

CITATION: Mondee, Inc. v. Voyzant Inc., 2025 ONSC 2226
COURT FILE NO.: CV-24-00733947-0000
DATE: 20250410

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
MONDEE, INC., MONDEE HOLDINGS,) *Young Park, Teodora Obradovic and Max*
INC. and MONDEE CANADA INC.) *Samuels, for the Plaintiff*
)
Plaintiffs)
)
- and -)
)
VOYZANT INC., SANDEEP MAMGAIN,) *Gregory Sidlofsky and Jason Moore, for the*
JASVINDER BINNING, TAHIR KHAN,) *Defendant Voyzant Inc.*
SUKHWINDER DHAMI, RAHEELA)
ADMANI, MANOJ SHUKLA and) *Lucas E. Lung and Rebecca Shoom, for the*
JAYARATNAM NIRANJAN) *remaining Defendants.*
)
Defendant)
)
) **HEARD:** April 3, 2025

2025 ONSC 2226 (CanLII)

REASONS FOR JUDGEMENT

PAPAGEORGIU J.

Overview

[1] The Plaintiffs (collectively, "Mondee") are travel consolidators. In May and June 2024, 7 employees of Mondee Canada, Inc. (the "Departing Employees") left to join Voyzant, Inc. ("Voyzant"), a competitor.

[2] The following is a chart that shows the positions that the Departing Employees had at Mondee and their position at Voyzant.

| Departing Employee | Mondee Position | Start Date | Last Day at Mondee in 2024 | Voyzant Start Date in 2024 | Voyzant Position |
|--------------------|-----------------|------------|----------------------------|----------------------------|------------------|
| | | | | | |

| | | | | | |
|---------------------------------------|---|------|--------|---------|---|
| Tahir Kahn ("Tahir") | VP Sales | 2021 | May 7 | May 16 | VP Sales |
| Manoj Shukla ("Manoj") | Operations Manager | 2016 | May 6 | May 21 | Senior Manager Operations |
| Raheela Admani ("Raheela") | Manager of Group Sales | 2021 | May 6 | May 21 | Manager Group |
| Sandeep Mamgain ("Sandeep") | President | 2008 | May 7 | May 20 | EVP Agency Business and Global Operations |
| Sukhwinder Dhami ("Sukhwinder") | Regional Manager of Sales | 2011 | May 7 | May 21 | Manager Western Canada |
| Jasvinder Binning ("Jasvinder") | SVP of Global Sales and Strategic Partnerships | 2008 | June 6 | June 10 | EVP Global Sales and Strategic Partnerships |
| Jayaratnam Niranjan ("Jay") | Regional Manager of Sales | 2018 | June 7 | June 11 | Senior Director-- Sales |

[3] Another 43 of Mondee's sales staff also left in September 2024 and joined Voyzant.

[4] It is uncontradicted that before leaving, the Defendant, Jasvinder Binning ("Jasvinder"), downloaded 434 files from his "Mondee 2" folder and an email backup folder from his Mondee laptop onto an external hard drive.

[5] The plaintiffs say that these files contained Mondee's confidential information. They say that at least two of these departing employees were fiduciaries and that all Defendants have used this information to unfairly compete with Mondee. They say that the Defendants were all working together and that Voyzant knew and encouraged this conduct.

[6] The Defendants say that although Jasvinder did take this information, none of the other Defendants were aware and that none of the Defendants ever used the information he took. They

also argue that Mondee has failed to prove that the information was confidential or that it was used to unfairly compete with Mondee. They say that Mondee has been having significant business issues for some time. Customers and employees have fled for this reason and not because of anything that these Defendants have done.

[7] They also say that Mondee has failed to show that it will suffer irreparable harm, that Voyzant will suffer irreparable harm, and that the undertaking provided by Mondee is insufficient given Mondee's current financial difficulties.

[8] Mondee seeks the following interlocutory orders:

