

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY OF KUALA LUMPUR,
MALAYSIA
(COMMERCIAL DIVISION)
CIVIL SUIT WRIT NO. WA-22NCC-121-03/2023**

BETWEEN

NATURE FARM ENTERPRISE SDN BHD
(COMPANY NO. 734453 - U)

... PLAINTIFF

AND

1. SAT WEI PIAW
(NRIC NO. 840820-14-5435)
2. LIM HUI LING
(NRIC NO. 870412-01-5268)
3. WONG CHEE HOE
(NRIC NO. 760411-14-5661)
4. GREEN FUSION SDN BHD
(COMPANY NO. 1488803 - X)

... DEFENDANTS

BRIEF GROUNDS OF DECISION

- [1] Enclosure 8 is dismissed and Enclosure 23 is allowed. My brief grounds are given below.

Enclosure 8

- [2] The Plaintiff's action is founded on two causes of action. The first cause of action is breach of director duties and the second is the tort of conspiracy. In the first cause of action, the Plaintiff's case is that the 1st Defendant, when he was a director of the Plaintiff, sabotaged the company by refusing

to renew its tenancy, leading to costly relocation and reconstruction, misappropriating company funds for personal use, withholding critical company assets, and causing business interruption and reputational damage; consequently, the Plaintiff seeks compensation for these actions which have resulted in significant financial losses and damages to the Plaintiff. In the second cause of action, the Plaintiff's case is that the 1st Defendant masterminded a conspiracy, assisted by the 2nd Defendant and 3rd Defendant, involving the poaching of the Plaintiff's employees and the misuse of confidential business information of the Plaintiff, leading to the creation of companies competing with the Plaintiff, causing significant financial losses, reputational damage, and loss of major customers.

[3] Much have been said about the 1st Defendant's breach of director's duties but the injunction orders sought by the Plaintiff in Enclosure 8 only relate to the second cause of action. It is the facts averred in the second cause of action that becomes the focus of the court.

[4] The injunction orders are mainly prohibitory orders which prevent the Defendants to continue causing damage through several injunction orders against the Defendants in this case. These restrain the Defendants from interfering with the Plaintiff's business operations, specifically prohibiting contact with clients, suppliers, and business partners; restrain the Defendants from conducting business

under the Plaintiff's name; and restrain the Defendants from revealing or dealing with the Plaintiff's confidential information such as customer listings, business strategies, quotations, and other confidential documents. The other orders generally call for the Defendants to account for and return any disclosed confidential information, manage any relevant third-party involvement, cancel unauthorised transactions, refrain from incurring financial liability for the Plaintiff, and restrict their access to the Plaintiff's premises until the suit is resolved.

- [5] The averments by the Plaintiff in its affidavit in support in relation to the second cause of action of conspiracy are found mainly in paragraphs 18 to 26. In gist, the Plaintiff avers that the 1st Defendant instigated 19 employees to terminate their contracts with the Plaintiff and subsequently join the 4th Defendant, disrupting the Plaintiff's operations and causing reputational damage. The 1st Defendant is accused of breaching his duties as a director by instigating these breaches to form a competing company the 4th Defendant. Additionally, the 3rd Defendant failed to secure any orders for the Plaintiff, and was later discovered to be diverting enquiries to the 4th Defendant. Further, the Plaintiff alleges that the 1st and 2nd Defendants established rival companies, Global Century Victory Sdn Bhd, and the 4th Defendant, both operating similar businesses to the Plaintiff. The Plaintiff contends this was a coordinated effort to poach employees and customers, utilising confidential information and business opportunities from the Plaintiff for

their own gain. This led to the 4th Defendant stepping into the Plaintiff's place in the market, exploiting their goodwill and branding, causing the Plaintiff to lose major customers and contracts, and resulting in significant losses and damages. The Plaintiff asserts that the the Defendants should account for all profits made from contracts awarded to the 4th Defendant at the expense of the Plaintiff.

