APPROVED **THE HIGH COURT**

[2024] IEHC 231

Record No.: 2024/1407P

BETWEEN:-

CREGANNA LIMITED

Plaintiff

-AND -

NIALL CULLEN

And

LAKE REGION MEDICAL LIMITED

Defendants

Judgment of Mr. Justice Oisín Quinn delivered on 23 April 2024

Introduction

1. The Plaintiff ('Creganna') relies on what it contends is a valid 'non-compete' clause in the contract of employment it has with the First Named Defendant ('Mr. Cullen') to seek an interlocutory injunction to restrain Mr. Cullen from taking up a job that has been offered to him with the Second Named Defendant ('Lake Region Medical'). Mr. Cullen and Lake Region Medical contend that the 'non-compete' clause is clearly invalid and should be declared so at this juncture. Mr. Cullen also claims that Creganna have been guilty of delay in bringing on the application for interlocutory relief. Lake Region Medical claim that no actual interlocutory orders are sought against it. Finally, both Defendants claim the balance of convenience is in favour of refusing the relief not least because they claim that the likelihood is that the offer of employment will not be kept open if interlocutory relief is granted.

Background

2. Creganna is an Irish company based in Galway employing approximately 1,300 people and it operates within the TE Medical business unit of a global business known as TE Connectivity which in turn is owned by a Swiss company called Tyco Electronics Group S.A. TE Connectivity is apparently ranked as amongst the top ten global companies in the medical device outsourcing industry. The TE Medical business unit specialises in the design and manufacture of what are described as minimally invasive delivery and access devices for a range of medical therapies. TE Connectivity in turn employs approximately 90,000 people worldwide. TE medical devices are often incorporated into other medical devices that are sold

to hospitals and healthcare providers by well-known global brand names such as Medtronic, Boston Scientific, Abbott, Philips, Siemens and others.

3. Lake Region Medical is also an Irish company which also has a facility in Galway. Lake Region Medical is part of a global business known as the Integar group of companies, and according to its deponent, it is involved in an $800m per year business 'engaged in global innovative medical device manufacturing and design'. Integar and TE Connectivity are, certainly in some substantial respects, clearly competitors. They seek to design and make highly sophisticated parts for complex medical devices that are then incorporated into final products by substantial well known global businesses who sell these products under their own brand names to end users, such as hospitals. In many specific factual respects however, there was an amount of disagreement as between the various deponents as to the precise ambit and contours of the nature of the business and competition as between Integar and TE Connectivity.

4. Mr. Cullen has an impressive professional track record and impressive qualifications. The evidence indicates that he was clearly a highly regarded employee of Creganna who was promoted many times to positions of increasing seniority and leadership. He commenced employment with Creganna in November 2015 pursuant to a written contract of employment signed by him on 22 October 2015. He was initially employed as Creganna's European Sales Manager. His contract of employment contained a clause headed 'Non-Compete' (the terms of which are set out in the Schedule to this judgment). It also contained a clause entitled 'Confidentiality' and there was an additional document that Creganna claim was executed by Mr. Cullen entitled 'Staff Member Confidentiality Agreement'. There may be a factual dispute about whether Mr. Cullen signed this second document. In January 2019 Mr. Cullen was promoted to the position of 'Global Account Manager'. Creganna claims that Mr. Cullen's role changed in geographic scope at this point to one with global reach. In February 2020 his role changed again to one as 'Product Manager' with responsibility for a particular product line and Creganna claims that Mr. Cullen continued to maintain relationships with key decision makers in a number of the global companies that are its customers. Creganna also says that this role meant that Mr. Cullen became aware of what it claims is highly sensitive commercial information such as its pricing, manufacturing, cost and profit level strategies.

5. Creganna says that Mr. Cullen's performance was highly regarded and that in November 2021 he was promoted again, this time to the position of Senior Manager in Product Management. Then, he was further promoted in February 2022 to what is described as 'Director Level' for Product Management. The Product Management function involves, according to Creganna, providing leadership and seeking to connect engineering and operations.

6. By this time, Mr Cullen's salary had increased significantly, and he also had an entitlement to a substantial bonus, and he benefited from access to the TE Connectivity Long Term Share Incentive scheme. In his most recent position , Creganna says that Mr. Cullen had ultimate responsibility for profit and loss for the broader TE Medical Metals portfolio which is described as having a 'multi-annual revenue' running into hundreds of millions of Euros. This role included, according to Creganna, Mr. Cullen being the ultimate key decision maker on all new product designs within the 'Metals' business as they progress through the development pathway. In addition, it is claimed that from September 2023 Mr. Cullen was tasked with leading a cross functional task force working with a major customer which involved working with its Vice President of Global Supply Chain and its Director of Global Sourcing. This role, it is claimed gave Mr. Cullen access to valuable and commercially sensitive data relating to that customer's growth strategy and how it would be supported by Creganna. In addition, Creganna claim that Mr. Cullen's role gave him access to TE Medical's pricing strategy and that, in

relation to one customer in particular, he had access to that customer's objectives and priorities, and it is said that Integar directly competes for that customer's business.

7. Overall, the Affidavit evidence of Creganna sets out what it claims is a significant amount of highly sensitive commercial information of the Plaintiff that is claimed to be in the knowledge of Mr. Cullen concerning, amongst other things, new technologies, costs and pricing strategies, customer programmes the subject of active bidding, capital investment plans and TE medical's strategies for various customers described as "*where we're going to play and how we're going to win*".

8. Mr. Cullen takes issue with several aspects of what is said about the precise nature of his roles and the information which he has acquired; although he does not dispute the generality of the assertion that he has acquired and is aware of commercially sensitive and confidential information of the Plaintiff.

9. Nonetheless, there is clearly a substantial factual dispute as to the precise ambit and nature of the various roles that Mr. Cullen has held in Creganna particularly in the context of precisely what information he has come into possession of and how commercially critical it is.

10. Equally, the affidavits disclose a factual dispute as to the context, nature and amount of contact Mr. Cullen has had with customers of the Plaintiff and secondly, how relevant that information might be to the decisions of customers to move their business from Creganna or, in the case of new business, to give their business to a rival.

