

HONG KONG / JUDGMENT

LIQUID ASSETS LTD v. GIAN ANDREA PESCI AND OTHERS

COURT

Court of First Instance

DECIDED

15 August 2011

CASE / FILE NUMBER

HCA871/2011

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bjbj HCA 871/2011 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE ACTION NO 871 OF 2011

BETWEEN LIQUID ASSETS LIMITED Plaintiff and GIAN ANDREA PESCI 1st Defendant GOOD
ASIA CORPORATION LTD 2nd Defendant CASAMIA INTERNATIONAL LTD 3rd Defendant

Before : Hon Yam J in Chambers Date of Hearing : 15 August 2011 Date of Judgment : 15 August
2011

JUDGMENT

AUTONUMOUT On 27 May 2011, Poon J granted an interim injunction against D1 and D2 expiring on 28 July 2011. This was based on two restraint of trade clauses for 6 month in the employment contract terminated on 28 January 2011. The issue of costs is reserved to this court to decide.

2. The 1st defendant has set up his business under the names of Casamia Wines and Casamia Wines Asia. That took effect from 1 February 2010 and the 1st defendant joined the plaintiff's business on the same day as its Managing Director. The documentation of employment came later on 25 March 2010. The 1st defendant signed the Employment Contract to take effect from 17 February 2010. The Employment Contract contained a solicitation clause and a competition clause .
3. On 18 May 2010 the defendant also signed a formal Business Purchase Agreement and that also took effect by back dating from 1 February 2010. At the same time he also re executed the Employment Contract with the addition of a Schedule

3. This Business Purchase Agreement is in respect of a wholly different subject matter, namely purchase by the plaintiff of the business of the 1st defendant in the name of Casa Mia Wines and Casa Mia Wines Asia.
4. About a year later, on 28 January 2011, he resigned and left the plaintiff's business. Under the Employment Contract the non solicitation clause and the non competition clause will take effect for six months from his departure and that is up to 28 July 2011.
5. In this case the plaintiff alleged that it discovered that the 1st defendant was selling wines to Ritz Carlton in April
2011. However I accept the 1st defendant's contention that Ritz Carlton was not a customer of the plaintiff during the six month period prior to his departure. The plaintiff only supplied three samples to Ritz Carlton and I accept that this is just a move to establish customer relationship. However customer relationship only starts with the actual sale. That only happened later on and therefore Ritz Carlton was not yet a customer of the plaintiff during that 6 month period.
6. In respect of the two other events : The Grissini Restaurant in Grand Hyatt the defendant only held a wine tasting event, he did not sell wines to Grand Hyatt at all. Holiday Inn at the invitation of Holiday Inn the defendant gave a training session to the staff of Holiday Inn, he did not sell wines to Holiday Inn. In fact, on that occasion it was the plaintiff itself who sold wines to Holiday Inn.
7. Thus, in these three incidents the 1st defendant was not soliciting or dealing with any customers during the six month period after his departure.
8. It is common ground that the 1st defendant was trying to participate in the Italian Wine Festival in June this year, which is within the six month period after his departure.
9. The question now before me is whether he would be in breach of the non competition clause and the non solicitation clause of the Employment Contract. The only issue appears to be whether the clauses were unreasonable. Here, I agree with Mr Gary Lam, counsel for the plaintiff, that looking at all the circumstances as a whole and in particular this Employment Contract which goes hand in hand with the Business Purchase Agreement, the restraint of trade clauses are not unreasonable clauses. In fact it is reasonable to impose a six month non competition restriction. Therefore the injunction is necessary in order to restrain the 1st and 2nd defendants from participating in the June 2011 Italian Wine Festival.
10. For that reason I consider that the plaintiff is entitled to the injunction and therefore the plaintiff will have the costs of the injunction proceedings. (D Yam) Judge of the Court of First Instance High Court Mr Gary Lam Chin Ching, instructed by Messrs Lo, Wong & Tsui, for the Plaintiff Mr Edward Alder, instructed by Messrs Laracy & Co., for the 1st to 3rd Defendants PAGE - PAGE - Appendix I A B C D E F G H I J K L M 1udk h#1n hx i hx i hwOn ~pe~]TK h%35 h)_G gdGU hRpQ hjNS hK11 hK11 hK11 hSZb hT?m &`#\$ h9'< 1udk gd9'< "@AB [Content_Types].xml Iw}, \$yi} _rels/.rels theme/theme/themeManager.xml K Y, sQ}#

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