- An interlocutory injunction restraining the Defendants from: (a) Using or disclosing to any third party or using in any way, the following information, directly or indirectly, for any purpose whatsoever: (i) Lists of Mondee's customers, contractors, partners, vendors, and suppliers; (ii) Information relating to the service needs and contacts of Mondee's customers, contractors, partners, vendors, and suppliers; (iii) The pricing, contract details, incentives and sales information, as applicable, for all of Mondee's customers, contractors, partners, vendors, and suppliers; (iv) Marketing plans and strategies which were prepared and/or delivered to Mondee's customers, contractors, partners, vendors, and suppliers; (v) Maturing business opportunities available to Mondee; All of Mondee's work product; and (vii) Similar non-public information regarding the business of Mondee.
- An interlocutory injunction restraining the Defendants, for a period of 18 months from directly, or indirectly attempting to solicit any business from: (a) CityTravel DMCC; (b) Changxi International Travel Agency; (c) Hong Kong Meiya Travel Co. Ltd; (d) Gotogate Inc.; (e) Hong Kong Yeswego Technology Co. Ltd.; (f) Ebix Travels Private Limited; (g) EaseMyTrip Middle East DMCC; (h) Flighthub; (i) Feifan Tech (shenzhen) Limited; (j) Beijing Zhong Yi International Travel Agency Co Ltd.; (k) AT & T Aida Travel Tours; (l) Supreme Travels and (m) Sohi G C Nanda & Sons Ltd. NYC.
- a mandatory Order as against any and all Defendants and their directors, officers, employees, contractors, agents, assigns, affiliates, subsidiaries, and related corporations, as applicable: (i) directing them to deliver to the Plaintiffs any and all of the Plaintiffs' Confidential Information in their possession, control or power; and (ii) directing them to permanently delete all of the Plaintiffs' Confidential Information in their possession, control or power which they have saved and/or stored electronically, or, in the alternative, an Order directing them to instruct a third party to do so, at the Defendants' expense.

Decision

[9] For the reasons that follow, I grant an Order returning Mondee's information to it, as well as the destruction of any copies that have been made.

[10] As noted in *Imperial Sheet Metal Ltd. et al v. Landry and Gray Metal Products Inc.*, 2007 NBCA 51 "Employees who depart with suitcases of documents, computer files or even a solitary customer list are in breach of their post-employment obligation." It makes no sense that Mondee's information would not be immediately returned to Mondee.

[11] I also grant an interlocutory injunction restraining the Defendants from making any use of Mondee's Information, defined as the material that was taken by Jasvinder.

[12] I also order that the Defendants turn over the hard drive that Jasvinder saved Mondee's materials on. He has objected so far on the basis that it has some of his own personal information on it and he says there needs to be a protocol to deal with that. The parties have seven days to work that out and return to me if there is a problem. It is critical, however, that Mondee is given the actual hard drive so it can analyze when and how often Mondee's information was accessed.

[13] I dismiss the injunction sought seeking to restrain the Defendants from dealing with customers that Mondee says it lost to Voyzant.

Issues

- Issue 1: Has Mondee demonstrated a substantial issue to be tried and/or a strong prima facie case where required?
 - a. Has Mondee established a substantial issue to be tried as to whether or not the Defendants have misappropriated and used confidential information?
 - b. Has Mondee established a strong prima facie case that the individual Defendants were fiduciaries and breached fiduciary duties?
- Issue 2: Have the plaintiffs demonstrated irreparable harm?
- Issue 3: Who does the balance of convenience favour?
- Issue 4: Is the undertaking provided by the plaintiffs sufficient?

Analysis

The Legal Test

[14] Pursuant to *RJR MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, at p. 334, the usual test for an interlocutory injunction is as follows:

- (a) Is there a serious issue to be tried?

(b) Will the party requesting the injunction suffer irreparable harm if the injunction is not granted? and

(c) Does the balance of convenience weigh in favour of granting an injunction or denying it?

[15] In *RJR MacDonald*, the Court indicated that, although rare, there are exceptions where the moving party must establish a more stringent “strong *prima facie* case”: at p. 339.

[16] Courts have applied the more stringent “strong *prima facie* case” test in the following where the plaintiff seeks an interlocutory injunction alleging breach of post-employment fiduciary obligations: *Benson Kearley & Associates Insurance Brokers Ltd., v. Jeffrey Valerio*, 2016 ONSC 4290, at para. 46; *Lockwood Fire Protection Ltd. v. Jason Caddick et al.*, 2015 ONSC 6320, at para. 36; *Parkeh et al v. Schechter et al*, 2022 ONSC 302 at para 34.

[17] When considering whether a strong *prima facie* case exists, courts must conduct a more extensive review of the merits of the case: *RJR MacDonald*, at p. 339.

Issue 1: Has Mondee demonstrated a substantial issue to be tried, and/or a strong *prima facie* case where required?

a) **Has Mondee established a substantial issue to be tried as to whether or not the Defendants have misappropriated and used confidential information?**

[18] I conclude that Mondee has satisfied this branch of the test.

[19] The elements of the tort of breach of confidence are: i) the documents have a quality of confidence, 2) the documents were imparted to the employee in circumstances importing an obligation of confidence, and 3) they were used in an unauthorized manner: *Cantol v. State Chemical*, 2019 ONSC 531 citing *RBC Dominion Securities* at para 55. *Boehmer* at para 62 citing *Stenada Marketing Ltd. v Nazareno*, [1990] B.C.J. No. 2118; *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574 at para 152.