11. There is also a significant dispute as to whether or not each promotion involved Mr. Cullen entering into a new contract of employment or a formal variation of his existing contract; each of which, the Plaintiff claims, involved the express incorporation of the aforementioned 'Non-Compete', 'Confidentiality' and 'Staff Member Confidentiality Agreement' terms being agreed again in, what the Plaintiff claims, was a new context. In that regard, the Plaintiff drew attention to the letter of 14 April 2022 concerning Mr. Cullen's appointment to the most recent position held by him of Director Product Management. This letter states, "Contract Start Date: 1st May 2022" and also contains the phrase "All other terms and conditions of your employment will remain unchanged". According to the Plaintiff's submissions this can be understood as reflecting a new contract of employment which contains the 'Non-Compete' clause. Whether this argument is correct or not has implications, the Plaintiff submits, for how the Court should approach the further question of whether a restraint of trade clause, such as the 'Non-Compete' clause, is valid or not.

12. On the other hand, on behalf of Mr. Cullen, for example, it is resolutely contended that these provisions even if they were agreed to (and there is a dispute about the terms of the 'Staff Member Confidentiality Agreement') were only agreed to in October 2015 in the context of the European Sales Manager role and therefore they have to be understood in that precise context only.

13. The foregoing is to leave aside for the moment, the separate dispute as to what the wording of those terms actually means.

14. The immediate background to these proceedings arises from an offer of employment made to Mr. Cullen by initially Integar it seems ('Legal Entity Name: Brivant Limited') on 12 January 2024. The letter of offer is dated the 12 January 2024 on Integar headed paper. It has subsequently been confirmed that Lake Region Medical "is the relevant entity for the purpose

of this matter". Mr. Cullen signed this letter apparently on 27 January 2024 and handed in his notice to Creganna on either the 29 or 30 Janaury 2024 giving two months notice. Creganna initially accepted this but now say that three months notice is required and accordingly, from their point of view, Mr. Cullen will remain as their employee until the 29 April 2024. The initial proposed start date was 1 April 2024 and from the Defendants' perspective Mr. Cullen will start immediately after 29 April, absent a Court Order.

15. Creganna claim that after handing in his resignation, Mr. Cullen was initially somewhat 'coy' as to his plans. Following an exchange of letters between Creganna's solicitors and Mr. Cullen's solicitors in February, Mr. Cullen confirmed he was proposing to go to Integar, and he was placed on garden leave on 23 February 2024.

16. According to the Affidavit evidence of Lake Region Medical there was a 'recruitment campaign' which led to the offer of employment to Mr. Cullen of the position of Senior Director, Product Marketing and it is said that this role is in the Cardio & Vascular business unit of Lake Region Medical. Mr. Cullen confirmed through his solicitors that he had showed the 'Non-Compete' clause to his prospective employer and he identified the 'General Counsel of Integar Holdings' as the person to whom the relevant contractual provisions were shown to; sub-clause (e) of the 'Non-Compete' on its face requires the employee to show the clause to a prospective new employer where its business is "in competition with the Business within the Restricted Area".

17. There is no suggestion, as sometimes may arise in these scenarios, that Mr. Cullen has brought or intends to bring any confidential documents with him or that he intends to solicit any customers or co-employees to move across to his new employer. Equally, both Defendants assert that there is no intention on the part of either of them to breach the confidentiality terms in Mr. Cullen's contract.

18. Rather, the concern of Creganna is that by taking up this position with Lake Region Medical, Mr. Cullen will, the Plaintiff claims, be in breach of the 'Non-Compete' clause which *inter alia* precludes him for a period of 12 months from the termination of his employment from being employed by a company in competition with the 'Business within the Restricted Area' (see sub-clause (b) of the 'Non-Compete' clause). The position of the Defendants is that the 'Non-Compete' clause is void and unenforceable as being, inter alia, unreasonable and too broad to be justifiable. Creganna's position is that the clause is valid because it is reasonably required to protect its legitimate interest in maintaining the confidentiality of its highly sensitive commercial information which it says will invariably be compromised if an employee with the role of Mr. Cullen takes up a position such as the one offered with a competitor such as Lake Region Medical. Creganna says that without such a clause it would in practise be impossible to 'police' the use of its confidential information.

The Proceedings

19. The solicitors for Creganna wrote to Mr. Cullen on 19 February 2024. The 'Non-Compete' clause was expressly referred to and various requirements were made for confirmations and information about the new job. The solicitors for Mr. Cullen replied very promptly on Friday 23 February 2024. This letter is impressively detailed and thorough given how quickly the response came. The information required is provided and importantly there is a detailed and, on its face, considered assertion that as far as Mr. Cullen is concerned, the 'Non-Compete' clause is void and unenforceable. Legal reasoning is set out. The position should be analysed from the perspective of the parties in October 2015 the letter said. "Any justification for the

non-compete clause, as a matter of law, must be referable to the situation that pertained in October 2015 not at the end of [Mr. Cullen's] employment as you appear to suggest", they asserted. Counsel for Mr. Cullen submitted, not unreasonably, that Mr. Cullen's position about the 'Non-Compete' clause was resolutely clear from this point.

20. From what the Court has been told, there then followed some without prejudice exchanges. In any event, on Thursday 14 March 2024 (just under three weeks later), the Plaintiff's solicitors indicated that they would be taking High Court proceedings and they sought the identity of the "Integar entity". Initially this was indicated to be Brivant Limited but then on Friday 15 March 2024 solicitors for the Second Named Defendant confirmed that the identity of the new employer was Lake Region Medical.

21. A plenary summons issued and an application for short service was then made on Tuesday 19 March 2024 (Monday being a public holiday). The motion for interlocutory relief was given a first return date of Friday 22 March 2024, the last day of the law term. On that date various directions were made by the Court for the exchange of Affidavits and the hearing of the Interlocutory application was listed for Wednesday 17 April 2024, being the second week of the following law term. The Affidavits were exchanged and detailed written submissions were filed, and the matter then proceeded and was heard by the Court over two days on 17 and 18 April 2024. The Court is told, and has no reason to doubt, that there was no reality on the 22 March to the case been given a plenary hearing during the month of April. Equally, in view of the position adopted by the Plaintiff that three months' notice is required, Mr. Cullen remains an employee on garden leave and in receipt of salary at this time.

22. At the hearing of the interlocutory application the Court was in a position to indicate to the parties that it could set a date for the trial of the plenary hearing for Tuesday 16 July 2024. In addition, Creganna indicated that it would continue to pay Mr. Cullen his basic salary pending the trial of the action if an interlocutory injunction was granted.

