

HCA 654/2025
[2025] HKCFI 1769

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO 654 OF 2025**

BETWEEN

INFO SALONS TECHNOLOGY
SERVICES (HK) LIMITED

Plaintiff

and

FENG WENGUO (馮文國)
LI TUNG YAT (李東逸)
EVENTLYTE LIMITED

1st Defendant
2nd Defendant
3rd Defendant

Before: Deputy High Court Judge Alan Kwong in Chambers (Open to Public)

Date of Hearing: 25 April 2025

Date of Decision: 25 April 2025

D E C I S I O N

Introduction

1. By summons dated 31 March 2025 (the “**Summons**”), the Plaintiff seeks an interlocutory injunction to enforce the restrictive covenants in its employment contract with the 2nd Defendant.

2. In gist, the restrictive covenants seek to restrain the 2nd Defendant from (i) soliciting business from the Plaintiff's clients; (ii) poaching the Plaintiff's employees; and (iii) engaging in any competing business.

Material Background

3. The Plaintiff has been carrying on a business of providing services in organizing events and exhibitions.

4. The Plaintiff says that:-

(1) It offers a sophisticated platform for event registration and data tracking, and it invested substantial resources in building up an online database management system.

(2) It has many loyal customers, one of whom is Informa Markets Asia Ltd ("**Informa Markets**").

5. The 2nd Defendant was the Plaintiff's deputy general manager. He tendered his resignation in May 2024, and his last day of employment was 7 June 2024.

6. It is not in dispute that the employment agreement between the parties contained, *inter alios*, (i) the Non-Solicitation Covenant; (ii) the Non-Enticement Covenant; and (iii) the Non-Competing Covenant. The effective duration is 12 months from the end of the 2nd Defendant's employment. This would be on 7 June 2025.

7. After the 2nd Defendant's employment with the Plaintiff came to an end, on 1 August 2024, the 2nd Defendant set up the 3rd Defendant, which has been carrying on a business similar to that of the Plaintiff. The

2nd Defendant is a 90% shareholder of the 3rd Defendant. The 2nd Defendant is certainly in control of the 3rd Defendant's affairs and operation.

8. There is no dispute that the 2nd and/or 3rd Defendants had business dealing with Informa Markets. The 2nd Defendant says that Informa Markets has chosen the 3rd Defendant as the service provider for a previous jewelry affair that took place in March 2025 (the “**Previous Jewelry Fair**”) and an upcoming jewelry fair, which will take place in June 2025 (the “**Upcoming Jewelry Fair**”).

9. The Plaintiff's Summons dated 31 March 2025 came before Keith Yeung J on 11 April 2025. Applying the approach set out in *China Shanshui Cement Group v Zhang Caikui* [2018] HKCA 409, the learned Judge refused to grant any interim-interim relief in favour of the Plaintiff.

10. Insofar as the Non-Enticement Covenant was concerned, Keith Yeung J pointed out that although Ms Sharon Chong worked for the 3rd Defendant, she was not a former employee of the Plaintiff, but a company related to the Plaintiff: *see* Decision, *para* 19(d).

11. More importantly, as regards the Non-Solicitation Covenant and the Non-Competing Covenant, Keith Yeung J took into account that:-

(1) The evidence was unclear as to whether Informa Markets approached the 2nd Defendant or *vice versa*: *see* Decision, *para* 19(c).

(2) The 3rd Defendant had been chosen to handle the Previous Jewelry Fair (which was completed already) and the

Upcoming Jewelry Fair. Informa Markets was at liberty to choose its service providers: *see* Decision, *para* 19(e)(vi).

(3) If an interim-interim injunction were granted, the 2nd Defendant would be abruptly stopped from working on the Upcoming Jewelry Fair and his professional reputation might be irreparably damaged: *see* Decision, *para* 19(e)(viii).

12. This is the expedited adjourned hearing in respect of the Plaintiff's Summons dated 31 March 2025.

13. As will be elaborated, the Plaintiff contended the evidence showed that contrary to the picture painted by the 2nd Defendant, Informa Markets had indeed not chosen the 2nd Defendant as its service provider in respect of the Upcoming Jewelry Fair that would take place in June 2025.

14. In these premises, the Plaintiff asked this Court to allow its application under the Summons.

Legal Principles

15. It is not in dispute that the legal principles set out in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 are applicable. The questions to consider are: (i) whether there is a serious issue to be tried; and (ii) whether the balance of convenience lies in favour of granting the interlocutory injunction sought.

