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STOPPING A FORMER EMPLOYEE FROM TAKING CLIENTS

The Supreme Court of NSW has recently handed down a useful decision regarding trade restraints against an employee who accepted a position with a competitor (Koops Martin v. Dean Reeves). The Court held that the employee could not approach or accept instructions from former clients. However he could not be restrained from soliciting customers he had not serviced while in his former employment or customers of other divisions of the employers company.

Dean Reeves, the employee (a financial planner), was employed by Koops Martin Financial Services Pty Limited under the terms of a letter containing a confidentiality clause and trade restraints.

The trade restraints were to the effect that upon termination of his employment, Mr Reeves could not accept any instructions from any clients of Koops Martin for a period of 12 months. The restraints covered instructions to

act for such clients but did not restrain the employee from working for a similar business.

Reeves resigned and accepted a position with a competitor, MBT Financial Services Pty Limited which was the same type of business as his former employer and located in the same area.

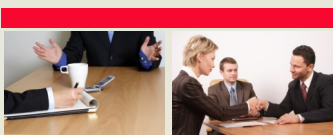
After changing employment, Reeves accepted instructions (within the 12 month period) from some of about 30 former clients of Koops Martin who had approached him. He himself had not approached any clients of Koops Martin.

Koops Martin, the former employer, instituted proceedings in the Supreme Court of NSW claiming injunctive relief in accordance with the trade restraint contained in Reeves' former contract of employment. Reeves counter claimed that the restraint was invalid. The Court upheld the restraint as to time and area. However, the restraint was held to be too wide (and hence invalid) in two respects:



- By including customers who the employee has not serviced; and
- By including customers of other divisions of the former employer other than the financial services division.

The lesson to take away from this case is that restraints included in contracts of employment need to be much more carefully drafted and restricted than those restraints often found in Sale of Business Contracts between Vendors and Purchasers of businesses. Employment restraints should cover such topics as employment within the same industry, canvassing or soliciting existing customers and confidential information. It may also be useful to draft the restraint so that parts of the restraint clause are severable in a cascading fashion.



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