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**Insights**

# HONG KONG HIGH COURT GRANTS INJUNCTION TO ENFORCE RESTRICTIVE COVENANTS

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SUMMARY

In two separate decisions in April 2025[1], the Hong Kong High Court first refused, but then allowed, an IT company's application for an interlocutory injunction to enforce post-termination restrictive covenants against its former employee and his newly set-up rival company.


## BACKGROUND

The plaintiff ("P") carried on the business of offering IT support for event and exhibition organizers.

The second defendant ("D2") was employed as P's deputy general manager (the second-most senior position in P) from 2014 to 7 June 2024.

The third defendant ("D3") was a company set up by D2 on 1 August 2024, and it carried on a similar line of business as P.

According to P, one of P's major clients was IMA. IMA had engaged P for multiple shows/exhibitions, including the Hong Kong Jewellery Fairs in March, June and September every year before D3 was set up.

There was no dispute that IMA had engaged D3 to handle the March Jewellery Fair 2025 for IMA. According to D2, in addition, IMA also already had chosen D3 as the service provider for the June Jewellery Fair 2025 – this was disputed by P.

As explained below, whether IMA contractually already had engaged D3 to handle June Jewellery Fair 2025 was a crucial factor for the court in deciding whether to grant the interlocutory injunction sought:

- If IMA already had engaged D3, the balance lay in favour of protecting D3's right to perform its existing contractual duties in respect of the June Jewellery Fair 2025 – the injunction should

not be granted.

- On the other hand, if there was not yet any contractual relationship between IMA and D3 in respect of the June Jewellery Fair 2025, the balance lay in favour of protecting P's (potential[2]) right to enforce the restrictive covenants – the injunction should be granted.

It was not disputed between the parties that D2's employment contract with P included a non-solicitation of business clause and a non-compete clause[3]. The effective duration of both of these restrictive covenants was 12 months from the end of D2's employment, i.e. until 7 June 2025.

## FIRST DECISION

P took out a summons seeking an interim-interim injunction, which included an application to restrain D2 from working on the June Jewellery Fair 2025.

At the hearing on 11 April 2025[4], the court refused P's application. The court pointed out that IMA was free to choose its service provider. The court also took the view that while any loss that P may suffer can be compensated by damages, allowing P's application will cause irreparable damage to D2/D3's professional reputation, and even cause D2 and D3 to be liable for breach of agreement. Crucially, in reaching its conclusion, the court relied on its finding that the "*evidence at this stage suggests that D3 has in fact been chosen to handle the June Jewellery Fair 2025*".

## SECOND DECISION

Two weeks after the first decision, at the hearing on 25 April 2025, the court[5] arrived at a different conclusion.

The court in the second decision first noted that D2 had failed to produce documents showing that IMA had engaged D2/D3 to handle the June Jewellery Fair 2025, despite repeated enquiries from P. This led the court to find that IMA had not yet entered into a binding contractual relationship with D2/D3. The court stated that it saw the force of P's submissions that D2 misled the court that handled the first decision into believing that IMA already had chosen D2 as its service provider when this was not the case.

As stated above, the court's finding that there was not yet any contractual relationship between IMA and D3 in respect of the June Jewellery Fair 2025 swayed the court in favour of granting the injunction sought by P.

With this important finding in mind, the court emphasised that D2 voluntarily had accepted and bound himself to the restrictive covenants in his employment contract, and that justice required that the parties be held to their contractual bargain as far as possible.

In deciding to grant an interlocutory injunction in favour of P, the court also took other factors into account, namely (a) the restrictive covenants would soon expire in June 2025, (b) IMA was P's important client, (c) P had been doing business with IMA for years whereas D3 was a new set-up, and (d) it could be difficult to quantify P's loss and damages.

Responding to D2's assertion that he was approached by IMA (and therefore D2 did not poach IMA), the court adopted the reasoning in an earlier English judgment[6], which held that "*[t]here 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.*"

The court's decision to grant an interlocutory injunction was made upon P's undertaking that it will compensate D2 and D3 if it eventually transpires that the court should not have granted the injunction.

## TAKEAWAY POINTS

This case shows that Hong Kong courts are willing to grant interlocutory injunctions to give effect to post-termination restrictive covenants against former employees under the appropriate circumstances.

An important legal point decided in this case is that the fact that the customer approaches the ex-employee does not necessarily mean that there was no breach of a non-solicitation clause. In other words, where the customer initiates contact with the ex-employee, the ex-employee can still be considered as "soliciting" a customer depending on the context (e.g. if the ex-employee makes a presentation to pitch their services to the customer after being approached by the customer).

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[1] *Info Salons Technology Services (HK) Ltd v Feng Wenguo and others*, case ref: [2025] HKCFI 1663 and [2025] HKCFI 1769

[2] Note that the two cases involved pre-trial injunction applications. The enforceability of the restrictive covenants in question will be argued in at the trial.

[3] There also was a clause for non-enticing away of *inter alia* P's employees and officers, but the discussion of this clause is omitted from this article for simplicity.

[4] This was the return date hearing on Summons Friday morning. The court pointed out that Summons Fridays are not normally suited for substantive hearings of contested applications, but the court was prepared to hear this application, albeit "*with some reluctance*".

[5] Before a different judge from the first decision.

[6] *Croesus Financial Services Ltd v Bradshaw & Anor* [2013] EWHC 3685 (QB) at para 102.

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