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Faccenda Chicken Ltd v Fowler: CA 1986

Nature of Confidentiality in Information

The appellant plaintiff company had employed the defendant as sales manager. The contract of employment made no provision restricting use of confidential information. He left to set up in competition. The company now sought to prevent him using confidential information for this purpose.

Held: The information and the advantage flowing from it was obtained through dishonesty.

The court set down the obligations of employees after leaving their employment with regard to confidential information acquired by them.

Except in special circumstances, there is no general restriction on an ex-employee canvassing or doing business with the customers of his former employer. The employer can only succeed on the basis of an implied term if he can show improper use of confidential information tantamount to a trade secret. The court must consider: '(a) The nature of the employment. Thus employment in a capacity where 'confidential' material is habitually handled may impose a high obligation of confidentiality because the employee can be expected to realise its sensitive nature to a greater extent than if he were employed in a capacity where such material reaches him only occasionally or incidently. (b) The nature of the information itself. In our judgment the information will only be protected if it can be properly be classed as a trade secret or as material which, while not properly to be described as a trade secret, is in all the circumstances of such a highly confidential nature as to require the same protection as a trade secret eo nomine. . (c) Whether the employer impressed on the employee the confidentiality of the information . . (d) Whether the relevant information can be easily isolated from other information which the employee is free to use or disclose.' and 'It is clearly impossible to provide a list of matters which will qualify as trade secrets or their equivalent. Secret processes of manufacture provide obvious examples, but innumerable other pieces of information are capable of being trade secrets, though the secrecy of some information may be only short-lived. In addition, the fact that the circulation of certain information is restricted to a limited number of individuals may throw light on the status of the information and its degree of confidentiality.'

Neill LJ restated the classification provided at first instance. '(1) Where the parties are linked by a contract of employment, their obligations are governed by the contract between the employee and the employer.

(2) In the absence of an express term, the obligations of the employee in respect of the use and disclosure of information are governed by implied terms.

(3) While the employee remains in the employment of the employer, the implied obligations impose a duty of good faith or fidelity on the employee. The extent of the duty of good faith will vary according to the nature of the contract. The duty of

good faith will be broken if the employee makes or copies a list of names or deliberately memorises such a list, even though (except in the case of an ex-employee canvassing or doing business with customers of his former employer.

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which is only confidential in the sense that unauthorised disclosure of such information to a third party while the employment subsisted would be a breach of the duty of good faith.

(5) In determining whether any item of information is protected by the implied term after termination of employment, all the circumstances would be taken into account and in particular the following factors would be considered :

(a) The nature of the employment-If the employment is in a capacity where confidential material is habitually handled this may impose a high obligation of confidentiality because the employee could be expected to realise the confidential nature of the information.

(b) The nature of the information itself-The information is only protected if it can properly be classified as a trade secret or material which is in all the circumstances of such a highly confidential nature as to require the same protection as a trade secret.

雇主是否让雇员铭记有关资料的机密性: 雇主对该等资料的态度提供证据, 可协助决定该等资料是否可适当地视为商业秘密

(c) **Whether the employer impressed on the employee the confidentiality of the information. The attitude of the employer towards the information provides evidence which may assist in determining whether or not the information can properly be regarded as a trade secret.**

(d) Whether the relevant information can be easily isolated from other information which the employee is free to use or disclose.

The Court did disagree with Goulding J that an employer can restrain the use of information in his second category (namely confidential information) by means of a restrictive covenant. A restrictive covenant will not be enforced unless it is reasonably necessary to protect a trade secret or to prevent some personal influence over customers being abused in order to entice them away.

...

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Neill LJ

[1987] Ch 117, [1986] 1 All ER 625

England and Wales

Citing:

Appeal from – [Faccenda Chicken v Fowler](#) ChD 1984

The court was asked to restrain the plaintiff's a former sales manager making use of information acquired during his employment which information the employer claimed to be confidential. F had set up a business in a similar field, the marketing of . .

⚙ **Cited** – [Amber Size and Chemical Co Ltd v Menzel](#) 1913

The implied obligation on a former employee not to use or disclose information may cover secret processes or manufacture such as chemical formulae. . .

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