

CASE NOTE – BREACH OF CONFIDENCE

I-Admin (Singapore) Pte Ltd v Hong Ying Ting and others [2020] SGCA 32

The Singapore Court of Appeal in this landmark decision modified the traditional three-element approach for establishing a successful breach of confidence action. An action for breach of confidence is now presumed once a plaintiff establishes that the information in question has the necessary quality of confidence about it and has been imparted in circumstances importing an obligation of confidence. The burden then falls on the defendant to prove that it did not deal with the confidential information in a manner that adversely affected its conscience.

Background

This appeal concerns an action for copyright infringement and breach of confidence by I-Admin (Singapore) Pte Ltd (the “**Appellant**”), which is in the business of outsourcing services and systems software, against its former employees, Hong Ying Ting and Liu Jia Wei, and related parties, Nice Payroll Pte Ltd and Li Yong (collectively, the “**Respondents**”). The court below found in favour of the Respondents and held that there was neither copyright infringement nor breach of confidence.

Findings

On appeal, the Court of Appeal dismissed the Appellant’s claim for copyright infringement but allowed the Appellant’s claim for breach of confidence.

The traditional approach for establishing a claim in breach of confidence requires a plaintiff to prove three elements as per *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41: **(i)** the information must possess the quality of confidentiality; **(ii)** the information must have been imparted in circumstances importing an obligation of confidence; and **(iii)** there must have been some unauthorised use of that information to the detriment of the party from whom the information originated (collectively, the “**Traditional Approach**”).

The Court of Appeal found that the Traditional Approach explicitly protected a plaintiff’s interest to prevent the wrongful gain or profit from its confidential information but not necessarily a plaintiff’s interest to avoid wrongful loss, which was the loss occasioned to a plaintiff whose information had lost its confidential character or had that character threatened by the unconscionable acts of a defendant.

To allow greater focus to be placed on the wrongful loss interest, the Court of Appeal modified the Traditional Approach (hereinafter, the “**Modified Approach**”) as follows: an action for breach of confidence is *presumed* when **(i)** the information possesses the necessary quality of confidentiality; and **(ii)** the information has been imparted in circumstances importing an obligation of confidence. There is no longer a need for a plaintiff to establish unauthorised use of the confidential information to its detriment. The presumption would be displaced on proof by the defendant that its conscience was unaffected, i.e. the defendant did not deal with the plaintiff’s confidential information in a manner that adversely affected the defendant’s conscience.

Examples of how a defendant may displace the presumption include the defendant coming across the information by accident, being unaware of its confidential nature or believing there to be a strong public interest in disclosing it. This shift in burden of proof is also intended by the Court of Appeal to address the evidential difficulties often faced by owners of confidential information in bringing a claim in confidence as defendants are often better placed to account for their suspected wrongdoing.

Applying the Modified Approach, the Court of Appeal found that it was undisputed that the Appellant's materials were confidential and the Respondents were under an obligation to preserve their confidentiality. The Respondents *prima facie* breached this obligation by acquiring, circulating and referencing the Appellant's materials without permission. The Respondents also failed to displace the presumption that their conscience was negatively affected. Accordingly, the Court of Appeal held that the Respondents had acted in breach of confidence.

Comment

The removal of the requirement for a plaintiff to establish unauthorised use of confidential information to its detriment from the Traditional Approach is indicative of the Court of Appeal's recognition that accessing, acquiring or threatening to abuse confidential information may be a breach of confidence even where a wrongdoer has yet to actually profit from misuse.

This is supported by the Court of Appeal's deliberate incorporation of the language of "conscience" into the Modified Approach so as to import a broader, equity-based rationalisation for the protection of confidentiality and to protect plaintiffs from *any* kind of improper threat to the confidentiality of their information.

Such developments in the law of confidence, including the shift in burden of proof mentioned above, to afford greater protection to the confidentiality of information are in line with recent developments in England and Australia and are also appreciated in light of modern developments which allow vast amounts of confidential information to be accessed, copied and disseminated instantaneously and often surreptitiously.

This case note is intended to provide general information only and should not be relied upon as an exhaustive or comprehensive statement of law. Should you have any specific questions, please speak with your usual contact at Amica Law LLC, or you may direct your query to mail@amicalaw.com.

*We wish to express our thanks to **Nicholas Tong** for his contributions to this case note.*

© 2020 Amica Law LLC. All rights reserved