Summary of the Submissions

23. The Plaintiff says it has established a fair case that if Mr. Cullen takes up the job on offer that it will amount to a breach of the 'Non-Compete' clause. In terms of the least risk of injustice, the Plaintiff says that the Court should seek to regulate matters justly pending the trial and that this approach favours granting the relief. The Plaintiff submits that damages will not be an adequate remedy for it, as it is unavoidable that its highly sensitive confidential commercial information will be used to inform the manner in which Mr. Cullen performs his work for Lake Region Medical in a manner that cannot be realistically gauged or assessed for the purposes of ever providing a remedy in damages. In addition it submits that the clause is necessary to protect its customer connections. On the other hand, it submits that by agreeing to continue to pay Mr. Cullen his base salary pending the full trial that this is the normal way the Courts typically addresses the balance of convenience for an employee who might be out of work pending a plenary trial.

24. On behalf of Mr. Cullen it was submitted that the relief should be refused for principally three reasons. Firstly, the Plaintiff has been guilty of delay in two overlapping respects; firstly, the delay between the 23 February 2024 and 19 March 2024 and secondly, by virtue of not having delivered a Statement of Claim. Counsel submitted that, had there been no delay, the case could have been heard by now. Secondly, it is said that the 'Non-Compete' clause is clearly void and that should be decided by the Court now on a definitive basis. That will bring the case to an end without the need for plenary hearing, it is said. Finally, it is said that the balance of convenience favours refusing the relief on the grounds, principally, that the Affidavit evidence

of Lake Region Medical should be interpretated as meaning that if an interlocutory injunction is granted that the job offer will be withdrawn. That will lead to the loss of a potentially very rewarding new job with promotional opportunities the loss of which cannot be adequately compensated by an award of damages.

25. In terms of the validity of the 'Non-Compete' clause it is submitted that it falls to be judged based on the factual situation in October 2015 when Mr. Cullen was taking the narrower role of European Sales Manager. In any event it is said, in particular, that the geographic scope is too broad and secondly that the scope in particular of sub-clause (b) is too broad as it would prohibit Mr. Cullen taking up any type of job with a competitor.

26. Lake Region Medical largely agrees with these submissions but says in particular that no actual interlocutory relief is sought against it and there is no clarity at all as to what wrongdoing Lake Region Medical could be guilty of.

Decision

Delay

27. Firstly, I am not satisfied that there has been any substantial delay to justify refusing relief on that ground. Indeed, the progress of this matter has been overall reasonably prompt. The fact that the interlocutory hearing has been heard within two months of the letter of 23 February 2024 (when Mr. Cullen's position was made clear) is reasonably expeditious, particularly given that the Easter vacation arose during that period and given that each side has delivered two rounds of Affidavits. The brief interregnum (from 23 February to 14 March) when apparently some without prejudice discussions took place has not actually caused any sufficient prejudice to Mr. Cullen's position. The Plaintiff draws attention to the case of *Boydell v NZP Ltd* [2023] EWCA Civ 373 where delay was held not to be a bar to relief in circumstances where there was a short period during which the parties were in negotiations and the defendant had not yet started work for the new employer. That is analogous to the scenario here.

28. Overall, however it does not appear likely in the circumstances here that the plenary hearing of this High Court action could have been heard within two months of the commencement of the proceedings. The dicta of Clarke J. (as he then was) in *Dowling v Min for Finance* [2013] 4 IR 576 from para.s 39-44 deal with a different scenario. Here, there has been no significant delay that has created any particular difficulty for the Court hearing the full interlocutory hearing within one month of the proceedings having commenced and within three months of the employee having served notice of resignation.

Should the validity of the Non-Compete clause be determined at the Interlocutory Stage?

29. Next, I am satisfied that the submissions of both Defendants that the appropriate way to proceed is to make a definitive and final decision on the validity of the 'Non-Compete' clause at this juncture is incorrect. Of necessity, interlocutory hearings are not appropriate hearings in which a Court should be urged to make any final decision. It is obvious that the validity of this clause involves a consideration of disputed factual and legal issues. There is a long-established jurisprudence that sets down clear principles as to how the Courts will approach applications for interlocutory relief. As Lord Diplock states in *American Cyanamid v Ethicon* [1975] AC 396 at 407:-

> *"It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial."*

30. The reliance on the decision of Dunne J. in *Net Affinity v Conaghan* [2012] 3 IR 67 is misplaced. While it is correct that Dunne J. in the context of an interlocutory hearing states "I have come to the conclusion that the non-compete clause is void and unenforceable" that statement needs to be understood in the context where the Plaintiff in that case, who was the employer seeking to enforce the non-compete clause, appears to have been willing to allow the hearing proceed to determine that issue. This problem of a misplaced reliance on *Net Affinity* is identified in *Hernandez v Vodafone Ireland Ltd* [2013] 24 ELR 194. There Laffoy J. carefully explains that this is simply not a permissible way in which to proceed on an interlocutory basis, stating at page 203:-

> *"[I]t is clear that the former employer [Net Affinity], which was the Plaintiff in that case, engaged in, and, perhaps initiated the discussion on the interlocutory application as to whether the prohibition on the first defendant on working for a competitor was void as being an unlawful restraint of trade*."

31. The decision of Clarke J. in the High Court in *Murgitroyd v Purdy* [2005] 3 IR 12 is not supportive of the Defendants in this regard either. As Laffoy J. explains in *Hernandez* at page 200:

> "*As is clear from the judgment [of Clarke J. in Murgitroyd], there was at the interlocutory stage, a factual dispute as to whether the defendant employee had continued to be bound by the non-compete clause. Moreover, it had been argued on behalf of the defendant that, even if the non-compete clause as a matter of agreement between the parties, was still in existence, it should not be enforced as being an unreasonable restraint of trade. Clarke J. stated that those issues could not be resolved at the interlocutory stage, but he was satisfied that they raised a fair issue to be tried.*"

32. Reliance was also placed on the decision of Costello J. (as he then was) in *John Orr Ltd v John Orr* [1987] ILRM 702. However, this demonstrates the opposite of what was urged. In that case Costello J. adjourned the hearing of the interlocutory application and directed a trial of preliminary hearing in relation to the validity of the relevant clause:-

> *"Having instituted these proceedings the plaintiffs on the 12th May last applied for an interlocutory injunction to restrain breaches of these clauses. It quickly became clear that the main issue between the parties was whether the restraint clauses were enforceable and I decided to try this point as a preliminary issue and fixed the 19th June for hearing oral evidence and submission on it, and adjourned the motion until the enforceability issue had been determined."*

33. Procedurally, a definitive finding on an issue can of course be reached following the trial of that issue as a preliminary issue. That finding can then inform an interlocutory hearing, as it did in *John Orr.* In that case oral evidence was given. That procedure allows factual disputes to be resolved.

