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EMPLOYEE ORDERED TO PAY DAMAGE FOR USING CONFIDENTIAL INFORMATION AND POACHING CLIENTS



The Supreme Court of New South Wales recently ordered an Accountant to pay \$117,995 in damages after he took confidential client information from his employer and used it to poach 776 clients.

Denis Cummins owned an accounting practice in New South Wales and sold it to a long term (14 years) employee. Mr. Cummins then stayed on and worked part time in the business, and worked another 2 days a week in his investment business which he owned and operated nearby. Over time he was allowed confidential information on a limited basis for some client mail outs in running his investment business. After 7 years he left the accounting practice to work full time on his investment planning business and service the accounting needs of his clients from there.

Before departing he flagged that he was likely to take a "hand full" of "clinging clients" and in fact prepared a list of 6 clients and associated family members on

his departure. This apparently wasn't his intention.

On leaving the practice he direct mailed a considerable number of clients from the former business and picked up over 750 new clients who had come from the accounting practice he had worked for.

The Trouble Started.

Having lost some hundreds of clients the practice then sued Mr. Cummins for his misuse of the confidential information.

The final decision turned on the issue of whether, as an employee of the company, he was entitled to make use of confidential information (client lists) which belonged to his employer. The answer was a resounding **NO**. The Court went on to allocate a good will valuation for the clients he won as a result of his improper actions and who then walked from the old practice to him. The Court ordered him to pay \$117,995 in damages. The Court also indicated a willingness to make further orders in relation to the confidential information, including formal declarations and mandatory injunctions on Mr. Cummins.

Interestingly, no part of the decision revolved around his employment agreement or a restraint of trade applicable to him but referenced specifically his use of client data as "confidential information".

This case is very relevant to your employment agreements and confidentiality agreements. ***How thoroughly do your agreements address this important asset of your business?***

If you would like to review your employment or other confidentiality agreements or discuss your business situation, please contact Adam Robinson or Ian Portas of Hollingworth & Spencer Lawyers on 07 3123 5700.