

CITATION: Mondee, Inc. et al. v. Voyzant Inc et al, 2025 ONSC 3133
COURT FILE NO.: CV-24-00733947-0000
DATE: 20250527

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:** in writing

2025 ONSC 3133 (CanLII)

COSTS ENDORSEMENT

PAPAGEORGIOU 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] Mondee brought a motion for injunctive relief.
- [3] I granted an Order returning Mondee's Information to it (as defined in the decision), as well as the destruction of any copies that have been made.
- [4] I also granted an interlocutory injunction restraining the Defendants from making any use of Mondee's Information, defined as the material that was taken by Jasvinder Binning.
- [5] I also ordered that the Defendants turn over the hard drive that Jasvinder saved Mondee's materials on.

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

[7] All of the parties seek their costs.

Mondee's claim for costs

[8] Mondee seeks partial indemnity costs in the amount of \$218,475.58.

[9] However, there is compelling caselaw that holds that when considering costs for a successful injunction, “in the usual case where a trial is a virtual certainty, the award of costs should be reserved to the trial judge”: *Intercontinental Forest Products SA v. Rugo*, 2004 CanLII 33353 (ON SCDC), at para 5.

[10] In *Quizno's Canada Restaurant Corp. v. 1450987 Ontario Corp.*, 2009 CanLII 31599 (Ont SC), at para 10, Perell J. observed that an order of costs in the cause in interlocutory injunctions “allows the court to have the benefit of hindsight and to avoid the possible injustice of awarding costs to a plaintiff for having succeeded in obtaining an order to protect his or her position pending trial when the outcome of the trial reveals that the plaintiff's position was not worthy of having been protected.”

[11] In *TDL Group Ltd. v. 1060284 Ontario Ltd.*, 2000 CanLII 22736 (Ont SC), at para 41, Nordheimer J. held that costs in the cause are appropriate since “a considerable portion of the costs associated with the injunction motion will benefit the parties in terms of the overall proceeding.”

[12] Mondee relies upon *Precision Fine Papers Inc. v. Durkin*, 2008 CanLII 26690 at para 20, where Strathy J. did order costs of an interlocutory injunction. I reject Mondee's argument that this decision is identical. In *Precision Fine Papers*, Strathy J. found a strong prima facie case of a breach of fiduciary duty and misuse of confidential information. I did not find that there was a strong prima facie case of a breach of fiduciary duty. I also did not find any irreparable harm related to this issue.

[13] I reject Mondee's argument that a core issue was decided finally in its favour, namely the issue of whether or not there has been a breach of confidence. There is no final determination. The only thing determined, which is something that Jasvinder admitted in any event, is that he took Mondee Information. What anyone did with it, if anything, has not been finally proven at all. Whether it constitutes confidential information and whether there was a breach of confidence has not been finally determined. The fact that the hard drive has to be returned to Mondee is of no moment. Jasvinder had agreed to this and simply wanted a protocol to deal with the Jasvinder's own information stored on the disc. Mondee did not respond to this request.

[14] Therefore, I would not grant Mondee its costs of the interlocutory injunction it did obtain. Subject to Voyzant and the Departing Employee's submissions seeking costs, I would order costs in the cause.

The Departing Employee and Voyzant’s Claim for Costs.

[15] In the Departing Employees’ Costs outline dated April 3, 2025 they seek \$192,342.88 on a partial indemnity basis and Voyzant seeks \$71,055.87 in partial indemnity costs.

[16] These defendants argue that they should be awarded their costs for the following reasons.

[17] Mondee’s original Notice of Motion sought sweeping and potentially ruinous relief against them including:

- Injunctions restraining them from soliciting any of Mondee’s customers and preventing them from disparaging Mondee to third parties.
- An injunction restraining the Departing Employees from offering, selling or providing to any of Mondee’s customers any products the same or substantially similar to or competitive with the products offered by Mondee. This relief would have prevented them from working in the travel industry as they had for decades.
- An injunction restraining the Departing Employees from inducing Mondee’s employees and certain customers to “breach their contractual, fiduciary and other legal duties to Mondee.”
- An injunction restraining the Departing Employees from “usurping, taking or converting any corporate assets or business opportunities of [Mondee].”

[18] The nature of this sought relief caused them to file substantial materials because the industry is small and Mondee and Voyzant actually have many of the same customers. The injunctions sought would have prevented Voyzant doing business with customers that it had already had for years. It would have impacted the Departing Employees ability to earn a living, including by preventing them from communicating with clients with whom they had years-long relationships, and would have affected their ability to earn an income.

[19] The parties delivered numerous affidavits and participated in 12 cross examinations over 7 days.

[20] Then, shortly before the hearing Mondee substantially narrowed the relief it sought without amending its Notice of Motion by simply limiting the scope of the draft order attached to its factum. The narrower relief still sought an order prohibiting the Defendants from soliciting business from certain identified customers for 18 months. This would have barred Voyzant from doing business with its largest customers and would have still impacted the Departing Employees’ ability to earn income.

[21] I agree that the relief obtained by Mondee was extremely limited compared to the relief it sought in its original Notice of Motion. Further, none of the Defendants actually asserted a right to use Mondee Information. Jasvinder had not opposed returning this information to Mondee. As

noted, he sought directions or a protocol for doing so because he had personal documents on the hard drive.

[22] I agree that prohibiting Voyzant from using information that Voyzant asserted it did not have, use or want is not significant relief particularly compared to the relief that was sought.

[23] I make the similar point for the Departing Employees.

[24] In my view, the more successful parties on the motion were the Defendants. They were more successful on the issues that mattered which were solicitation and competition. The only success achieved by Mondee was something that could have likely been achieved with a consent order since none of the Defendants claimed any entitlement to use Mondee's Information. And as noted, Jasvinder admitted that he had downloaded this information at the outset in his affidavit.

[25] The vast majority of the evidence did not relate to the issues on which Mondee succeeded. Therefore, the bulk of the costs that the parties incurred related to issues that Mondee did not succeed on.

[26] And as noted, the way that the Notice of Motion was originally drafted is what caused the bulk of the work that the parties did.

[27] Given the partial indemnity costs claimed by Mondee, the quantum of costs claimed by the Defendants is within its reasonable contemplation. I note that Mondee raised no issues as to time spent or rates charged in any event.

[28] Therefore, I award Voyzant its partial indemnity costs payable within 15 days in the amount of \$71,055.87.

[29] I do not award Jasvinder his costs. His conduct in taking the Mondee Information is in part what led to this proceeding. Since there are 7 Departing Employees, I have taken the total partial indemnity costs and apportioned them taking out 1/7 of the claim which would reflect Jasvinder's proportionate share of the costs.

[30] I award \$164,864 to the other Departing Employees in respect of their costs, payable within 15 days also.

PAPAGEORGIU J.

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MANOJ SHUKLA and JAYARATNAM NIRANJAN

Defendant

COSTS ENDORSEMENT

Papageorgiou J.

Released: May 27, 2025