34. The second named Defendant drew attention to the dicta of O'Donnell J. (as he then was) at para 62 of *Merck Sharp & Dohme v Clonmel Healthcare* [2020] 2 IR 1 where he states:-

It is recognised in the decision in American Cyanamid v. Ethicon Ltd. [1975] A.C. 396 that if the question of adequacy of damages is evenly balanced, it may not be inappropriate to consider the relative strengths and merits of each party's case as it may appear at the interlocutory stage. Courts are correctly reluctant to express views on cases which are to come to trial. However, it would be absurd if this rule of abstention were to result in a court conducting an agonised and necessarily imperfect assessment of a number of variable factors in a field with which it has little familiarity and where the evidence is indirect, written, and untested, all the while averting its attention from the area (perhaps of pure law) in which it can justifiably claim expertise. For this reason, I consider that Hogan J., taking the view he did of the balance of convenience, was quite correct to form some tentative view of the merits.

35. However, this passage does no more than give depth to the contours of applying the established jurisprudence on dealing with interlocutory injunctions and indeed, closely read, it does not give support to the idea that the court should form a definitive view on a matter such as the validity of a restraint clause in an employment contract at an interlocutory stage. Forming a 'tentative view of the merits' when the 'merits' substantially involve questions of pure law, as a precursor to moving on to consider the balance of convenience is clearly not the same as deciding on the validity of the clause so that, as the Defendants would have it, there would be no need for a plenary trial.

36. This approach would also violate the principle that the fixed pre-condition to considering an application for interlocutory relief is whether the applicant for same has made out a serious question to be tried. As Murray J. states in *Ryanair DAC v Skyscanner Ltd* [2022] IECA 64, at para. 31:

> *"There is one – and only one – fixed precondition to the grant of an interlocutory injunctive order, this arising from the obvious and uncontroversial requirement that the plaintiff establish (as it is variously described) a 'fair question' a 'bona fide issue' or a 'serious issue to be tried'. Each of these is akin to the threshold that applies where a party seeks to dismiss a claim against it pursuant to the inherent jurisdiction of the court ..."*

37. The Plaintiff drew attention to the consistent approach to this issue in the cases from England & Wales. For example, in *Planon Ltd v Gilligan* [2022] IRLR 684, Nugee L.J. in the Court of Appeal of England and Wales observes at paragraph 102 that:

> *"...an application for an interlocutory injunction is not the appropriate occasion to expect the Court to give any definitive answer to the question whether a covenant is enforceable or not....At the first stage of the analysis the question is whether there is a serious issue to be tried. This is not a demanding test, and it really only serves to exclude the case where the claim is frivolous or vexatious, or otherwise demonstrably bad."*

38. In Goulding, *Employee Competition: Covenants, Confidentiality and Garden Leave* (3rd Edition, 2016) at page 468 it is stated, in the context of case law in England and Wales, that:

"It is rare in a restraint of trade case for a Court to conclude at the (interlocutory) stage that there is no serious issue to be tried. Generally, such applications are decided on the balance of convenience."

39. Accordingly, I am satisfied that the Defendants submissions in this regard are incorrect and that I should consider whether or not the Plaintiff has raised a serious question to be tried that if Mr. Cullen takes up the job on offer from Lake Region Medical that this will be an actionable breach of his contract with Creganna.

Serious question to be tried

40. Turning now to whether the Plaintiff has established a serious question to be tried. The relevant facts are very much in dispute. The basis as to whether the relevant facts are to be found by looking at the context in 2015 or in 2022 is not clear. That issue is not straight forward and will require consideration of what Simons J. states about successive contracts in *Power v HSE* [2021] IEHC 346. As Simons J. observes at para 47:

"….An individual may be employed by the same organisation in a series of different posts, each subject to its own terms and conditions as specified in a consecutive series of contracts of employment. Such an individual will nevertheless have had continuous service with the employer throughout the overall period, albeit under a number of contracts."

41. The Plaintiff refers to the decision in *Egon Zehnder Ltd v Tillman* [2017] IRLR 828. This case demonstrates that, when assessing the position as at the start of the employment relationship, it is appropriate to consider what the parties are likely to have envisaged looking forward. In *Tillman* Mann J states at para 27:

"That is not to say that one only looks at the actual position as at the date the employment started. If one looked at that position alone few covenants would be valid because in most cases the employee will not have engaged fully enough with the business to justify it. One has to go further and look at what was in the contemplation of both parties. That contemplation can include promotion. Diplock LJ made plain the appropriateness of looking at the contemplated future, and the question of promotion was dealt with in Allan Janes LLP v Johal [2006] ICR 742."

42. This case was then considered by the UK Supreme Court in *Harcus Sinclair LLP v Your Lawyers Ltd* [2021] 3 W.L.R. 598 where the UK Supreme Court analysed two employment cases concerned with non-compete clauses. It is clear from *Harcus Sinclair* that, where the parties contemplated the possibility of promotion, that can inform the analysis of whether the original contract entered into is enforceable. In the joint judgment of Lord Briggs, Lord Hamblen and Lord Burrows it is stated at para 70 as follows:-

"70. In determining the legitimate interests of the promisee one can take into account what the parties (objectively) intended or contemplated, consequent on the contract, at the time the contract was made as well as the contract terms. In addition to relying on the obiter dicta of Diplock LJ, and on the two first instance decisions referred to in paras 67–68 above (although no previous case has been concerned

with the precise issue in this case and the facts of those two cases were plainly very different from those in this case), we rely on the following five general reasons.

(i) Provided the enquiry is confined to the parties' intentions, or what they contemplated, at the time the contract was made, it is hard to accept that there is any good reason of principle or policy why a party should be prevented from seeking to protect its interests by a clause which anticipates what both parties intended, or contemplated, would occur even if they have not reached any binding agreement to bring about that occurrence.

(ii) The very adoption of the phrase "legitimate interests" rather than "legally protected interests" suggests that one is not just concerned with what flows from the parties' legal rights.