[20] Courts have held that the kind of information that can qualify as confidential information includes:

64. [...] "In addition to the trade secrets of an employer, confidential information can include commercial information, such as special knowledge about the employer's customers, knowledge of the employer's policies and procedures that would make it possible to undercut the former employer with a view to inducing the customer to change from its current supplier to the former employee, as well as customer lists: [...]. On the latter point, courts have found a misuse of confidential information not only where an employee departs with copies of customer lists, but where an employee has memorized the list. [...]" 65. To be clear, confidential information need not involve trade secrets or be proprietary: *Boemer Box LP v. Ellis Packaging Limited*, 2007 CanLII 14619 at para 63

[21] Mondee and Voyzant are both in the travel industry as travel consolidators.

[22] They both sell travel offerings in two principal areas. They sell to travel agencies, who sell to other travel agencies, which is a business-to-business solution (“BTB Sales”). They also sell directly to online travel agents who then sell to consumers through online retail platforms used by consumers, which is business-to-consumers solutions. (“BTC Sales”).

[23] As noted, it is uncontradicted that Jasvinder downloaded Mondee’s information before he left. This was discovered through a forensic analysis of Jasvinder’s Mondee laptop which concluded that on June 3, 2024, at 12:34 pm, Jasvinder connected an external hard drive to the laptop and downloaded 434 files from his "Mondee 2" folder on the C:\ drive.⁵¹ This was the day before he negotiated a “handshake” agreement with Mondee to join Voyzant.

[24] On June 7, 2024, Mondee's lawyers wrote to Jasvinder asserting that he had misappropriated Mondee's confidential information and demanding that he immediately return all such information to Mondee by June 10, 2024. It also wrote cease and desist letters to all Defendants.

[25] Notwithstanding this notice to Jasvinder, the forensic analysis also concluded that on June 10, 2024, from 11:28 am to 12:32 pm, Jasvinder connected a "Seagate" USB device to his laptop and downloaded the contents of a folder titled "Email backup" from his C:\ drive.⁵⁴ This was on his final day at Mondee Canada, and 4 days before joining Voyzant.

[26] He admitted that he downloaded these files onto an external hard drive that he owned.

[27] I am satisfied that Mondee has established a substantial issue to be tried as to whether the information downloaded had a quality of confidence and was imparted to Jasvinder in circumstances importing an obligation of confidence for the following reasons:

- Like all employees at Mondee, Jasvinder and the other Departing Employees signed Mondee’s Code of Business Conduct and Ethics where they agreed to hold Mondee’s confidential information in strict confidence. The Code provided that confidential information includes:
 - "information entrusted to them by [Mondee] or by its customers" including "commercial- sensitive information" such as "financial or sales records/reports, marketing or business strategies/plans, product development, customer lists" and "all non-public information that might be of use to [Mondee's] competitors or its customer's if disclosed".
- Jasvinder conceded that he treated these materials as confidential and that he breached the confidentiality requirement by downloading these materials.
- All Departing Employees who signed the Code confirmed they agreed to abide by its terms.

- There is evidence from the individuals who analyzed the materials taken that the files included:
 - Client lists, which include sales volume, incentives, commissions, and other sensitive aspects of the customer relationship with Mondee.
 - PCC (Pseudo City Code) information for various regions and customers serviced by Mondee.
 - Commission information including all promotion models and incentive information for Mondee's clients. These documents identify incentive strategies offered to a particular client or partner.
 - Sales information current to May 15, 2024.
 - All airline partner information current to May 31, 2024. These documents also contain information on incentives and other rewards.
 - Information on potential new clients (current to April 11, 2024), which contains information on 99 new client opportunities for Mondee, and on other maturing business or marketing opportunities available to Mondee, in Dubai, China, and elsewhere.
 - Copies of agreements with various suppliers, including ticketing suppliers from 2022, 2023, and 2024, with Mondee's specific offerings, and contact information for the suppliers' representatives.
 - Other Mondee work product, including several budget plans and business plans. This includes strategic plans for expanding Mondee's business with customers who Mondee says have now left Mondee for Voyzant or provides key sales information.

[28] I reject the argument that Mondee cannot meet the test of establishing that the information is confidential because it would not turn over the information to the Defendants for them to analyze. Injunctions have been granted on the basis of misuse of confidential information without the production of documents claimed to be confidential: *The Catalyst Group Inc. v. Moyse*, 2014 ONSC 6442 at para 28. Voyzant took the position that it had not seen this information and Mondee did not want to disclose it for that reason because it would result in Voyzant seeing this information.

[29] The description of this information is sufficiently “reasonably specific” to describe the information and why it should be protected: *Dymon Storage Corporation v. Nicholas Caragianis*, 2022 ONSC 5883 at paras 5, 53, 55. The information described by Mondee is not generally known outside its business, it has value to Mondee, there is sufficient evidence that it would be the product of time and effort, and the Departing Employees have generally acknowledged that it is

confidential by having signed the Code: *GasTOPS Ltd. v. Forsyth*, [2009] OJ No. 3969 at para 124.

