

SUPREME COURT OF QUEENSLAND

CITATION: *Stryker Australia Pty Ltd v Short* [2026] QSC 174

PARTIES: **STRYKER AUSTRALIA PTY LTD**
ACN 002 873 850
(Applicant)
v
ALANNA SHORT
(Respondent)

FILE NO/S: BS 3275/26

DIVISION: Trial

PROCEEDING: Originating Application

ORIGINATING COURT: Supreme Court

DELIVERED ON: 20 July 2026

DELIVERED AT: Brisbane

HEARING DATE: 17 July 2026

JUDGE: Freeburn J

ORDERS: **1. Order in accordance with the Respondent’s draft.**
2. The costs of the application are reserved.

CATCHWORDS: EQUITY – EQUITABLE REMEDIES – INJUNCTIONS – INTERLOCUTORY INJUNCTIONS – RELEVANT CONSIDERATIONS – BALANCE OF CONVENIENCE
GENERALLY – where the applicant alleges that employment restraints are binding on and enforceable against the respondent – where the respondent was a former employee who held the role of “*Executive Territory Manager – Endoscopy*” with the applicant – where the applicant seeks interlocutory relief to prevent the respondent from taking up new employment – where the applicant contends it is in competition with the respondent’s new employer – whether the balance of convenience favours the grant of interlocutory relief
SDW2 Pty Ltd v JLF Corporation Pty Ltd [2017] QSC 1, applied

COUNSEL: D J Ananian-Cooper
(Counsel for the Applicant)
N J Derrington
(Counsel for the Respondent)

SOLICITORS: Baker Mackenzie (Applicant)
Gilbert + Tobin (Respondent)

- [1] On Friday, 17 July 2026, subject to some undertakings by the respondent, Ms Short, I decided to dismiss an application made by Stryker Australia Pty Ltd (Stryker) to restrain Ms Short from commencing employment with a new employer, Fortress Surgical Pty Ltd (Fortress). I said I would deliver reasons today. These are those reasons.

Background

- [2] Ms Short resigned her employment with the applicant on 16 June 2026, to commence employment with Fortress. Her notice period of five weeks ends on Tuesday, 21 July 2026. In fact, Ms Short proposes to commence employment with Fortress today. That she proposes to commence a day early is a *de minimis* point.
- [3] Stryker is a medical technology business which sells a variety of medical devices for use by medical practitioners. Its customers include hospitals and various medical professionals including surgeons. Stryker's operations included the following business units:
- (a) Joint Replacement;
 - (b) Orthopaedic instruments;
 - (c) Surgical technologies;
 - (d) Endoscopy and Communications;
 - (e) Upper extremities;
 - (f) Foot and ankle;
 - (g) Neurosurgery and CMF (Cranio-Maxillofacial Surgery);
 - (h) Medical; and
 - (i) Neurovascular.
- [4] Joint Replacement and Surgical technologies is Stryker's main division, accounting for around 60% to 75% of its business. Ms Short worked in Stryker's Endoscopy and Communications sales team. That team is responsible for about 10% of Stryker's Australian business. Ms Short's role was described as "*Executive Territory Manager – Endoscopy*" but, in reality, she was responsible for sales to customers in Brisbane Metro South, Gold Coast, Northern New South Wales and Townsville.
- [5] Stryker's Endoscopy and Communications department sells products for use by surgeons and other medical professionals in operating theatres in hospitals. The Endoscopy team sells minimally invasive camera systems for use in surgical procedures. The Communications team sells other operating theatre infrastructure including digital integration, operating tables, equipment pendants, anaesthetic pendants and lights. The two teams are managed as a single department under a single Executive Regional Manager, Jane Renwick. They regularly pitch for work together, as the equipment offered by both teams are required as part of operating theatre

infrastructure, and Stryker's products in both areas are developed to work optimally together.

- [6] Ms Short only sold products listed in Stryker's Endoscopy Product Guide.
- [7] There is a contest regarding the extent to which the businesses of Stryker and Fortress compete and overlap. Even the extent to which the Communications team worked with Endoscopy was contested. Ms Short swore that the two are fundamentally different businesses. Ms Short reported to Ms Renwick whose evidence was that the two teams regularly pitch for work together, as the equipment offered by both teams are required as part of operating theatre infrastructure, and Stryker's products in both areas are developed to work optimally together.
- [8] Similarly, there was a contest about the seniority of Ms Short's position and the extent to which she had what could be described as managerial role and an involvement in strategic information and decisions. On an interlocutory application like this, the court is not able to resolve those contested issues.
- [9] Nevertheless, the extent of the overlap looks to be modest. Ms Short's evidence is that there are four product categories in which the sales of Stryker and Fortress overlap:
 - (a) personal protective equipment, which includes the sale of hoods and togas;
 - (b) operating tables;
 - (c) operating lights and pendants; and
 - (d) integrated operating room ecosystems.
- [10] Those were not products sold by Stryker's Endoscopy Division and they were not products sold by Ms Short.
- [11] Ms Short's evidence is that Stryker's main competitors are Zimmer, Johnson & Johnson, and Arthrex.