(iii) In other areas of the law of contract where the phrase "legitimate interest" is used, the relevant legitimate interest can extend beyond the contractual rights of the parties. For example, the modern test for whether a term is unenforceable, because it is a penalty, is whether or not the stipulated sum, judged at the time of the making of the contract, is out of all proportion to a legitimate interest of the claimant in the performance of the contract: Cavendish Square Holdings BV v Makdessi and ParkingEye Ltd v Beavis [2016] AC 1172 . On the facts of the ParkingEye case, it was accepted, at para 99, that in considering ParkingEye's legitimate interest in performance it was relevant to consider the interests of third parties (who had no rights under the contract) in the sense that encouraging the prompt turnover of car parking space was for the benefit of the owners of the operator of the retail park and members of the public. See generally Chitty on Contracts , 33rd ed (2018), para 26-218.

(iv) Although not a direct parallel, it may be regarded as relevant that, in interpreting contracts, the law has shifted from any historically narrow focus on what lies within the "four corners of the contract" to taking into account the factual matrix. That is, the accepted modern approach to interpreting a term in a contract is to ask what the term (viewed in the light of the whole contract) would mean to a reasonable person having all the relevant background knowledge reasonably available to the parties at the time the contract was made: see Lord Hoffmann in Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896, 912 , and Bank of Credit and Commerce International SA v Ali [2002] 1 AC 251, para 39 .

(v) We have seen that the preferable analysis of the contract in this case was that it was a unilateral contract. It may be thought particularly difficult to confine the analysis of a legitimate interest to the contractual obligations of the parties where only one party (Harcus Sinclair) was promising to do anything. Put another way, the Court of Appeal regarded it as important that Your Lawyers had no legal obligation to collaborate but, if the unilateral contract analysis is correct, Your Lawyers had no legal obligation to do anything."

43. The reference at para 70(iv) to the decision in *Investors Compensation Scheme ltd. V West Bromwich Building Society* is instructive as those principles have been adopted here by the Supreme Court; see in relation to the interpretation of agreements the judgments in *Analog Devices B.V. v Zurich Insurance Company* [2005] 1 IR 274 and *Law Society v MIBI* [2017]

IESC 31. These cases identify a number of interpretative principles, the most relevant of which are as follows: -

(i) the overarching principle to be applied in interpretating a legal document is to seek to ascertain the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation they were in at the time of the making of the agreement;
(ii) the 'background knowledge', or as it is sometimes referred to, the 'matrix of fact', includes anything which would have affected the way in which the language would have been understood by a reasonable person;
(iii) evidence of previous negotiations and declarations of subjective intent are not admissible;
(iv) the meaning of words in the document is what the parties using the words against the relevant background would reasonably have understood those words to mean;
(v) the words should be given a single meaning which is the meaning both parties are taken to have agreed upon and that meaning is to be determined from a consideration of the agreement as a whole;
(vi) semantic and syntactical analysis of words should yield to common sense meanings if there is a conflict between the two.

44. In this case there is a clear dispute as to what the relevant factual background is when the relevant clause was agreed. As explained earlier, there is a significant dispute as to even when one should look to ascertain the relevant factual background.

45. The factual context asserted on behalf of the Plaintiff is that at the relevant time the most recent promotion occurred, the First Named Defendant was moving into a role with a global aspect in that the potential customers for the Plaintiff's products operate on a global scale and seek highly sophisticated parts for medical devices that are then sold under the brand name of these customers to hospitals and healthcare providers. It is said by the Plaintiff that the First Named Defendant is essentially moving to a not dissimilar role with the Second Named Defendant who also manufactures highly sophisticated parts for the very same global companies. Even on the First Named Defendant's own affidavit he accepted that there was overlap between the work he did for the Plaintiff and the work he hopes to do for the Second Named Defendant in respect of Guidewires, Coils and what he described as 'Engineered Metal Comp'. Either way these global companies, who are the customers of both the Plaintiff and the Second Named Defendant can conceivably, it seems, buy the parts they seek for the end-products that will be sold under their brand name from potentially anywhere in the world. While the Second Named Defendant filed a supplemental affidavit to remove an earlier valuation of this market as a "trillion-dollar" industry, there is no doubt that the market in which these businesses are operating is massive and global by any reasonable measure.

46. The general test that provides the starting point for considering whether the 'non-compete' clause in this case is valid is described succinctly by Clarke J. in *Murgitroyd* as follows:-

> *A restraint on a person working or being engaged in one or more lines of business is by definition a restraint of trade. It is well settled that such a term will not be enforced by the courts unless it meets a two fold test:-*
>
> *(a) it is reasonable as between the parties; and*
>
> *(b) it is consistent with the interests of the public"*

47. At the trial, the employer will bear the onus of establishing that the clause in question goes no further than is reasonably necessary to protect a legitimate interest of the employer; see *Murgitroyd* and *Ryanair*.

48. I am satisfied that there is a serious question to be tried as to the validity of the terms defining the 'Business', the 'Competitor' and of the 'Restricted Area'. Put another way, I am satisfied that the Plaintiff has established that on the facts as it asserts them to be, there is a serious question to be tried on these issues. In other words, the Plaintiff has identified a serious question that it has a legitimate interest that this clause is necessary to protect and that the extent of the protection goes no further than is necessary to afford the Plaintiff with reasonable protection for that legitimate interest.

49. Equally the caselaw contains multiple examples of a 12-month restriction as not necessarily being inappropriate for a senior executive who has had access to highly sensitive and confidential information; see for example *Ryanair v Bellew* [2020] 3 IR 601 and *Murgitroyd*. Accordingly, I am satisfied that the Plaintiff has established a serious question to be tried that the temporal limit of 12 months is not impermissible.

50. The question is posed as to the whether a serious question has been raised as to the validity of the clause because it arguably restrains Mr. Cullen from working for any competitor for 12 months.