[30] I am also satisfied that there is a sufficient basis to conclude that there is a substantial issue to be tried as to whether all Defendants used this information for the following reasons:

- The Departing Employees worked closely together.
- They all left at approximately the same time.
- Jasvinder had unfettered access to Mondee's files and emails on his external hard drive for over 7 months from June 10, 2024, until January 15, 2025, when he gave the hard drive to his lawyers. He admitted that during this time he accessed 9 files on the hard drive.
- When he was asked whether he connected his external hard drive to his laptop or desktop to access the files first he said he had done so "To my laptop". When he was asked questions about this laptop, he then changed his answer to saying that he had downloaded the information to his daughter's laptop. Then, in answer to an undertaking he claimed that his daughter's laptop was disposed of in late 2024, something he did not mention during his cross examination.
- Notably, he received a cease-and-desist letter in June 2024 that directed him to preserve and not destroy any evidence. As such, litigation was reasonably contemplated. And then, he did not preserve the laptop that he used to access the information. I am satisfied that there is a substantial issue to be tried as to whether this constitutes spoliation such that an adverse inference could be drawn that the laptop was destroyed because the evidence on it would have been unfavourable: *SS&C Technologies Canada Corp v. The Bank of New York Mellon Corporation*, 2024 ONCA 675 at para 155.
- When Jasvinder left Mondee, like most other Departing Employees, he wiped his Mondee laptop and did a factory reset.
- While the other Departing Employees said that they wiped their laptops to delete personal banking information on their browser and personal files stored there, they could have simply deleted this information without conducting a factory reset.
- Forensic analysis showed that Sandeep added an additional layer of encryption to his laptop such that Mondee's administrator login credentials would no longer provide access.
- When Jasvinder joined Voyzant, even though he was hired into the BTC business, his employment agreement provided him incentives to receive net profit from Voyzant's BTB business.

- Although Jasvinder says that he downloaded the information as part of his usual practice of backing up information, he only worked in the BTC business. The information he downloaded contained both BTB and BTC information. As well, he downloaded this material on June 3 and then resigned on June 6, in the context of other Departing Employees leaving. I infer that he must have been considering this too when he downloaded this information, and so that also makes little sense to do so as part of a usual practice for a place he intended to leave.
- Voyzant and the Departing Employees have refused to produce their communications from April 2024 to June 2024.
- One of the categories of information taken include login information for Mondee Canada's International Air Travel Agency ("IATA") account. A person who has this account information has access to and the ability to download Mondee's airline accounts, weekly sales data, historical sales data, and ticket pricing. Mondee made inquiries with IATA who confirmed that it was unable to see a history of logins but Sandeep (one of the Departing Employees who used to be Mondee's President and who became Voyzant's EVP Agency Business and Global Operations.), had accessed Mondee Canada's IATA account on August 16, 2024, while he was working at Voyzant. It is certainly possible that this information is incorrect as Sandeep denied that he had done so, but this is a conflict in the evidence and this raises an issue.
- Upon all of these Departing Employees joining Voyzant, sales by Mondee significantly decreased and sales to Voyzant significantly increased in both lines of business.

[31] A third party in receipt of confidential information with knowledge it was confidential is liable: *The Catalyst Capital Group* at paras 70-71. Here, Voyzant was put on notice by Mondee in July 2024 by way of a cease-and-desist letter. Therefore, it was put on notice that Mondee believed that the Departing Employees had participated in a breach of confidence. If it is later proven that this was the case, and that Voyzant benefitted, then in my view, there is a substantial issue to be tried as to whether Voyzant knowingly benefitted.

[32] There are certainly many arguments raised by the Defendants opposing the conclusion that they have used any of the information that Jasvinder took. These include their evidence that Jasvinder never told them he had this information, and that there are other reasons why Mondee's sales have decreased and Voyzant's have increased. They say Mondee has been in dire financial straits for some time. They left because Mondee is a sinking ship.

[33] As well, Jasvinder argues that the information was stale and could not be used, but if this is true, it begs the question as to why he downloaded this material and kept it for seven months.

[34] These arguments may ultimately prevail, but they do not displace the evidence that establishes a substantial issue to be tried as to whether they did. The information from IATA is particularly troubling in this regard because it was Sandeep, not Jasvinder, who IATA says

accessed Mondee's account, and it was Jasvinder who took this information. There is a basis to infer that Jasvinder provided this login information to Sandeep.

[35] As Lederer J. stated in *The Catalyst Capital Group v. Moyse*, 2014 ONSC 6442 at para 49:

In cases involving confidential business information misuse can rarely be proved by convincing direct evidence. In most cases employers must construct a web of perhaps ambiguous circumstantial evidence from which the Court may draw inferences which convince it that it is more probable than not that what employers alleged happened, did in fact take place. Against this often-delicate construct of circumstantial evidence there frequently must be balanced the testimony of employees and their witnesses who directly deny everything.

