



## Springboards in Spring

A new season maybe encourages some employees to look for a new start. For some reason the advent of Spring seems to herald an increase in employment high court litigation cases relating to breach of restrictive covenants or theft of confidential information. Indeed Spring can be high season for Springboard injunctions! These injunctions can be a powerful tool for companies worried about an ex-employee taking away valuable business in circumstances where restrictive covenants are not as good as they might be or simply don't exist. They require an employer to point to wrongdoing by the employee whilst employed which then gives them an unfair competitive advantage in their new endeavour. The court can prevent the employee from working in this competitive endeavour for a period of time (e.g. 6 or 12 months) to try to counteract the competitive advantage. A useful and quite common form of employee wrongdoing is the theft of confidential information. What employees often forget (and this is something which is even more important if they are senior) is that material that they use at work is very likely to belong to their employer and is often confidential. A recent case against Sunderland Association Football Club Limited is a helpful reminder to companies about what constitutes confidential information and what sort of behaviour is and is not acceptable in terms of emails sent whilst an employee of a company.

It is not a defence for an employee to say that they were “banking” confidential information for use in future litigation or for assistance with job-seeking. Michael Farnan tried to email examples of work he had done with Sunderland Association Football Club to his wife's email address. His main role was to try to obtain shirt sponsorship for the 2012/13 football season. On 3 April 2013 he acknowledged in an email to one of the Directors at Sunderland that it “looks like my time is up” and prosaically announced “I done my best”! He emailed a football agent later that evening a presentation he had prepared whilst at SAFC. The court

considered this confidential information and found he did not have a right to do this. It also useful to note that the court did not think the Club could object to emails forwarding documents for printing when it had been agreed that the employee would often work away from the offices. Other emails informing Michael Farnan's wife of developments at work were considered trivial and not serious breaches. However, an email enclosing board minutes was clearly a serious breach of the duty to keep confidential information confidential.

Theft of confidential information is considered a serious matter by the courts and can lead to significant sanctions, not to mention significant legal fees in enforcing those sanctions. Individuals planning start-ups in competition with their previous employer can be broken and put out of business if they get this wrong. It can therefore be a powerful weapon. If you suspect that an employee has been sending emails either to himself or herself or to a member of their family it is worth checking whether permission had been given for this behaviour and whether the information was truly confidential. The Sunderland case is a useful reminder of how a judge is likely to look at such behaviour.

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