

Remedies against ex-employees

Although ex-employees may set up in competition with you once their employment ends, they cannot take advantage of breaches of employment obligations. Some recent cases illustrate the range of remedies available.

Confidential information

A search order to retrieve confidential information from an ex-employee was obtained in the High Court for the employment case *Hally Labels Ltd v Powell* [2011] NZEmpC 63. To get a search order an employer must have a strong case and evidence that the ex-employee has taken or kept information which is highly confidential and potentially damaging to the employer.

Restraint of trade

To be enforceable a restraint must be reasonable in its scope, for example as to time and geographical area, and in what it prevents compared with what the employer is entitled to protect. A restraint that prevents an ex-employee from soliciting your customers and staff is more likely to be enforceable than one that prevents an ex-employee from working for a competitor or setting up in competition.

However even such an anti-competitive restraint will sometimes be enforced, for example against a former manager who had extensive knowledge of confidential and non-confidential information, where there was a risk of inadvertent disclosure or use of the information: *Affco New Zealand Ltd v Graham and Silver Fern Farms Ltd* [2011] NZERA Auckland 223.

Freezing assets

With strong grounds to suspect that an employee has misappropriated a significant sum of money, and a very real risk that that money might be moved or spent by the employee, it may be possible to get a freezing order for the employee's bank accounts. The effect of the freezing order is to prevent the banks from making payments on the employee's instructions, until the employer's case against the employee could be decided: *Mason Engineers (NZ) Ltd v Hodgson* [2011] NZEmpC 82.

Recovery of damages to compensate for loss

An employer can sue ex-employees for breaches of their obligations, see for example *Rooney Earthmoving Ltd v McTague* [2009] ERNZ 240, where three employees conspired to set up in competition with their employer. The employer will need to be able to prove what losses it has suffered as a result.



For further information please contact:

Lesley Brook

Direct 03 467 7764

Email lesley.brook@andersonlloyd.co.nz

Mobile 0274 345 295