

Restrictive Covenants in Employment Contracts: How can Companies and its Employees Protect Their Interests in Singapore?

Introduction

- 1 The issue of employee rights in employment contracts have been put into the spotlight following the recent mass layoffs by e-commerce giant Lazada and a recent lawsuit brought about by Shopee Pte Ltd against its former employee in *Shopee Singapore Pte Ltd v Lim Teck Yong* (“*Shopee v Lim*”)¹.
- 2 Traditionally, employers have sought to restrict former employees in 2 principal ways:
 - (a) First, on the basis that the employee breached clauses in the Employment Contract which prohibit the commencement of employment with any of the employer’s competitors (“**Non-Compete Clauses**”);
 - (b) Second, on the basis that the employee had breached clauses in the Employment Contract which prohibit the unauthorised acquisition and/or disclosure of the employer’s confidential information (“**Confidentiality Clauses**”).
- 3 Collectively, Non-Compete and Confidentiality clauses are commonly referred to as “**Restraint of Trade Clauses**”.
- 4 As a starting point, common law courts including Singapore have frowned upon the use of Restraint of Trade Clauses in the context of employment as they represent unreasonable attempts to proscribe an employee’s freedom to trade.² However, there are certain circumstances where such Non-Compete Clauses have been held to be legitimate and upheld by the Singapore Courts.
- 5 This article serves to summarise some of the various principles and doctrines that govern this complex area of the law so that readers can equip themselves with information that may prove helpful when negotiating employment contracts or when faced with an employment dispute.

Shopee v Lim: A Brief Summary

- 6 In *Shopee v Lim*, the Singapore High Court (“**the Court**”) dismissed Shopee’s application for an injunction to stop a former senior employee (“**Mr. Lim**”) from commencing employment with its competitor, ByteDance Pte Ltd which owns the popular social-media app TikTok.

¹ [2024] SGHC 29.

² *Man Financial (S) Pte Ltd (formerly known as E D & F Man International (S) Pte Ltd) v Wong Bark Chuan David* [2008] 1 SLR(R) 663, at [45].

- 7 The crux of Shopee’s arguments were that Mr. Lim had breached or was about to breach his contractual undertakings to:-
- a. keep all of Shopee’s proprietary information confidential (“**Confidentiality Restriction**”);
 - b. not accept employment with a competitor which operated in the same countries as Shopee (“**Non-Competition Restriction**”); and
 - c. not solicit or entice away any clients or employees of Shopee (“**Non-Solicitation Restriction**”).
- 8 When considering whether Mr Lim had breached the Non-Competition Restriction, the Court applied the starting point held by the Court of Appeal in *Man Financial v Wong Bark Chuan David* (“*Man Financial*”) that Restraint of Trade clauses were *prima facie* void and unenforceable unless they sought to protect a legitimate interest of the employer and is reasonable in the interests of the parties and the general public.³ The court in *Man Financial* also held that where there is already a clause governing the protection of confidential information, 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.*”⁴
- 9 On the facts, the Court found that Shopee did not plead or point to specific confidential information that was at risk of being disclosed and was unable to show that it had legitimate proprietary interests above and beyond what was already protected by clauses in its agreements.⁵
- 10 The Court also struck down Shopee’s generic argument that the “*general knowhow*”⁶ that Mr. Lim acquired through his attendance in regional meetings constituted confidential information as it would in effect “*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*”.⁷ As a matter of public policy and reasonableness, the Court therefore had “*serious doubts*”⁸ as to whether the Confidentiality Restriction could stand.
- 11 Regarding the Non-Solicitation Restriction, Shopee’s argued that Mr Lim had threatened to breach this restriction as he refused to provide an extra undertaking during his employment that he would not solicit Shopee’s employees or clients. The Court held that Mr Lim’s refusal did not amount to a breach as Mr Lim had sworn before the Court during the proceedings that he would not solicit Shopee’s clients or employees.⁹

³ *Man Financial*, at [70] and [79].

⁴ *Id.*, at [92].

⁵ *supra* n 1, at [68].

⁶ *Id.*, at [71].

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Id.*, at [74].

Comments

- 12 The case of *Shopee v Lim* serves as a reminder to employers that Restraint of Trade Clauses do not always guarantee relief in court. While the Court did recognise that the protection of confidential information can be a legitimate proprietary interest,¹⁰ this case exemplifies how employers cannot simply point towards an employee who is in possession of the employer's confidential information to restrict his freedom to seek alternative employment.
- 13 Having said that, this does not mean that the absence of a Restraint of Trade clause or the unenforceability of a Restraint of Trade clause grants an employee the complete freedom to share and disclose his employer's confidential information.
- 14 Depending on his / her position in the company, an employee may be bound by **fiduciary duties** which places him in a position not to disclose any of the confidential information that he may be in possession of.
- 15 Similarly, while an employee might not be in breach of his contractual duties of confidentiality, there may be **additional obligations of confidentiality in equity** that a court can impose on an employee.
- 16 As such, if one is unsure of whether he / she might be in breach of his / her terms of employment, it would be best to consult one of our employment law lawyers to advise you.
- 17 Correspondingly, employers who are unsure of the validity of their subsisting employment terms or who wish to mount a claim for breach of employment and / or other obligations in equity may wish to consult one of our employment law lawyers to assist.

None of the information mentioned above shall be construed as legal advice. For formal legal advice pertaining to your case, please contact 6553 4800 or email us at <law@hoh.com.sg>

¹⁰ *Id* at [71].