

Update: 28 November 2007 Difficulties restraining ex-employees



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Summary

A recent Supreme Court decision shows that restraints on ex-employees will be difficult to enforce – even when they are paid salary for the period of the restraint – unless there really is 'confidential information' that needs protection.

What were the facts?

A senior property manager with Woolworths resigned to take a similar job with Myer. His contract said that he would not take a position with a competitor for six months after resigning if Woolworths paid him an amount equal to his salary for that period.

Woolworths paid him his six months salary and then tried to prevent him from working for Myer. Woolworths seemed to be on firm ground, as they had won a case in 2004 based on the same provision in the contract of another executive who had left to work for Franklins.

What was the decision?

Woolworths was not successful. The Court did not accept that this particular employee held any confidential information that could be used to benefit Myer.

The key difference between this case and the earlier 2004 decision was that the other executive had information that was recognised as confidential and of benefit to the competitor in that case, Franklins.

What are the lessons?

The two cases show that, even with identical restraint provisions, a court will only enforce a restraint if an ex-employee actually has confidential information about that business that would give a competitive advantage to the new employer.

The fact that Woolworths had paid the executive six months salary to cover the restraint period was not enough, on its own, to make it enforceable.

How can Fleming Muntz help?

Restraints on ex-employees – and also restraints on vendors of a business – need to be drafted realistically, since courts always presume them to be invalid unless proven otherwise.

Fleming Muntz can help identify the scope of confidential information or property that can be protected and draft appropriate restraint provisions for an employment or sale agreement.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

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