[36] Even if Voyzant was unaware as it says, I am also satisfied that there is a substantial issue to be tried as to Voyzant's vicarious liability for these Departing Employees' conduct after they joined Voyzant and/or that it participated in this conduct.

[37] The evidence submitted by Mondee at this early stage is circumstantial evidence from which inferences can be drawn that are sufficient to raise a substantial issue to be tried; the evidence the Defendants have raised is certainly not determinative of the issue.

b) Have the plaintiffs established a strong prima facie case that the individual Defendants were fiduciaries and breached fiduciary duties?

[38] The general characteristics of a fiduciary relationship are as follows:

(i) the fiduciary has scope for the exercise of some discretion or power; (ii) the fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests; and, (iii) the beneficiary is peculiarly vulnerable to, or at the mercy of the fiduciary holding the discretion or power: *Boehmers Box v Ellis Packaging*, 2007 CanLII 14619 at para 41 quoting *Frame v. Smith*, [1987] 2 S.C.R. 99

[39] In *Imperial Sheet Metal Ltd. et al v Landry and Gray Metal Products Inc.*, 2007 NBCA 51, the Court noted that there are two approaches to determining whether an employee is a fiduciary. The broad approach focuses on the degree of vulnerability of the employer to competition from the employee. The Court rejected this approach for policy reasons including the fundamental right of everyone to make a living. It also concluded that the broad approach is inconsistent with *Can. Aero v. O'Malley*, [1974] SCR 592, which focused on whether the employee was a "key" employee. See also *Boehmers* at para 46 which references the "key employee" test.

[40] The Court in *Imperial Sheet Metal* applied the following considerations in determining whether an employee is a "key employee":

- (1) whether the employee is integral and indispensable to the management team that guides the employer's business affairs.
- (2) whether the employee is necessarily involved in the decision-making process.
- (3) whether the employee has broad access to confidential information that if disclosed would significantly impair the competitive advantages that the former employer enjoyed.

[41] As noted by Brown J., in *Boehmers*, the results in various cases are fact driven: *Boehmers* at para 48. Brown J. set out a number of relevant factors including exclusive relationships, the ability to unilaterally bind the employer in contract, the ability to set prices, and supervisory responsibility over other employees: *Boehmers* at para 52.

[42] Because the imposition of fiduciary obligations restricts competition, courts should be cautious "in imposing restrictive duties on former employees in less than clear circumstances": para 39.

[43] Fiduciaries may compete after they leave their former employer, as long as they do so fairly and honestly: Soliciting the former employer's customer is considered unfair, and accordingly, a fiduciary may not actively solicit former customers for a reasonable period of time. There is no liability if the customer seeks out the fiduciary: *Imperial Sheet Metal*, at para. 43.

[44] Fiduciary duties attach to employees who depart with a fiduciary to work in a competing business. Were it otherwise, the fiduciary would be permitted to do indirectly what they cannot do directly: *Precision Fine Papers Inc*, 2008 CanLII 6871 at paras 22 and 30. This is because fiduciaries cannot do indirectly what they are prohibited from directly.

[45] The reasonable period of time during which a fiduciary may not solicit customers varies in each case. Generally, it is equal to the length of time required in all the circumstances for the employer "to solidify and secure its relationship with its clients and to compensate for any destabilizing effect the employee's departure may have had": *Boehmer*, at para. 42. The more trust and confidence the employer has in the employee and the more vulnerable the employer is, the longer the reasonable period will be: *Boehmer*, at para. 42; *Anderson, Smyth & Kelly Customers Brokers Ltd. v. Worldwide Customs Brokers Ltd* (1996), 184 A.R. 81 (C.A.), at para. 32.

[46] In this case, there is a strong prima facie case that at least two of the Departing Employees were fiduciaries.

[47] Sandeep was the President of Mondee. He had oversight over all aspects of Mondee Canada's business, including sales, promotions, operations and relationships with airlines. He was responsible for ensuring that commissions were paid to Mondee's customers.

[48] Sandeep admits that he had exclusive relationships with two of the BTB clients at issue and described them as his clients. Five of the Departing Employees reported to Sandeep.

[49] Jasvinder was Senior Vice President for Global Sales and Strategic Partnerships in the business-to-consumer (B2C) space. He led this business and had exclusive relationships with Mondee's clients and the authority to set prices.

[50] Both Jasvinder and Sandeep had broad access to confidential information that if disclosed could impair competitive advantages.

[51] I am also satisfied that there is a strong *prima facie* case that Jasvinder breached fiduciary duties based on the admission that he downloaded Mondee's information and accessed it while at Voyzant.

[52] However, with respect to the other Departing Employees, I find Mondee has only established a substantial issue to be tried.