51. I am satisfied that a serious question has been raised in that regard given the factual backdrop to this clause as asserted on behalf of Creganna. In *Ryanair v Bellew* [2020] 3 I.R. 601 at 645 Allen J. observed that:

> *"It seems to me that sensitive commercial information obtained by an employee in the course of his previous employment can be valuable to a competitor, and can be deployed, without necessarily disclosing it. An executive's knowledge of what agreements a counterparty had previously made would allow him to adopt, or direct, or advise a negotiating position without expressly disclosing the fact or terms of a previous agreement made by his former employer. The basis of the negotiating position might rapidly become fairly obvious to the new employer, but technically there would have been no disclosure."*

52. Accordingly, it is clear that as a general proposition, a clause which on its face precludes an employee from working for a particular class of competitor for a defined period may not automatically be void in a context where same may, depending on the facts, be considered necessary, and go no further than is reasonably required, to protect a legitimate interest of an employer, namely to prevent the disclosure of otherwise confidential and sensitive information. Hence Allen J. concluded in *Ryanair* at para 172 that "*I am satisfied that the nature and extent of the confidential information that would inevitably come to the knowledge of Mr. Bellew in the course of his employment was such as to justify a post termination restraint*." The clause in that case went too far though in two other respects.

53. Whether the clause in this case is reasonable will depend on many things that are factually and legally in dispute. For example: what the clause means, which in turn depends on what the relevant facts are (which is disputed) which in turn depends on the outcome of the debate about the point in time when the context should be looked at.

54. Once it is known what precisely the clause means the Plaintiff will then have the onus of establishing that it goes no further than is necessary to protect a legitimate business interest of the Plaintiff.

55. As to the geographic limit two things should be noted. First, the business is largely global, and secondly there is the possibility of blue-pencilling; see *Mulligan v Corr* [1925] 1 IR 169 and the discussion in relation to that issue in *Cox Corbett & Connaughton, Employment law in Ireland, 2nd Edition*, at page 293.

56. Finally, I turn to the debate about the meaning of the words 'in any manner' contained in sub-clause (b) of the 'Non-Compete' clause. Firstly, those words are not the same as the words 'in any capacity' which appear in some of the reported cases on this topic; see for example *Ryanair*. Secondly, it is not at all clear that the words 'in any manner' equate to 'in any capacity'. Next, the words 'in any manner' may not relate at all to the type of role the departing employee takes. Next, there is arguably some ambiguity which opens the necessity to look at the context. Fifthly, the facts underpinning that context are not agreed. Finally, there is plausible English caselaw to suggest that such clauses should not be interpreted in a broad literal fashion; see the other cases on this topic referred to by Allen J in *Ryanair* in para.s 199 *et seq*.

57. During submissions, Counsel for Mr. Cullen drew attention to the unenumerated constitutional right to work referenced by the Supreme Court in *Meskell v CIE* [1973] IR 121and more recently in *NVH v. Minister for Justice* [2017] IESC 35 In that context it is to be observed that O'Donnell C.J. has raised the question as to how precisely this right might be appropriately said to raise obligations as between private parties or, to have 'horizontal effect'; see O'Donnell J. as he then was in *NVH* and writing extra judicially in the Foreword to *Collins & O'Reilly, Civil Proceedings and the State*, 3rd Edition. O'Donnell J. at para 12 in *NVH* states as follows:-

> *"As Hogan J. observed, there is a relatively impressive line of authority recognising that the Constitution Article 40.3, at least, guarantees what has been described as a right to work. That was established in cases such as Landers v. The Attorney General (1975) 109 I.L.T.R. 1, Murtagh Properties v. Cleary [1972] I.R. 330, Murphy v. Stewart [1973] I.R. 97 and Cafolla v. O'Malley [1985] 1 I.R. 486. I share however Hogan J.'s view that if the right was not so well established, I would have wished to consider afresh whether such a right was one of the unenumerated rights protected by Article 40.3 and in any event if it could be accurately described as an enforceable right to work. Most of the relevant case law comes from an era when unenumerated rights were discovered if not declared, almost on the basis of propositions with which no one could disagree. However, a socio-economic right is of quite a different order to the personal rights which are explicitly guaranteed by the text. It certainly seems unlikely that the drafters of the Constitution would have set out a right to work in a bald form without considerable explanation and elaboration, and perhaps limitation. This is even clearer since after Meskell v. CIÉ [1973] I.R. 121 (a case itself decided in employment context), it appears that the Constitution provides for horizontal enforcement between individuals, albeit without much discussion of the theoretical justification for this development. If there was some general and unspecified right to work, it would arguably be engaged if not infringed, when an economy did not provide for full employment, when a person who was in employment was dismissed or, when someone was precluded from working because of a strike. I find it difficult to believe for example that the Constitution imposes on the Government an obligation (presumably enforceable by action in court) to pursue policies directed towards full employment, as*

was suggested in some of the international material submitted on behalf of the appellant. It is easier I think to conceive of any constitutional protected interest as a freedom, and in this case, freedom to seek work which however implies a negative obligation not to prevent the person from seeking or obtaining employment, at least without substantial justification."

58. Even so, this issue could well arise in the context of the Courts consideration of the second limb of the test for clauses in restraint of trade concerning whether the clause is 'consistent with the public interest'. In any event, for present purposes, this is the sort of bumpy legal terrain that Lord Diplock in *American Cyanamid* flags as meriting 'detailed argument and mature considerations' and therefore is not readily to be deployed by the Court at an interlocutory hearing to deliver a decisive blow.

59. All that being so, I am satisfied that the Plaintiff has established a serious question to be tried that if Mr. Cullen takes up the job offer he will be acting in breach of the 'non-compete' clause and there is a serious question to be tried that the 'non-compete' clause when properly construed is not void or invalid.

Least Risk of Injustice, adequacy of damages, balance of convenience issues

60. I turn now to the questions associated with assessing the least risk of injustice, or as Collins J. states in *Betty Martin v EBS DAC* [2019] IECA 327: *"the essential concern of the court is to regulate matters pending trial pragmatically and in a manner calculated to minimise injustice."*

61. Firstly, it is necessary to consider whether if the injunction sought is not granted and it transpires that the clause is valid then is damages an adequate remedy for the Plaintiff. Based on the affidavits sworn on behalf of the Plaintiff this largely boils down to a description of the confidential and sensitive information and knowledge acquired by Mr. Cullen in his roles and the nature of the competitive business between the two companies. On the Plaintiff's case, and allowing that the underlying facts are disputed somewhat, it is claimed that it is unavoidable that its highly sensitive confidential commercial information will be used to inform the manner in which Mr. Cullen performs his work for Lake Region Medical in a manner and with an impact that cannot be realistically gauged or assessed for the purposes of ever providing a remedy in damages. The point is made that this scenario is akin to what is described by Allen J. in *Ryanair* at page 645, referred to above. It is also said that the Plaintiff's customer relationships will be affected by virtue of the confidential knowledge acquired by Mr. Cullen.

