



Protecting Confidential Information Pending Trial: The Line Between Injunctive Restraint And Evidence Preservation

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In the recent case of *DSH Systems Limited v Yap Joe Sieng & Ors* (Civil Suit No: WA-22IP-17-02/2026), the High Court considered two interlocutory applications arising from allegations that a former employee had taken and used his former employer's confidential information to establish a competing business. The Plaintiff sought an interlocutory injunction to restrain the Defendants from using, disclosing or otherwise dealing with the alleged confidential information, while the Defendants sought to set aside an Anton Piller Order (APO) previously obtained ex parte by the Plaintiff.

The High Court reached different outcomes on the 2 applications. It refused the interlocutory injunction but upheld the APO, highlighting the distinct purposes and considerations underlying the two remedies notwithstanding that they arose from the same factual allegations.

Brief Facts

The Plaintiff, DSH Systems Limited, is a New Zealand company which claimed to be the proprietor of technical know-how, designs and trade secrets developed over more than 20 years relating to dust cone hopper systems used in bulk material handling. The 1st Defendant was a former employee of the Plaintiff, while the 2nd Defendant was his spouse. They were the controlling minds of the 3rd Defendant, a Malaysian company carrying on a competing hopper business.

The Plaintiff's case was that the 1st Defendant, in his final period of employment, downloaded and removed its confidential information, failed to return external drives, and

subsequently used that information to establish and operate the competing business. The Defendants denied those allegations and maintained that much of what the Plaintiff sought to protect comprised the 1st Defendant's own skill, experience and know-how rather than protectable confidential information.

Prior to the hearing, the Plaintiff had obtained an ad interim order and the APO on an ex parte basis. The APO was directed at locating and preserving the Plaintiff's alleged confidential information. It was against this background that the Court was required to determine, on the one hand, whether a prohibitory injunction ought to be granted and, on the other, whether the APO ought to be set aside.

The High Court's Decision

Interlocutory Injunction

The High Court was satisfied that there was a serious issue to be tried. In particular, there was evidence that the 1st Defendant had downloaded a substantial volume of data described as the "DSH Systems" folder during the final week of his employment and had failed to return external drives.

Notwithstanding the existence of a serious issue to be tried, the Court refused the interlocutory injunction. The Court stressed that a party seeking to restrain the use of confidential information must identify the information sought to be protected with sufficient precision. In this case, references to "620 GB of file storage", approximately 95,000 files and 22,000 folders, and generic categories such as "drawings and designs" were insufficient. The Court considered that an overly generalised restraint over abstract know-how could, in substance, operate as a restraint of trade.

The Court further found that the balance of convenience favoured the Defendants. The injunction, if granted in the terms sought, could effectively shut down their newly established business, whereas the Plaintiff's alleged harm was essentially commercial and had not been shown to be irreparable.

The Court also took into account that the Plaintiff's undertaking as to damages was bare, unquantified and unsupported by evidence of its financial means. This deficiency was aggravated by the fact that the Plaintiff was a foreign company with no assets within the jurisdiction. The Court considered this a significant factor weighing against the Plaintiff in assessing the balance of convenience.

APO

The Court, however, reached a different conclusion in relation to the APO and distinguished its purpose from that of an interlocutory injunction:

"45.... The injunction is a forward-looking restraint requiring me to weigh future harm and to assess the adequacy of the relief sought where else the APO was a backward-looking preservation order, to be judged by the

circumstances obtaining when it was sought and granted, and by reference to its own and more demanding pre-conditions.”

On the evidence available when the APO was granted, the Court was satisfied that the Plaintiff had demonstrated an extremely strong prima facie case and a real risk that relevant evidence might be destroyed or concealed. Crucially, the Court rejected the argument that the Plaintiff's inability to identify with precision the confidential information allegedly taken was fatal to the APO. The Court recognised that the very purpose of the APO was to ascertain and preserve the material in question. As the Court observed, a plaintiff could not be required, as a condition of obtaining a preservation order, to prove with precision the very material which the order was intended to uncover.

Accordingly, the Plaintiff's application for an interlocutory injunction was dismissed, while the Defendants' application to set aside the APO was also dismissed. The substantive issues concerning the nature of the information and whether it had in fact been misused were left to be determined at trial.

Commentary

The decision demonstrates that the requirement to identify confidential information with sufficient precision is not merely technical. It goes directly to whether the Court can frame a workable and enforceable injunction. Although the Plaintiff established a serious issue to be tried, its references to hundreds of gigabytes of data, thousands of files and broad categories such as “drawings and designs” did not sufficiently identify the information which the Defendants were to be restrained from using. A defendant subject to an injunction must be able to ascertain with reasonable certainty what conduct is prohibited. The decision therefore serves as a reminder that applicants seeking to protect confidential information should identify the information by its content, rather than merely by the volume or location of the material said to contain it.

Second, an undertaking as to damages must be supported by evidence. The Court treated the Plaintiff's bare and unquantified undertaking, unsupported by evidence of its ability to pay and aggravated by its status as a foreign company with no local assets, as a decisive factor against the grant of the injunction. Applicants seeking interlocutory relief should therefore be prepared to substantiate their financial capacity to honour an undertaking as to damages, as the adequacy of the undertaking may materially affect the balance of convenience even where a serious issue to be tried has been established.

Third, a defendant's objection to an Anton Piller Order does not justify non-compliance with it. The Court observed that the Defendants' failure to comply with the APO reinforced, rather than undermined, the concern underlying its grant. Importantly, the Court stated that the proper course for a defendant who objects to an APO is to permit its execution under the supervision of the independent solicitor, while reserving the right to apply promptly for its discharge, rather than obstructing or delaying the search.

Overall, *DSH Systems* is a timely reminder for businesses seeking to protect confidential information that the strength of the underlying claim is only one part of the equation at the interlocutory stage. The precision with which the alleged confidential information is identified, the scope and workability of the relief sought, and the adequacy of the undertaking as to damages may be equally important in determining whether urgent interim protection will be granted.

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