

Actual Injury Required for Breach of Loyalty Claim

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In a case of first impression, the Connecticut Supreme Court recently held that an employer bringing suit against a former employee for breach of the duty of loyalty must prove a specific loss in order to state a cause of action. News America Marketing In-Store, Inc. v. Marquis, 276 Conn. 310 (2005).

The plaintiff, News America, sued its former Vice President of marketing, Marquis, claiming he took copies of certain business related materials just prior to quitting his employment and taking a new job with a competitor, Floorgraphics. News America also claimed Marquis solicited one of its employees prior to quitting in an effort to have that employee join him at the competitor company. The plaintiff argued that Marquis' actions breached the duty of loyalty he owed to News America. That duty generally includes a promise to not compete while employed, or disclose trade secrets or confidential information at any time, including post termination.

Although the trial court found that Marquis had taken the documents and solicited a fellow employee, his actions failed to cause any injury to News America. With regard to the documents, Marquis removed them from the plaintiff's premises and took them home, but never delivered them to Floorgraphics. Instead, he kept them in his garage and destroyed them when he learned that News America planned to sue him. Because Floorgraphics never saw the documents, News America suffered no harm.

Likewise, even though Marquis solicited a co-worker to join him at Floorgraphics while still employed by News America, the employee declined the offer and News America suffered no injury.

In analyzing the claim, the Court pointed out that breach of the duty of loyalty is a tort based action, and therefore actual harm is an essential element. While the Court found that Marquis had a duty, and breached that duty, his actions did not cause any monetary or quantifiable loss to News America. Therefore no tort had been committed.

The Court went on to explain that had the parties signed confidentiality and non-solicitation agreements, News America could have brought a breach of contract action and possibly recovered nominal damages. Because News America never had Marquis sign any such agreement it was foreclosed from bringing a contract based claim.

While employers will often have actual damages stemming from a breach of loyalty, there are situations where proving them is difficult, or where as here damages don't exist. As a result, employers should carefully consider having employees sign confidentiality, non-solicitation, and non-compete agreements. Doing so gives them an additional avenue to discourage, and if necessary pursue employees and former employees who have engaged in unwanted acts.

For more information contact scott@schaffer-law.com or (860) 216-1965.

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