Deliberation

16. In their submissions, Mr Ernest Ng together with Mr Calvin Ng (for the Plaintiff) sternly criticized the 2nd Defendant for misleading Keith Yeung J to believe that Informa Markets had already chosen the

2nd Defendant as its service provider in respect of the Upcoming Jewelry Fair when this was not the case.

17. They pointed out that despite repeated enquiries, the 2nd Defendant had failed to put forward the contractual document showing that there had been a legally binding arrangement, and the 4 emails relied on by the 2nd Defendant did not show that a binding contractual commitment existed at all.

18. I see the force of the Plaintiff's submissions.

19. In my view, had Informa Markets entered into a legally binding agreement or arrangement with the 3rd Defendant as alleged, the 2nd Defendant would have put forward the relevant contractual documents that show the existence of a legally binding contractual relationship. This did not happen. Even if the contractual document(s) contain(s) sensitive commercial information, the Defendants could have redacted the same. There is no point playing a game of hide and seek.

20. In the premises, I am of the view the evidence shows that Informa Markets has not yet entered into a binding contractual relationship with the 3rd Defendant and/or the 2nd Defendant.

21. It is important to bear in mind that the 2nd Defendant voluntarily accepted the Non-Solicitation Covenant and the Non-Competing Covenant. These contractual provisions formed part of the contractual bargain between the Plaintiff and the 2nd Defendant.

22. I am inclined to the view justice requires that the parties be held to their contractual bargain as far as possible.

23. In this connection, I also take into account that:-

- (1) the Non-Solicitation Covenant and the Non-Competing Covenant will soon expire in late June 2025;
- (2) Informa Markets is an important client to the Plaintiff;
- (3) whilst the Plaintiff has been doing business with Informa Markets for years, the 3rd Defendant is a new set-up; and
- (4) it could be difficult to quantify loss and damages, given the complications in regard to proving the causation between the loss of business on the part of the Plaintiff and the impact arising from 2nd Defendant's conduct.

24. In the premises, I am not persuaded that the 2nd Defendant should be allowed to flagrantly flout the Non-Solicitation Covenant and the Non-Competing Covenant at his own prerogative. This would be unfair to the Plaintiff, who all along acted on the basis that the terms and provisions in the employment agreement were valid and enforceable.

25. I do not lose sight of the 2nd Defendant's assertion that he was approached by Informa Markets.

26. However, Mr Ng referred me to *Croesus Financial Services Ltd v Bradshaw & Anor* [2013] EWHC 3685 (QB) at para 102. There, Simler J stated:-

"It is often assumed there is no solicitation where it is the customer who first contacts the ex-employee....However, this is not necessarily the case and although the question who made the first contact is relevant, all the circumstances surrounding the contact must be considered, each case depending on its facts. There is no general rule that whenever a customer initiates contact, an individual can respond and even go so far

as making a presentation without breaching a prohibition on solicitation...Rather, these are questions of facts and degree.”

27. In the premises, it is highly arguable that the 2nd Defendant breached the Non-Solicitation Covenant.

28. In any event, the Plaintiff is also entitled to rely on the Non-Competing Covenant.

29. In this connection, Mr Tony Au (for the Defendants) submitted that the Non-Competing Covenant was plainly invalid bearing in mind the width thereof. Although I see the force of Mr Au’s submissions, I am of the view that the question of whether the Plaintiff could justify the width and breadth of the Non-Competing Covenant in light of its legitimate commercial interest is plainly a matter to be tried. Based on the materials available to me, I am not in a position to form a definite view at this juncture.

30. For all the above reasons, I am satisfied that:-

- (1) The Plaintiff has raised a serious issue to be tried; and
- (2) The balance of justice lies in favour of granting the proposed interlocutory injunction sought.

Conclusion

31. In the premises, upon the Plaintiff’s undertaking that it will compensate the Defendants if it transpires that the court should not have granted interlocutory injunction sought, I make an order in terms of paragraphs 1(a) and 1(c) of the Plaintiff’s Summons, save that the duration of the interlocutory injunction should only last until 7 June 2025. For the

avoidance of doubt, Informa Markets should be expressly included in the terms of the interlocutory injunction under paragraph 1(a).

32. I order that costs be in the cause.

33. I express my gratitude to Mr Ernest Ng, Mr Calvin Ng and Mr Tony Au for their helpful assistance.

(Alan Kwong)
Deputy High Court Judge

Mr Ernest Ng and Mr Calvin Ng, inst'd by M/s Alvan Liu & Partners, for
the Plaintiff

Mr Tony Au and Miss Chau Dung Ching, of M/s Tony Au & Co for the 2nd
and 3rd Defendant