

NP GENERATIONS P/L V FENELEY [2000] SASC 240

Supreme Court of South Australia - 19 July 2000

FACTS

NP was a real estate agent and a rental property manager. Feneley was employed by NP as the manager of its rental property business. Feneley kept a diary and an address book that contained details of NP's clients. Feneley decided to resign from her position when her relationship with her employers was deteriorating but before she could do so, her employment was terminated.

After the termination Feneley called NP's clients to inform them that she was no longer employed with NP and that she would no longer be handling their properties. Eight of the owners whom she had contacted terminated their arrangement with NP and established arrangements with Feneley when she joined her partner who operated a real estate business.

ISSUES

Was Feneley acting in breach of her employment duties given that there were no written employment contract between the parties?

Could the court grant an injunction against Feneley to stop her using NP's confidential information?

FINDING

A contract of employment existed between the parties even though it was not expressed in writing. It was implied to the contract that during the continuance of the employment, Feneley would act in NP's interests and not use the time for which Feneley was paid by NP in furthering her own interest. Information about the clients was an asset of NP therefore the nature of the business was sufficient to confer confidential status upon the information in the diary and address book.

The fact that the information was accessible by other staff was irrelevant as the same obligation of confidence applied to all of them. Employees of NP including Feneley were therefore obliged to keep that information in confidence from competitors like property owners.

However, Feneley compiled the information for the sole purpose of discharging her duties as a rental property manager. She was not deliberately memorizing the information to act inconsistently with her obligation to NP. She was not using the information to compete with NP because she had not decided to join another real estate business when her employment was terminated.

QUOTE

Mullighan J said:

"If the information in question can be regarded as separate part of the employee's stock of knowledge which can be recognised to be the property of his old employer and not his own to do as he likes, then if the court

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finds that there is a danger of the information being used or disclosed by the ex-employee to the detriment of the old employer, the courts will prevent the result by granting an injunction.”

IMPACT

The duty of good faith and fidelity is an implied term imposed on an employee during the course of his/her employment.

The duty will be broken if an employee deliberately copies or memorizes information of customers of the employer and solicits the customers for future time when the employment has ceased, and the employee has established his/her own business.

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