62. In that regard I accept the submission on behalf of the Plaintiff that an interlocutory injunction will generally be an appropriate remedy to preserve the *status quo* pending the trial. Counsel for the Plaintiff helpfully drew the Courts attention to the decision of the Court of Appeal in England & Wales, in *Dyson Technology Ltd v Pellery* [2016] ICR 688 where it is stated at paragraphs 15 and 16 as follows:

"15. The substantive effect of the defendant's opposition to the claim for injunctive relief was to ask the court to release him from this contractual restraint so that he could be free to take up immediate employment with the very type of competitor in respect of whom the restraint was intended to apply. ...But in cases such as this damages are not what an employer wants. The damage potentially sufferable by a covenantee such as the claimant by a breach of the relevant restraint will usually be unquantifiable and

will rarely, if ever, provide the covenantee with an adequate substitute for an injunction….

16. Why, therefore, in circumstances such as these, should the Court's approach to the claimant's claim be other than one reflecting a firm recognition that the remedy to which it ought prima facie to be entitled is an injunction?

63. In addition, Clarke J. in *Murgitroyd* [2005] IEHC 110 (his judgment dealing with the interlocutory hearing) states that damages would not be an adequate remedy for breach of a non-compete clause.

64. I also agree that the matter is correctly seen as analogous to what is described by Clarke J. as he then was in *AIB v Diamond* [2012] 3 IR 549 where he states at para 8.2:

> *"The mere fact that it may, therefore, be possible to put a value on property rights lost does not, of itself, mean that damages are necessarily an adequate remedy for the party concerned is entitled to its property rights instead of their value. Viewed in that way, damages would not be an adequate remedy for AIB. In particular, a failure to grant interlocutory relief at this stage would mean, in practice, that imposing some form of springboard injunction after the trial would be largely redundant. If the defendants are permitted to avail of what transpires to be (after trial) an unlawful head start for the period between now and trial, it will become virtually impossible to undo that head start in any practical way whatever the findings of the court at trial might be. In those circumstances it seems to me that AIB would suffer irremediable loss to its property rights in the event that it should not obtain an interlocutory injunction now but should succeed at trial."*

65. Accordingly, I am satisfied that if the injunction sought is not granted and it transpires that the clause is valid then damages will probably not be an adequate remedy for the Plaintiff.

66. On the other hand, I am satisfied that if the injunction is granted and if it turns out to have been wrongly granted then it is probable that damages will be an adequate remedy for Mr. Cullen. Firstly, it is not clear that the offer of the job will be withdrawn, and the likelihood is therefore that he will have been delayed taking up his new job by three months while being paid his current base salary. This could be compensated adequately by damages.

67. As to the question of the job offer not being kept open indefinitely or withdrawn if the injunction is granted, these averments of the Second Named Defendant were made in the context of interlocutory reliefs seeking the injunction for a year and before the parties were aware that the plenary trial will be heard within three months.

68. Even then, those averments on behalf of Lake Region Medical were not in categoric terms. While it is not unreasonable that Mr. Cullen would be apprehensive, I am not persuaded that the averments of the Second Named Defendant's deponent clearly mean that if the injunction is granted that the job offer will be withdrawn. For starters, there is no factual amplification for such a serious conclusion to be drawn. It is not said that there is another candidate ready to start. The full nature of the recruitment process that led to Mr. Cullen being offered the position is not described. For example, were there other unsuccessful candidates deemed suitable to whom the position could now be offered to? Would they still be available? Are they currently

in employment? What notice period would they have to give? For instance, Lake Region Medical's proposed offer to Mr. Cullen contains a 3-month notice clause that he would have to give them if he were to leave. It seems reasonable to conclude that most candidates for such an important position are likely to be in employment that requires them to give three months' notice to their employer. If there are no such candidates waiting in the wings - and Lake Region Medical's deponent does not suggest that there are - then how long would it take to complete a fresh recruitment process? Surely the likely candidate to emerge from such a process would also have to give notice unless they were currently unemployed. Finally, the question arises as to whether a business the size of Integar could not temporarily appoint someone to act up or across. None of these issues are factually addressed. Finally, if the injunction is granted, the plenary hearing will take place within three months – a period less than the likely notice period any new candidate would be required to give to their employer.

69. Even so, the possibility of the offer being withdrawn remains. Nonetheless that does not, even if it occurs, make the implications for Mr. Cullen beyond adequate compensation. Aside from the fact that Mr. Cullen, if he succeeds at trial, will be free to take employment without restriction, the courts regularly have to grapple with assessing damages for lost employment in the context of other cases, not least those involving significant personal injuries.

70. However, even if I were wrong in this estimation of the position and if there was some significantly higher degree of uncertainty as to whether damages might be adequate for Mr. Cullen if the injunction were granted and it turned out that the clause is void, then I am nonetheless of the view that the balance of convenience favours the grant of the injunction.

71. In terms of the balance of convenience, the Plaintiff has agreed to continue to pay Mr. Cullen his salary. This is the usual order made in favour of employees seeking to restrain threatened dismissals (the *Fennelly Order*) and it is considered adequate by the Courts to address the balance of convenience in favour of employees pending a trial.

72. Integar's General Counsel saw the clause at some stage prior to 23 February 2024, probably prior to the offer being made on 12 January 2024. Accordingly, it seems probable that Integar did know of the clause and did make an offer to Mr. Cullen to take up employment with them within a period well within the 12-month period of the clause. While the Second Named Defendant submits not unreasonably that there is little detail at this stage about the case against them, the position is that the tort of inducing a breach of contract and its necessary ingredients is far from straight forward either factually or legally; see the Court of Appeal of England and Wales decision in *Kawasaki Kisen Kaisha Ltd v James Kimball Limited* [2021] EWCA Civ. 33 and the House of Lords decision in *OBG v Allan* [2008] 1 AC 1 where Lord Nicholls states at para 178 "*[i]n inducement cases the very act of joining with the contracting party and inducing him to break his contract is sufficient to found liability as an accessory".* Of course, if the clause is void, then it is difficult to see how Lake Region Medical could be guilty of any wrongdoing and hence Lake Region Medical probably felt its interests were served by supporting the arguments of Mr. Cullen in relation to this application. In addition, of course Lake Region Medical presumably wants Mr. Cullen to be able to start work as soon as possible. In any event, the answer to the question of whether the clause is void or not will be resolved at the trial due to start in less than three months and it is difficult to see what significant prejudice attaches to the position of Lake Region Medical by the granting of the injunction sought for that period. As explained above, the information provided on its behalf concerning whether the offer to Mr. Cullen might be withdrawn is modest.