[53] In *Benson*, at para. 21, Charney J. described the high standard which must be met to establish a *prima facie* case as follows:

A strong *prima facie* case is one in which there is "a substantial likelihood of success in the action that justifies extraordinary relief at the very commencement of the proceeding." (See: *Factor Gas Liquids Inc. v. Jean*, 2010 ONSC 2454 (CanLII), 264 O.A.C. 46 (Div. Ct.), at para 42). It is not enough to establish that the case will succeed on a balance of probabilities: the plaintiff must establish that he or she is "clearly right and almost certain to be successful at trial" (*Barton-Reid Canada Ltd. v. Alfresh Beverages Canada Corp.*, 2002 CanLII 34862 (ON SC), 2002 CanLII 34862 (Ont. S.C.), at para 9, and *Accreditation Canada International v. Guerra*, 2016 ONSC 3595 at para 41).

[54] There are only two pieces of significant evidence as against Sandeep. First, there is the evidence that he accessed the IATA account, but that evidence is only an email from IATA, who did not file an affidavit. Sandeep denied he accessed Mondee's IATA account. His counsel requested that Mondee sign an authorization and direction directing IATA to produce to both Mondee and Voyzant any and all information, data and/or documentation relating to the alleged login. Mondee would not agree. Therefore, this evidence is disputed and not supported by direct evidence from IATA.

[55] The second piece of evidence is that Sandeep was copied with an email that another Departing Employee, Sukhwinder, (who worked under him) sent to customers after he joined Voyzant soliciting them two weeks after he joined. This Departing Employee referred to their "continued partnership", used Voyzant's email address. It referenced "exciting news" that he wanted to share with them and said that he deeply valued their partnership and trust, unwavering support, collaboration, and commitment. It also said "Voyzant is renowned for its innovative solutions, client-centric approach, and commitment to excellence. I am confident that this move will enable me to serve you even better, bringing fresh perspectives and enhanced capabilities to

our collaboration.” I am satisfied there is a substantial issue to be tried as to his participating in this solicitation since he was copied and since this Departing Employee reported to him.

[56] I am also satisfied based upon the above details and the surrounding circumstances which include these employees departing in or around the same time and working with Sandeep and Jasvinder as well as the decreased sales after this happened, as well as the admission that Jasvinder took Mondee’s information, that there is substantial issue to be tried as to whether these other Departing Employees participated in the alleged breaches such that fiduciary duties attach to the other Departing Employees as well.

[57] Even if Voyzant was unaware as it says, I am also satisfied that there is a substantial issue to be tried as to Voyzant’s vicarious liability for these Departing Employees’ conduct and/or whether it participated in any breaches.

[58] However, the evidence simply does not reach the required standard to show a strong prima facie case as it does not establish that Mondee is clearly right, given the conflict in the evidence.

Issue 2: Have the plaintiffs demonstrated irreparable harm?

[59] In order to obtain an interim or interlocutory injunction, a moving party must provide clear and non-speculative evidence that harm not compensable in damages will result if the injunction is not granted: *RJR-MacDonald* at para 64. Irreparable harm includes harm that cannot be quantified in monetary terms, such as being put out of business or permanent loss of market share.

[60] In my view Mondee does not have to establish irreparable harm with respect to the orders sought concerning the return of its Information because everyone agrees whether it is confidential or not, that it belongs to Mondee and Jasvinder had no right to take it. Where a prima facie case is shown, the court can attach less importance to the second and third branches: *Parekh et al v. Schechter et al*, at para 33. In any event, there is case law that supports the conclusion the loss of confidential information is prima facie irreparable: *Aware Ads Inc. v. Walker et al*, 2021 ONSC 7452 at para 63. This is because it will never be known the extent to which it was used, copied and printed: *The Catalyst Group*, at paras 77 & 78.

[61] However, with respect to the orders sought restraining the Defendants from selling to Mondee customers, which it says the Defendants have done by using its Confidential Information and through breaches of fiduciary duties, (and/or other causes of action alleged) Mondee has failed to show irreparable harm.

[62] In most cases, lost customers, sales, and market share can be compensated in damages and calculated based on sales histories and sales projections: *Berton-Reid Canada Ltd. v. Alfresh Beverages Canada Corp*, 2002 CanLII 34862 at para 18. Such harm may be considered irreparable where it is difficult to establish the extent to which customers were lost by the moving party or gained by the responding party as a result of the impugned conduct: *Canpages Inc. v. Quebecor Media Inc.*, 2008 CanLII 26660 at para 14. However, it will not be considered irreparable if there is no evidence linking the loss of customers or profits to the responding party's conduct or if the

moving party is, in fact, able to quantify the harm: *Peoples Trust Company v. PSP Services Inc.*, 2024 ONSC 2616 at para 74; *Titanium Logistics Inc. v. Ellesmere Hearing Centre Ltd*, 2008 CanLII 68119 at para 22.

