

COCO V. A.N. CLARK (ENGINEERS) LTD [1969] RPC 41

High Court – Chancery (England) – 1 July 1968

FACTS

Coco was developing a motor-assisted cycle or moped. He entered into negotiations with AN Clark to develop the moped and provided information to A.N. Clark about his moped. After some time, A.N. Clark elected to not further develop the Coco moped and instead began to develop its own moped.

Coco became suspicious that A.N. Clark was using some of his designs for the new moped. He therefore applied for an injunction to stop A.N. Clark making or sell any moped using his confidential information. A.N. Clark had just released its moped on the market while Coco had stopped developing his moped.

ISSUES

Had Coco established a strong prima facie case that the information was confidential or that there had been a breach of confidence?

Should an injunction be awarded to prevent the making and selling of the moped?

FINDING

Coco had failed to establish that the similarities between the two mopeds were achieved by the use of information provided by him to A.N. Clark.

Also, an injunction was not appropriate as the evidence for the case had not been properly tested and Coco had not developed his own moped and therefore it did not need protection from the sale of the rival moped.

QUOTE

Megarry J at page 47 said:

“In my judgment, three elements are normally required if, apart from contract, a case of breach of confidence is to succeed.

First, the information must itself ... have the necessary quality of confidence about it.

Secondly, that information must have been imparted in circumstances importing an obligation of confidence.

Thirdly, there must be an unauthorised use of that information to the detriment of the party communicating it.”

And at page 50 he said:

“If the duty is a duty not to use the information without consent, then it may be the proper subject of an injunction to restrain its use, even if there is an offer to pay a reasonable sum for that use.

If, on the other hand, the duty is merely a duty not to use the information without paying a reasonable sum for it, then no such injunction should be granted.”

IMPACT

When claiming that confidential information is being misused it is important to be able to clearly identify the information and explain how it is being misused.

A Court may not order an injunction to prevent the use of confidential information if the plaintiff is not themselves using that information.

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