

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2019-404-1714
[2020] NZHC 1005**

UNDER The Anti-Money Laundering and Countering
Financing of Terrorism Act 2009

BETWEEN THE DEPARTMENT OF INTERNAL
AFFAIRS
Plaintiff

AND OTT TRADING GROUP LIMITED
First Defendant

TONGHUI QI
Second Defendant

...Cont...

Hearing: On the papers

Appearances: S McMullan for Plaintiff
H M Lim for Second, Third and Fifth Defendants

Judgment: 15 May 2020

JUDGMENT OF LANG J
**[on application for orders under the Anti-Money Laundering
and Countering Financing of Terrorism Act 2009]**

*This judgment was delivered by me on 15 May 2020 at 3.30 pm,
pursuant to Rule 11.5 of the High Court Rules.*

Registrar/Deputy Registrar

Date.....

LEE CHON WOON
Third Defendant

MSI GROUP LIMITED
Fourth Defendant

YE DUAN
Fifth Defendant

[1] In this proceeding the Department of Internal Affairs (the Department) alleges that, between May 2014 and April 2019, OTT Trading Group Limited (OTT) and the MSI Group Limited (MSI) breached their obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the Act). The Department commenced this proceeding seeking injunctions against OTT and MSI, as well as their sole directors and shareholders, Mr Qi and Ms Duan. They also sought orders against Ms Woon, who was OTT’s compliance officer between February 2017 and April 2019. Her role was to ensure that OTT complied with the requirements of the Act.

[2] The parties have now reached agreement regarding resolution of this proceeding. They have filed an agreed summary of facts together with a joint memorandum setting out the orders they seek by consent. This judgment records the terms of the settlement and the orders the parties seek.

The legislation

[3] The purposes of the Act are as follows:¹

- (a) To detect and deter money laundering and the financing of terrorism; and
- (b) To maintain and enhance New Zealand’s international reputation by adopting, where appropriate, in the New Zealand context, recommendations issued by the Financial Action Task Force; and
- (c) To contribute to public confidence in the financial system.

[4] Section 87 of the Act provides the Court with a discretion, on the Department’s application, to grant an injunction “restraining a person from engaging in conduct that constitutes or would constitute a contravention of the Act”. Section 88 then relevantly provides:

¹ Anti-Money Laundering and Countering Financing of Terrorism Act 2009, s 3(1).

88 When High Court may grant restraining injunctions and interim injunctions

- (1) The High Court may grant an injunction restraining a person from engaging in conduct of a particular kind if—
- (a) it is satisfied that the person has engaged in conduct of that kind; or
 - (b) it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind.
- ...
- (3) Subsections (1)(a) and (2) apply whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind.
- (4) Subsections (1)(b) and (2) apply—
- (a) whether or not the person has previously engaged in conduct of that kind; or
 - (b) where there is an imminent danger of substantial damage to any other person if that person engages in conduct of that kind.

[5] The Department seeks restraining injunctions against the individual defendants under s 87 of the Act. The purpose of such an injunction is to:²

maintain and enhance New Zealand's international reputation in this area of financial activity, and ... contribute to public confidence in New Zealand's financial sector. The threat of exclusion will also deter non-compliance by others.

This case

[6] The joint memorandum describes the parties' respective positions as follows:

11 The Department alleges that, as demonstrated by the entities' own records, OTT and MSI Group committed serious breaches of the Act, for which Mr Qi, Ms Duan and Ms Wood were responsible by reason of the office each held in their respective entity. Further, it alleges that each of Mr Qi, Ms Duan and Ms Wood misled the Department in the course of its investigation into OTT and MSI Group, including through the creation of false documents. The Department says they did that to confuse the true nature of OTT and MSI Group's relationship between one another, their position in respect of other related entities and the reasons for the entities' non-compliance with the Act.

² *Department of Internal Affairs v Ping An Finance (Group) New Zealand Ltd* [2017] NZHC 2363, [2018] 2 NZLR 552 at [132].

12. The Individual Defendants reject the Department's allegations. Their position is that OTT and MSI Group did not breach any obligation under the Act in terms of standard customer due diligence and, even if those entities did, the Individual Defendants were not personally responsible for those breaches. In particular, Mr Qi and Ms Duan will say that they had no de facto control over OTT or MSI Group.

[7] Notwithstanding these differences, the parties have agreed to resolve the proceeding on the basis that the facts recorded in the agreed statement of facts satisfy both limbs of s 88(1). The agreed facts that are relevant for present purposes are as follows:

- 6 Between 2014 and 2019, OTT and MSI Group breached the Obligations (**Breaches**).
- 7 Between 2014 and 2019 neither OTT nor MSI Group had an AML/CFT programme that complied fully with the Obligations [under the Act]. OTT's AML/CFT programme did not provide for adequate customer due diligence procedures, in particular enhanced customer due diligence. MSI Group, relying on OTT's AML/CFT programme did not have its own AML/CFT programme.
- 8 OTT's and MSI Group's conduct of enhanced customer due diligence was insufficient. The Department obtained a number of samples of OTT's and MSI Group's customer files. Many were deficient in their recording of customer due diligence information. OTT and MSI Group did not collect enhanced customer due diligence information (such as information relating to the source of high risk customer funds or wealth), as the Act requires, until June 2018.
- 9 Ms Woon's statements to the Department as OTT's compliance officer exemplified OTT's compliance regarding customer due diligence. She told the Department that she did not know what the Act required for enhanced customer due diligence.
- 10 Relatedly, neither entity routinely monitored accounts to ensure compliance or kept adequate records. Any account monitoring that did occur was ad hoc and insufficient. And, any records kept did not enable the ready reconstruction of transactions or verification of due diligence material relied on, as the Act requires.

The second, third and fifth defendants' liability for the Breaches

- 11 Mr Qi and Ms Duan did not discharge their obligations as a director of OTT and MSI Group, respectively, to ensure each entity complied with the Obligations.
- 12 Ms Woon did not competently discharge her obligations to OTT as a compliance officer.

Orders

[8] Given the parties' agreement that injunctive relief is appropriate, I make the following orders by consent:

- (a) The second defendant, Tonghui Qi, is restrained for three years from the date of this order from:
 - (i) acting as the "compliance officer" of any "reporting entity";
 - (ii) engaging in any activity that would make him a "senior manager" of any "reporting entity"; or
 - (iii) engaging in any activity that would make him a "reporting entity".

- (b) The third defendant, Lee Chon Woon, is restrained until further order of the Court from acting as the "compliance officer" of any "reporting entity".

- (c) The fifth, defendant, Ye Duan, is restrained for three years from the date of this order from:
 - (i) acting as the "compliance officer" of any "reporting entity";
 - (ii) engaging in any activity that would make her a "senior manager" of any "reporting entity"; or
 - (iii) engaging in any activity that would maker her a "reporting entity".

Costs

[9] The parties have agreed that costs are to lie where they fall. I therefore make no order as to costs.

Fixture

[10] The fixture currently scheduled to commence on 22 February 2021 is vacated.

Lang J