Ms Short's Employment with Stryker

- [12] Ms Short commenced employment with Stryker in January 2015. In May 2015, Ms Short started as a Territory Manager in Queensland. In that role, she was allocated a 'Territory', being a list of hospitals at which she was permitted to sell the products in the Stryker's Endoscopy Product Guide. Sometimes territories were altered or re-allocated.
- [13] In February 2025, Ms Short went on maternity leave. While she was on leave, another representative, Mr Brown, managed the sales of endoscopy products to hospitals in what had been Ms Short's territory. When she returned from maternity leave in January 2026, Mr Brown continued to service those hospitals. On her return, Ms Short was allocated an exclusive assignment at St Vincent's Private Hospital in Lismore.

[14] In June 2026, Ms Short accepted employment at Fortress and gave notice of her resignation to Stryker. Ms Short's evidence is that her resignation from Stryker has been precipitated, in part, by offensive and harassing conduct in the workplace.

[15] Ms Short says this about her new role at Fortress:

As Fortress is a start-up company, I expect that my role will involve broader duties than my Position at Stryker. While the role will still involve active sales responsibilities to achieve growth targets, it will also include business and operational duties. I do not expect to be as hands-on at client sites at least initially as part of the role will be identifying and bringing products to market first.¹

[16] Since her resignation, Mr Brown and others have continued to service the hospitals within what was Ms Short's territory.

Legal Principles

[17] There was no contest about the legal principles the court is required to apply. Bond J had reason to consider these principles in *SDW2 Pty Ltd v JLF Corporation Pty Ltd*² where his Honour observed that:

- (a) The law in Australia has long regarded it to be necessary to make two main inquiries:
 - (i) Whether the Applicant has shown that it has a prima facie case; and
 - (ii) Whether the Applicant has shown that the balance of convenience favours the granting of the relief claimed.
- (b) The significance of the requirement that a prima facie case be shown is elaborated upon in *Australian Broadcasting Corporation v O'Neill*³ and *Live Earth Resource Management Pty Ltd v Live Earth LLC*.⁴
- (c) The considerations brought to bear on the balance of convenience requirement were the subject of discussion in *Australian Broadcasting Corporation v O'Neill* and *Bowen Central Coal Pty Ltd v Aquila Coal Pty Ltd*,⁵ the latter case clarifying that the adequacy of an award of damages, and the question of the sufficiency of the usual undertaking, were to be considered as part of the totality of the balance of convenience question.
- (d) The progression of the two main inquiries is not a mechanical exercise. Whether the relief sought is prohibitory or mandatory, the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have

¹ Ms Short's affidavit affirmed on 16 July 2026 at [40].

² [2017] QSC 1 at [21].

³ (2006) 227 CLR 57; [2006] HCA 46.

⁴ [2007] FCA 1034 at [11] to [13].

⁵ [2011] QCA 334.

been “*wrong*” in the sense of granting an injunction to a party who fails to establish his right at an ultimate trial, or in failing to grant an injunction to party who succeeds at trial. In making that decision, the court should weigh in the balance all relevant factors, including matters pertaining to the strength of the case to be tried and the balance of convenience.

- (e) Where the effect of an injunction would be to alter the status quo and effectively finally to determine a respondent’s legal rights against the respondent in advance of a trial, it would be appropriate to require an applicant to establish its case that the respondent should not be afforded those legal rights with a high degree of assurance.⁶

Prima Facie Case

- [18] Ms Short’s employment contract with Stryker included a number of restraints that applied on the termination of her employment:

Unless you have first obtained Stryker’s fully informed written consent, you must not during both the employment and the Restraint Period, directly or indirectly, and whether on your own account or for any other person (including any corporation or other legal entity), in the Restraint Area:

- (a) Participate or be involved in a Restricted Business in a Restricted Capacity;
- (b) Without limiting (a), participate or be involved in any of the following businesses of their distributors in a Restricted Capacity: Zimmer Biomet; Johnson & Johnson (De Puy/Synthes); Aesculap; Smith & Nephew; Medtronic; Sofamor Danek; Medacta; Surgical Specialities; Zoll; Phillips; Core Pulse; Hill-Rom; Arjo Huntleigh/Getinge Group; Device Technologies; Stortz, Olympus ConMed; Drager, Laerdal; Defibtech; B.Braun; LifeHealthCare; Nuvasive and Teleflex.
- (c) solicit or attempt to solicit, or accept any business from a customer, client or supplier of Stryker with whom you have been directly or indirectly involved at any time during the 12 months prior to the termination of your employment;
- (d) solicit or attempt to solicit away from Stryker any customer, client or supplier with whom you have been directly or indirectly involved at any time during the 12 months prior to the termination of your employment;
- (e) interfere or attempt to interfere in a relationship with Stryker maintains with any customer, client or supplier with whom you have been directly or indirectly involved at any time during the 12 months prior to the termination of your employment;

⁶ Counsel for the respondent also referred to the judgment of Bond J in *AECI Australia Pty Ltd v Convey* [2020] QSC 207 at [13]-[18] where the same principles are discussed.

