

Intellectual Property / Equity / Civil Procedure
Copyright – Design of CSTR anaerobic digester system – Whether developer of system had proprietary rights over design – Whether licensee had exclusive rights over technology – Whether there was breach of fiduciary duty – Whether *Anton Piller* order rightfully granted

Watermech Engineering Sdn Bhd & Anor v Novaviro Technology Sdn Bhd
[2014] 9 CLJ 791, Court of Appeal

Facts The plaintiff/respondent commenced legal proceedings against the defendants/appellants for breach of fiduciary duty and the infringement of a CSTR anaerobic digester system¹ (“the system”) developed by Keck Seng (Malaysia) Sdn Bhd (“Keck Seng”). The plaintiff contended that the defendants obtained confidential information through a joint venture between the defendants’ joint venture vehicle, Aquarius System Sdn Bhd and the plaintiff, and proceeded to use Keck Seng’s technology to develop their own system (“UBS system”). It was further argued that since the defendants’ act was without authorisation, they breached Keck Seng’s proprietary rights over the system, which was exclusively licensed to the plaintiff for commercialisation. The High Court ruled in favour of the plaintiff and granted an *Anton Piller Order*². The appellants appealed to the Court of Appeal.

Issue The issues before the Court of Appeal were (1) whether Keck Seng, as developer of the system, had proprietary rights over the design that was entitled to protection under the law; (2) whether the respondent could enforce any rights against the appellants; (3) whether there was a breach of fiduciary duty by the appellants; and (4) whether the *Anton Piller* order was rightfully granted.

Held The Court of Appeal dismissed the appeal and held that due to the unique features of the system, Keck Seng had proprietary rights over the design that was entitled to protection under the law, and the respondent, as lawful licensee of the design, was also entitled to enforce it against the appellants. Additionally, a fiduciary relationship existed between the appellants and the respondent by virtue of the joint venture agreement. Thus, by failing to protect the confidential information relating to Keck Seng’s system and misusing it for their own benefit, the appellants had breached its fiduciary duty owed to the respondent. Furthermore, as there was a real risk that incriminating evidence relating to the UBS system would be destroyed by the appellants, it was held that the *Anton Piller* order was rightfully granted.

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¹ This CSTR system helps recover methane gas from the treatment of Palm Oil Mill Effluent, which is polluted wastewater generated from the production of palm oil.

² This order grants a right of entry into one’s premises to search and seize any material evidence.