[63] Mondee's evidence is that since the Departing Employees joined Voyzant, Mondee has suffered fall in sales based on 13 customers that it says have either moved to Voyzant or who may have already been dealing with Voyzant, but where Mondee sales to such customers has decreased while Voyzant's has increased.

[64] The loss of sales is \$66 million in the BTC business and \$7.7 million in the BTB business (or a 91 % drop) as compared to the same period in 2023.

[65] In 2024, when comparing the five-month period from January to May 2024 (before the Departing Employees left) to the five-month period from June to October 2024 (after the Departing Employees left), Mondee's gross sales to CTC customers declined by over \$48.9 million (or 68%). The losses to Supreme/Sohi/AT&T over the same five-month period was \$5,595,000 (or 93%).

[66] The difficulty with this argument is that Mondee has been able to provide precise calculations as to what its lost sales are. Mondee has prepared spreadsheets estimating lost sales in relation to particular customers that they allege have been "poached" by the Defendants. In the event a trial judge ultimately finds wrongdoing by the Defendants, there is no sufficient reason why the resulting harm cannot be quantified in damages.

[67] Furthermore, the information that Mondee provided was only lost sales. It did not provide any evidence as to lost profits, which would be the measure of its damages.

[68] Profit margins in this industry are very small.

[69] Mondee refused to provide any estimate of their profit margin on sales. Voyzant has provided uncontradicted evidence, using Mondee's financial statements, to show that Mondee's profit margin is .066 percent. Mondee also admitted in answers to undertakings that on gross sales of \$30 million it would lose approximately \$19,800 in profits.

[70] This means that the tens of millions of lost sales it alleges translates into tens of thousands of dollars only.

[71] Even if these customers were permanently lost and the trial did not occur for five years, the measure of damages, based upon the figures in the record, would not be that great.

[72] Mondee references Strathy J.'s ruling in *Precision Fine Papers Inc.* at para 25 where he states:

Cases of unfair competition have often been recognized as ones in which damages may not adequately compensate the plaintiff for the loss suffered due to the Defendant's conduct.

Not only is it difficult to quantify the loss of goodwill or market share suffered by the plaintiff due to the Defendant's actions, but the damage to relationships with customers is inherently difficult to assess. In a competitive industry, where there can be considerable fluidity of customer allegiances, it may be difficult for the moving party to establish an accurate measure of damages. See in this regard: *EJ Personnel Services Inc. v. Quality Personnel Inc.* (1985), 1985 CanLII 6386 (ON SC), 6 C.P.R. (3d) 173 (Ont. H.C.J.); *Sheehan & Rosie Ltd. v. Northwood*, 2000 CarswellOnt 670 (S.C.J.); *KJA Consultants Inc. v. Soberman*, 2002 CanLII 49613 (ON SC), 2002 CarswellOnt 467 (S.C.J.)

[73] However, in this case, Mondee has not actually lost most of the 13 customers at issue although admittedly sales to them have significantly decreased. Therefore, it is still in the game with these.

[74] Further, I am not satisfied that Mondee has provided sufficient evidence linking the loss of customers or sales to the Defendants' conduct.

[75] Mondee has been in dire straits for some time.

[76] Since at least June 2023, Mondee has been experiencing considerable and highly publicized financial difficulties. Between June 2023 and January 2024 Mondee's stock price declined by over 80 percent. According to a 2023 filing with the SEC, Mondee had an accumulated deficit of \$341.1 million USD as of December 31, 2023.

[77] On January 15, 2025, Mondee Holdings Inc. and Mondee Inc. filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court - District of Delaware (the "Bankruptcy Proceedings"). Documents filed by creditors in the Bankruptcy Proceeding indicate that the companies' co-founder, former CEO, and current board member, Prasad Gundumogula, is currently under investigation by the SEC for, among other things, "insider trading and market manipulation of Mondee's own stock."

[78] With respect to Mondee Canada, its audited financial statements disclose that in 2022, its net income (loss) was (\$476,376). In 2023, its net income recovered to only \$279,462, but was still running a deficit at the end of the year of (\$319,571) and it owed its shareholders (the entity in Chapter 11) \$5, 172,541.23

[79] According to its 2024 unaudited financial statements, Mondee Canada's net income rose to \$1,005,649, but the amount owing to its shareholders almost doubled to \$10,252,629.24

[80] Mondee Canada is also a joint debtor with the other Mondee companies in the hundreds of millions.

[81] There is some improvement on the horizon. A stalking horse asset purchase transaction in the Chapter 11 proceeding closed on April 3, 2025. Nevertheless, this turbulent history shows that there may be other significant reasons why it has lost customers and employees.