73. Ultimately, on the Plaintiff's case, the First Named Defendant has agreed to this term on each occasion on which he was promoted. If the Second Named Defendant withdraws the offer, then, subject to such rights as the First Named Defendant may have arising out of his interactions with the Second Named Defendant, then that is ultimately its decision.

74. On the other hand, if an employee could avoid an interlocutory injunction to restrain a breach of a non-compete clause for the reasons urged here (i.e. that the job offer will be withdrawn), then any employee who agreed to a restraint clause could be able, on the Defendants' analysis, to successfully resist an interlocutory injunction by producing a letter with a job offer in the one hand and then a second letter from the potential new employer in the other which states that the offer will be withdrawn in the event of an interlocutory injunction being granted - even where the delay until the full hearing is potentially less than three months from the end of the outgoing employee's employment. Such a scenario, if it were a trump card, would be unsatisfactory as it would enable Defendants with relative ease to put a 'gun to the head' of the Court: 'don't grant the injunction or I will lose my new job'.

75. Ultimately the matter has to be analysed and considered carefully, arising from the specific circumstances of this case. For the reasons set above, the key considerations are:-

    (a) damages will probably not be an adequate remedy for the Plaintiff if the injunction is not granted and it turns out the non-compete clause is valid;
    (b) damages probably will be adequate for the Defendants if the injunction is granted, and it turns out at trial that the clause is void;
    (c) the undertaking of the Plaintiff to continue to pay Mr. Cullen pending the trial - which can be heard within three months - addresses much of the concerns around the balance of convenience when looked at from the perspective of Mr. Cullen if it turns out that the clause is void;
    (d) the lack of detail and the bare assertion that the job offer cannot be kept open weakens the arguments of the Defendants that an injunction should not be granted from a 'least risk of injustice' perspective;
    (e) Mr. Cullen, on the Plaintiff's case, is said to have agreed to the non-compete clause on each occasion that he has accepted a promotion;
    (f) equally Lake Region Medical (through Integar's General Counsel), it is claimed, was aware of the non-compete clause when it made the offer of the job to Mr. Cullen; and
    (g) the grant of an injunction in circumstances where the Plaintiff has established a serious question to be tried has the effect in this case of essentially preserving the *status quo*.

76. Accordingly, while the least risk of injustice issue has not been an easy or straightforward issue to resolve, I am satisfied, particularly where the Plaintiff is undertaking to continue to pay the First Named Defendant and where the Court can give directions for an early trial and fix a trial date for the 16 July 2024, that the appropriate conclusion is that the way to regulate matters pragmatically and in a manner calculated to minimise injustice favours the grant of relief to the Plaintiff. This approach also has the advantage of preserving the current status quo.

Conclusion

77. I am satisfied that the Plaintiff has established a serious question to be tried that if, at this time, the First Named Defendant takes up the position of employment offered with the Second Named Defendant that this will be an actionable breach of contract by virtue of being a breach of the non-compete clause in his contract of employment. For the avoidance of doubt, I am satisfied that the Plaintiff has raised a serious question to be tried that the non-compete clause is valid.

78. Secondly, I am satisfied that in circumstances where the Plaintiff has offered, and will be required to undertake, to continue to pay to the First Named Defendant his salary until the conclusion of the trial of the action and in circumstances where the trial of the action can now be listed to commence in less than three months' time on Tuesday 16 July, 2024 that the least risk of injustice is to preserve the status quo and to grant an interlocutory order restraining the First Named Defendant from taking up employment with the Second Named Defendant until the conclusion of the trial or until further order. There will of course be liberty to apply in relation to this matter in the event of any material change of circumstances in any respect.

79. Finally, I propose to issue directions as to the exchange of pleadings and in relation to discovery to ensure that the matter is ready to commence on Tuesday 16 July 2024. I will also hear from the parties in relation to costs.

Non-Compete

During your employment, and for a period of 12 months from the termination of this Contract of Employment (for any reason other than your involuntary redundancy), you shall not, on your behalf, or on behalf of any person, entity, business or company, directly or indirectly;

(a) Engage in, own, manage, operate or control any entity, business or company wholly or partially, directly or indirectly in competition with the Business within the Restricted Area;

(b) Join, control, consult with, participate in the ownership, operation or control of, be employed by, or be connected in any manner with any person, entity, business or company wholly or partially, directly or indirectly in competition with the Business within the Restricted Area;

(c) Solicit or endeavour to solicit or entice away from the Company any customers of the Company to a person, entity, business or company that is directly or indirectly in competition with the Business or interfere in any way in the relationship between the Company and its customers;

(d) Solicit or endeavour to solicit or entice away from the Company any person who has at any time in the 12 month period preceding the date of termination of employment been engaged or employed by the Company;

(e) You agree that when and if during the continuance in force of the restrictions set out in this clause, that should you receive an offer of employment from any person, entity, business or company that is wholly or partially, directly or indirectly in competition with the Business within the Restricted Area, you will immediately provide that person, entity, business or company with a complete and accurate copy of this clause and agreement.

For the purposes of this clause, "Business" means the business of developing, manufacturing and selling minimally invasive delivery and access medical devices for Structural Heart; Cardiovascular; Neurovascular; Peripheral Vascular; Electro Physiology; and Endoscopy procedures carried on by the Company and any part of such business operated by the Company at the date of termination of your employment. For the purposes of this clause, "a Competitor" means any entity, business or company in competition with the Business. Examples of companies which currently compete with the Business include Cambus Medical, Accellant, Advant Medical, ArraVasc Limited, Teleflex

Medical and any affiliated and associated companies. For the purposes of this clause, "Restricted Area" means the Island of Ireland and any country in the world to the extent that a Competitor operates in such a country.

Nothing in this clause shall act to prevent you from using generic skills learnt while employed by the Company in any business or activity which is not in competition with the Company.

You acknowledge and agree that the terms set out at (a), (b), (c), (d), and (e) are reasonable in light of the nature of the position you hold with the Company, the relationships you will have established with Company's customers and prospective customers. You further agree that the restrictions contained herein shall apply for a period of 12 months from the termination of this Contract of Employment (for any reason other than your involuntary redundancy).