- [6] Yet, the averments in paragraphs 18 to 26 and other paragraphs relating to the conspiracy are mainly bare averments not substantiated by evidence. To pick an example, the Plaintiff avers in paragraph 7 that during the last few days of employment in Plaintiff, the 1st and 2nd Defendants quietly incorporated the 4th Defendant with the intention to divert Plaintiff's businesses, customers and employees to the 4th Defendant. In paragraph 22 it is averred that the 1st and 2nd Defendants had on 21.11.2022 incorporated the 4th Defendant with Lim Leng Wee, the Plaintiff's former fruit supplier as its director. In paragraph 5 it is averred that the 2nd Defendant is presently one of the directors / alter ego of the 4th Defendant. The only evidence put forward is the SSM Search of the 4th Defendant which do not show any connection to the 1st and 2nd Defendants. The Plaintiff's contention of the 1st and 2nd Defendants being in control of the 4th Defendant is purely conjecture.

- [7] Claims of diversion of the Plaintiff's business to the 4th Defendant are also unsubstantiated. There are invoices showing that the 4th Defendant is supplying fruits to 2

hotels said to be the Plaintiff's customers and an invoice showing fruits supplied by the Plaintiff's supplier. These appear to be normal transactions of a fruit seller which do not indicate diversion of the Plaintiff's business.

- [8] Even the other documents exhibited by the Plaintiff do not establish anything at a "serious issues" level. These include the business cards of the 1st Defendant and 3rd Defendant which only show the 1st Defendant and the 3rd Defendant being employees of the 4th Defendant and Global Century Victory Sdn Bhd respectively and also photographs of business premises without explanation. One potentially favourable piece of evidence for the Plaintiff is a quotation issued by the 3rd Defendant on the 4th Defendant's letterhead but signed off with the Plaintiff's name, after the 3rd Defendant's termination. However, the 3rd Defendant explained this in his affidavit that it was issued in error, and the court accepts that this solitary incident does not warrant an injunctive order.
- [9] None of the Plaintiff's evidence supports the Defendants' conspiracy to injure the Plaintiff. The court needs to be certain that the facts presented are credible, accurate, and solid that demonstrates a real risk of irreparable harm if the injunction is not granted.
- [10] The Plaintiff therefore has failed to demonstrate to the court that its case has more than 50% chance of success (see *American Cyanamid Co v Ethicon Ltd* [1975] AC 396) and in

consequence have failed to show that there are serious issues relating to the Plaintiff's claim of conspiracy by the Defendants. The application is dismissed on this ground alone.

Enclosure 23

- [11] The 1st Defendant to 3rd Defendant's application to set aside the ex parte order is allowed.
- [12] The Plaintiff did not comply with Order 29 rule 1(2A)(c) ROC 2012 when applying for the ex-parte injunction against the Defendants as it failed to give notice to the Defendants about the ex-parte application. The Plaintiff's justification for not notifying the Defendants was that there was a risk of the 1st Defendant to 3rd Defendant destroying or removing evidence. This is unsatisfactory.
- [13] After the dismissal of the 1st Defendant, he did not get a chance to remove personal belongings from the premises despite repeated requests. This is evidence that the Plaintiff's premises are secured without the need for an injunction order taken in stealth to prevent the Plaintiff from entering the premises.
- [14] The Plaintiff also claims that evidence may be destroyed by the 1st Defendant to 3rd Defendant. However, the Plaintiff failed to state specifically what could be removed or destroyed. If a risk was indeed present, an Anton Piller

Order would have been the appropriate form of injunction, rather than a prohibitory injunction.

- [15] Compliance with rule 1(2A)(c) is mandatory, and non-compliance is considered a serious breach, as held in *University of Malaya Medical Centre v Choo Chee Kon & Anor* [2008] 3 MLJ 278. Consequently, the ex-parte order against the 1st to 3rd Defendants is set aside due to this non-compliance.

18 July 2023

-sgd-

ATAN MUSTAFFA YUSSOF AHMAD

Judge

Kuala Lumpur High Court

(Commercial Division)

Counsel:

For the Plaintiff: *Amely Khoo May Yee and Bernard Kiong*
(Messrs Foo Hiap Siong & Co.)

**For the 1st to 3rd
Defendants:** *Ravi Nekoo with Selvi and Sarah Anthony*
(Messrs Nekoo)

**For the 4th
Defendant:** *Lee Wei Yet*
(Messrs Lee & Gan Chambers)