[82] Although Mondee provided evidence of losses related to clients and employees that it says it has lost to Voyzant since May 2024, it refused to disclose customers who decreased business with Mondee prior to the Departing Employees joining Voyzant. This is important because if it lost the same percentage of other customers to other competitors, and before these Departing Employees even left, it significantly affects its argument that it has suffered harm because of anything these Defendants have done, even if what they have done breached obligations.

[83] It is also the case, on the basis of the materials that it filed that its sales were going down, although not as dramatically, before the Departing Employees left, even in 2024 and that Voyzant's sales to customers was increasing before the Departing Employees left.

[84] As well, Mondee knew about its concerns as of June and July 2024, wrote cease and desist letters but then delayed in bringing this motion for six months. This also undermines the argument that it will suffer irreparable harm.

[85] There was also no persuasive evidence as to loss of goodwill because 13 customers have moved.

[86] Mondee did not persuasively articulate what was irreparable about these losses which do not appear to translate into significant lost profits or even a significant number of customers. Given its problems even before these Departing Employees left, its failure to disclose information about other customers and employees and what was happening with these before the employees left, is fatal.

Issue 3: Who does the balance of convenience favour?

[87] The balance of convenience favours Mondee with respect to its information since the Defendants claim no interest in it, admit it was wrongly taken and claim they do not use it.

[88] For a variety of reasons, the balance of convenience favours the Defendants with respect to the customers.

[89] Mondee seeks an order that prevents Voyzant or the Departing Employees from making any sales to these specified former customers. But Voyzant was already selling to most of these customers before the Departing Employees joined. Mondee has not referenced any cases where an interlocutory injunction has been ordered restraining a competitor from selling to customers who it already had before the alleged breaches.

[90] Further, these customers constituted 25 % of Voyzant's sales in 2024.

[91] The industry is highly competitive with customers moving back and forth and often staying with whatever sales agent they previously worked with. Mondee also hires employees from competitors hoping they will bring customers with them.

[92] Mondee sought to improve its relationship with its customers back in the fall of 2024 but this obviously did not work since it subsequently brought this injunction proceeding. It would not provide answers as to what these discussions were. So, an injunction here, would essentially deprive Voyzant of the customers, deprive the customers of their choices, deprive the Departing Employees from income related to these customers, and not ensure any return to or increase in sales by Mondee, and restrain competition all in the context of a case where the lost profit from these customers is not proven to be significant.

[93] As well, Voyzant has provided uncontradicted evidence that if it is not permitted to make sales to these customers then it will lose a \$10 million incentive it receives from airlines and the loss of this incentive would impact its goodwill and credibility. This would also result in it losing airline contracts because it would not be able to hit its targets. This would affect its ability to continue to employ all its 500 employees.

[94] Given Mondee's current financial circumstances, and the evidence on the profits it earns from these customers, an injunction related to these customers is unlikely to save it, but an injunction could destroy or significantly impact Voyzant and its employees.

[95] With respect to the Departing Employees, the evidence is that in this industry, individuals develop relationships with customers who often move with them. The Departing Employees have worked with some of the customers at issue for years, and some even before they joined Mondee Canada. The injunction would prevent these Departing Employees from working with their customers. If the Departing Employees are successful in the case, the fact of this injunction could destroy any future dealings with these customers because an injunction implies significant wrongdoing.

Issue 4: Is the undertaking provided by the plaintiffs sufficient?

[96] Mondee has provided an undertaking as to damages.

[97] The Defendants raised issues about the appropriateness of this undertaking given the Chapter 11 proceedings.

[98] In my view, the undertaking is sufficient because the injunction is limited to the alleged Confidential Information that none of the Defendants say they are actually using or entitled to in any event.

Conclusion

[99] I grant an injunction preventing the use or disclosure of Mondee's Information, defined as the materials that Jasvinder took. I also order that this material be returned to Mondee and that the hard drive be provided to Mondee for analysis.

[100] I dismiss the motion related to Mondee's customers.

[101] I ask that the parties arrange a case conference before me to address the wording of the injunction order.

[102] I encourage the parties to settle costs. If they cannot agree, they make submissions after the Order is settled, with Mondee's submissions 5 days after the Order is settled and Voyzant's 5 days thereafter.

Papageorgiou J.

Released: April 10, 2025

CITATION: Mondee, Inc. v. Voyzant Inc., 2025 ONSC 2226
COURT FILE NO.: CV-24-00733947-0000
DATE: 20250410

ONTARIO

SUPERIOR COURT OF JUSTICE

MONDEE, INC., MONDEE HOLDINGS, INC. and
MONDEE CANADA INC.

Plaintiffs

– and –

VOYZANT INC., SANDEEP MAMGAIN,
JASVINDER BINNING, TAHIR KHAN,
SUKHWINDER DHAMI, RAHEELA ADMANI,
MANOJ SHUKLA and JAYARATNAM NIRANJAN

Defendant

REASONS FOR JUDGEMENT

Papageorgiou J.

Released: April 10, 2025