

TWO LANDS SERVICES PTY LTD V GREGORY ROBERT CAVE [2000] NSWSC 14

Supreme Court of NSW – 10 February 2000

FACTS

Cave was employed by Two Lands as a finance consultant in the mortgage origination business.

The employment contract included a restraint of trade clause which provided that Cave would not work for a competitor for twelve months and would not contact any referrers used by Two Lands for twelve months. Two Lands developed a list of referrers and graded these referrers by the likelihood that the referrer would refer clients to Two Lands.

Cave left the employ of Two Lands and went to work for another company in the mortgage origination business. Cave also took a copy of the list of referrers which included their grades as assessed by Two Lands. There was evidence that Cave contacted some of the referrers on the Two Lands' list.

Two Lands issued proceedings to enforce the restraint of trade clause.

ISSUES

Was the restraint of trade clause unenforceable for being unreasonable or against public policy?

FINDING

When considering the nature of Two Lands' business and the nature of Cave's employment both the restriction on contacting referrers and on being employed by another mortgage originator were reasonable and the restraint of trade clause was not against public policy.

QUOTE

Santow J said:

“Turning to the scope of the relevant restraints as they apply to the particular claimed breaches, the referrer restraint does not fit aptly with the earlier quoted test proposed by Professor Blake. Here, one is not dealing with replacement or supervision of one blue-collar worker with another, readily able to master the job.

Rather we are dealing with the replacement of a referrer relationship that requires considerable time and effort to establish and whose fructification in terms of referrals requires a relatively long lead-time. Indeed if Professor's Blake's test of the time taken for a reasonably competent new employee to master the job were applied, that time period when related to the referrer would necessarily have to take into account both the period of time required to create the relationship and the time for it to fructify; twelve months would not be an unreasonable estimate of that period.”

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IMPACT

When considering whether restraint of trade clauses are enforceable it is important to note the nature of the relevant industry and the nature of the position held by the employee.

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