

98 The claimant denies any mischaracterisation of the defendant's prior experience,[96] and also denies any omission of relevant material information in relation to the defendant's resignation.[97]

99 In my view, the non-disclosure of the actual scope of the Non-Compete Clause *vis-à-vis* the scope of the interim injunctions sought is disconcerting. It is material that the claimant was seeking to enforce only part of the Non-Compete Clause since the geographical scope of the interim injunctions sought was narrower than what the clause prescribed. This gives rise to questions of whether the claimant is permitted to do so or whether severance operates to allow this outcome (see above at [58]–[64]). However, these questions did not arise at the *ex parte* hearing because of the non-disclosure of this issue by the claimant. Plainly, this issue, which pertains to the very legal basis of the interim injunctions sought, should have been highlighted. I must stress that the interim injunctions would be vulnerable to be discharged due to this non-disclosure.

100 Be that as it may, I accept that there has been no prejudice to the defendant since the claimant has undertaken not to enforce the interim injunctions.

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95 DWS at para 74(c).

96 Aff2 MDV at para 5.1.2(a).

97 Aff2 MDV at para 5.1.2(b).

Conclusion

101 In conclusion, the Non-Compete Clause neither protects a legitimate proprietary interest of the claimant nor is reasonable and fair. The Non-Compete Clause is also against the interests of the public. Hence, the Non-Compete Clause is not valid and enforceable, and thus there cannot be a good arguable case that the clause has been breached.

102 With respect to the Confidentiality Clause, the claimant failed to specifically identify the information that it alleges to be confidential. There is no evidence that the claimant had informed the defendant of the confidentiality or that information disclosed to the defendant was clearly classified as confidential. The manner in which the alleged confidential information was handled and disseminated did not suggest that it was confidential. The defendant utilised the information disclosed to him to enable the development of the Bubblegum platform by him using his information technology expertise. Thus, the claimant has failed to establish that there is a good arguable case that the alleged information was confidential and that the defendant has breached, or will breach, the Confidentiality Clause.

103 The balance of convenience is in favour of the defendant and it is inequitable to allow the interim injunctions to continue.

104 Therefore, both interim injunctions that were granted on an *ex parte* basis in SUM 229 on 29 January 2024 are hereby discharged.

105 I shall hear parties on the issue of costs to the defendant.

Tan Siong Thye
Senior Judge

Lee Ping (Li Ping), Swah Yeqin Shirin and Yong Ying Jie
(Shook Lin & Bok LLP) for the claimant;
Lee Eng Beng SC, Timothy Ang Wei Kiat (Hong Weijie) and
Liu Yulin (Rajah & Tann Singapore LLP) for the defendant.