- (f) accept employment or engagement with any customer, client or supplier of Stryker with whom you have been involved in the 12 months prior to the termination of your employment;
- (g) directly or indirectly employ or solicit the services of, or encourage to leave or attempt to entice away from Stryker or offer employment or otherwise interfere with the relationship which Stryker maintains with any person who is employed by Stryker or was employed by Stryker within the three months preceding the date of termination of your employment.

[19] In her affidavit Ms Short says this regarding her post employment restraints:

- a. I understand that I have obligations not to use any of Stryker's Confidential Information; and
- b. I am willing to offer an undertaking to the Court to comply with the terms of the post employment restraints on the following basis:
 - i. paragraphs (c) to (d) on the basis that it is limited to the customers named in Annexure A to the Originating Application (although I do not accept that I have had contact with all of those customers in the last 12 months); and
 - ii. (e) to (g),

until the resolution of this proceeding.

[20] Because of Ms Short's offer of that undertaking, the real dispute is whether the court should restrain Ms Short from commencing her employment with Fortress. In other words, the question is whether the court should enforce sub-paragraph (a) of the restraint.

[21] Sub-paragraph (a) is a broad restraint, especially having regard to the definitions. The restriction:

- (a) applies for 12 months (or 6 months or 3 months);
- (b) applies to the whole of Australia (or Queensland or Brisbane);
- (c) applies to a business that "*now or in the future offers a substantially similar product or service to that offered by Stryker*" – in other words, one product or service, can engage the restraint and the engaging of the restraint applies in the future; and
- (d) applies where that other business deals in a product or service that Ms Short may have been "*directly or indirectly involved in at any time in during the past 24 months*".

[22] As is submitted by counsel for Ms Short, the words "*directly or indirectly*" give the restraint an expansive reach. The engagement of the restraint merely because of a peripheral involvement in a product up to two years ago may go a long way to barring Ms Short from the whole field of medical equipment. There is force in counsel for Ms Short's submission that Stryker has no legitimate interest in preventing a former employee going to a competing business and selling products that are not

substantially similar to those that the employee used to sell, just because the new employer happens to compete with Stryker in respect of some products that the employee used to have indirect involvement with.

- [23] It is also important to observe that Stryker has the benefit of the other restraint provisions.
- [24] A restraint is prima facie invalid unless it is proven to be reasonable as between the parties and not unreasonable in the public interest.⁷ The test is whether the restraint affords no more than adequate protection of the legitimate interest of the party who benefits from the restraint. The party seeking to enforce the restraint bears the onus of proof.⁸
- [25] And so, whilst Stryker may have an argument that it is entitled to enforce the employment restraint, there is a strong argument that the employment restraint goes beyond the protection of Stryker's legitimate business interests and that the clause is invalid.

Balance of Convenience

- [26] In any event, even putting aside the problems Stryker is likely to have in sustaining the employment restraint, the balance of convenience does not favour enjoining Ms Short from being employed by Fortress.
- [27] Counsel for Stryker submits that Ms Short was privy to confidential information in the nature of details of Stryker's sales strategy and information about the requirements of hospitals within her territory. But no specific information is identified. Ms Short's role, in so far as it can be discerned on this interlocutory application, does not appear to have given her any opportunity to exploit confidential information or private strategies of Stryker. Ms Short's role was not a management role. She was a sales executive with a limited territorial brief.⁹
- [28] The situation may have been different if Ms Short had a true management role or if there were a significant overlap in the work of Stryker's Endoscopy division and Ms Short's new employer.
- [29] Ms Short's relatively recent maternity leave, her involvement in a specific project at St Vincent's Private Hospital in Lismore, and the fact that the hospitals within Ms Short's territory are now being serviced by other Stryker representatives reduces the scope for any serious damage to Stryker's business.
- [30] In any event, Stryker has the benefit of the other restraints which will bind Ms Short by undertakings to the court.
- [31] On the other hand, the potential damage to Ms Short is significant. Ms Short is her family's principal breadwinner. Barring her from employment with Fortress is likely to mean that she, and her family, will be without income for some time. And damages would be difficult to calculate given that her principal earnings are from commission.

⁷ *Reims Investments Pty Ltd v City Fertility Group Sydney CBD Pty Ltd* [2025] QCA 243 at [60].

⁸ *Reims* (supra) at [62].

⁹ Ms Short's new role at Fortress appears to have a more management focus.

[32] In those circumstances, the application has been dismissed.

[33] I will hear the parties on costs and on the further steps necessary in the proceeding.