

Information Sensitivity

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What is a springboard injunction and its effect on Hong Kong employers?



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Employer should be aware of the lifespan of confidential information and timing of bringing a springboard injunction

On 4 January 2023, the Hong Kong Court refused to grant a springboard injunction against a former employee to protect the employer's confidential information in the recent case of *DCL Communications Ltd v Lam Yim Chi Julia and another*¹.

What is a springboard injunction?

A springboard injunction removes any advantage a former employee or his subsequent employer may have obtained by misusing his former employer's confidential information. An ordinary injunction is ineffective since the confidential information has already been used and may no longer be confidential.

The court will grant a springboard injunction if the applicant former employer can show:

1. there has been an unlawful activity by the former employee;
2. the former employee has, as a result of that activity, gained an unfair competitive advantage over the former employer;
3. the nature and period of the competitive advantage is not short term;
4. the advantage still exists at the date the injunction is sought and will continue unless the injunction is granted; and



¹ [2023] HKCFI 98

5. an injunction would be proportionate having regard to the other protection which might be available to the former employer (i.e., existing restrictive covenants or damages).

The aim of the injunction is to restore the parties to the competitive position they would have occupied had the misconduct not occurred. The injunction should not be used to penalize the former employee and should not put the former employer in a better position than had there been no wrongdoing in the first place.

DCL Communications Ltd v Lam Yim Chi Julia and another

The employee (Lam) was employed by DCL Communications Ltd (DCL) as an account executive responsible for dealing with DCL's clients. She left DCL in September 2019 and was hired by a new employer 19 months later. Around December 2021, DCL lost its maintenance contract with a long-standing client.

DCL realised that the original sale contract with that client had been handled by Lam. A different client informed DCL that Lam, on behalf of her new employer, had attempted to sell similar services and products that DCL offered. DCL suspected that Lam had attempted to entice away its clients when the maintenance contracts were due for renewal.

DCL applied for a springboard injunction to stop Lam's new employer from using or disclosing any of the DCL's confidential information including client list, expiry dates of DCL's contracts with its clients and DCL's profit margins for each contract (Confidential Information).



Why did the court refuse to grant a springboard injunction to DCL?

No unlawful behaviors

There was no evidence that Lam had misused any Confidential Information. Without any restraint of trade covenants, Lam was entitled to solicit business from DCL's customers and use the same for her own purposes any information she carried in her head provided that the information was acquired honestly in the ordinary course of her employment, and she had not stolen, copied or deliberately memorized such information.



applied for the injunction. The contracts would already be renewed and any information about profit margin would be outdated thus any competitive advantage would not be present.

No unfair competitive advantage

There was evidence that DCL's clients usually ask for multiple quotations before renewing a contract. In some cases, DCL's clients approached Lam and not the other way round. There was also evidence that competitors other than the new employer managed to provide quotations with a significantly lower price than DCL.

Competitive advantage is not short term

There was no evidence that the Confidential Information would still be useful after 19 months when Lam started working for her new employer or after three years when DCL

Monetary award would be adequate

There was no unfair competitive advantage in this case. But if competitive advantage did exist, monetary damages would be adequate.

Key takeaways

- To successfully obtain a springboard injunction, employers should gather concrete evidence of wrongdoing and not mere suspicions and speculations.
- An employer may be unable to impose any contractual restraint on an employee to protect against mere competition. However, it can impose post-termination restrictive covenants on an employee to protect a legitimate interest, so long as the restraint is reasonable in all the circumstances to protect that interest.
- Confidentiality clauses in employment contracts may be ineffective for employees are free to use any information they honestly obtained and carried away within their head.
- Employer should be aware of the lifespan of confidential information and timing of bringing a springboard injunction. Employers who are concerned about the misuse or disclosure of their confidential information by its former employees should act quickly while such information is still up to date and capable of providing competitive advantage.



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