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COURT RESTRAINS MANAGING DIRECTOR FROM WORKING WITH A COMPETITOR



In a recent case in the Western Australian Court of Appeal, a Managing Director of a company has been restrained from taking up employment with a competing business, principally on the basis that the Managing Director had agreed with his former employer in his contract of employment to certain restraints, including in relation to confidential information and working for competing businesses.

The employment agreement between the company and the General Manager contained restrictions prohibiting the employee from:-

1. Disclosing or using any of the employer's confidential information, either during or after his employment with the employer; and
2. Restraints on him from taking up work with any competing business (as defined) within certain geographical locations and during the period of 6 months after termination of his employment with the company.

The General Manager worked for the Company for approximately one year and then accepted an offer of employment with a competing business. The Company then sought, and obtained, an interlocutory injunction (a Court

ordered restraint applying to the General Manager) from the Western Australian Supreme Court, the effect of which was to restrain the employee from starting work with the other business and from breaching the promises given in his employment contract. The General Manager then appealed against this decision but the appeal was dismissed. The employee made the following arguments to the Court on appeal:-

- A. That the employer's intention in imposing the restraints on the employee should be taken into account in determining whether those restraints were valid or not.
- B. The restraining provisions had the effect of stopping him working for anyone other than the company and that this effect should be taken into account in determining the question of whether the restraints were reasonable.
- C. The Court at first instance should not have taken into account the employee's acknowledgment in his contract of employment that the restraints were reasonable.
- D. The desire of the Company to protect its confidential information was not sufficient on its own to justify stopping him taking up employment with the competitor organisation.

The Court rejected all these arguments and found that the restraints were reasonable in all the circumstances.

In these cases, the law requires that the Court determine a balance between the competing interests of ensuring freedom of trade and commerce, from the employee's point of view on the one hand and the interest of the company/employer in ensuring that its goodwill and confidential information are protected on the other. These sorts of cases depend a great deal on the particular facts in each case.

In addition, restraints of trade are relevant not only to employment situations but also matters relating to sales of businesses and company takeovers.



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