



Restraint injunction granted against law firm partners

Date : March 15, 2017

Background

Eight partners from a top-tier law firm in Sydney were (temporarily) prevented from moving to another rival law firm after 'retiring' from their old law firm by virtue of (some of) the restraints that they had entered into.

Decision

In a verdict granting an injunction in respect of the restraint provisions that was sought by the old law firm, the court:

- upheld the "detailed and extensive protections offered" by the partnership agreement - in particular restraint clauses concerning:
 - transfer of work to the new law firm
 - solicitation of other lawyers from the old firm
 - rendering of services to the old firm's current and related clients
- acknowledged the strength of the eight partners reasoning in relation a number of subsequent restraint clauses which they argued were void for being unreasonable restraints of trade
- found it difficult to see how a refusal to enforce the disputed restraint clauses could operate to the disadvantage of the old firm given the protections provided by the other restraint clauses
- observed the likely adverse, and in some cases significant, consequences for the outgoing partners, should the disputed restraint clauses be upheld



- stated that although the consequences "must have been apparent" to the "commercially and legally sophisticated" outgoing partners (particularly given their co-ordinated departure) the balance of convenience did not favour the enforcement of the disputed restraint clauses
- refrained from deciding disputed questions of law in circumstances where the injunction application was brought on urgently for hearing (these will be determined in substantive proceedings at a later date)

Tips for Employers

Although the restraints in question related to a partnership arrangement, fundamentally many of the concepts have direct application to employment law, thus employers should:

- undertake a review of the restraint clauses in their employment agreements
- have any redrafting of clauses within the employment agreements undertaken by an employment lawyer
- avoid, ideally, boilerplate restraint clauses in the employment agreements
- draft restraint clauses in the employment agreements that aim to reasonably protect the goodwill, confidential information and client relationships of the employer
- avoid the temptation to draft restraint clauses too broadly in the employment agreement (ie, ones designed to stifle competition)
- consider any other restraint clauses that might apply and which may need to be updated eg, if the employee is also a shareholder, any restraints in the shareholders deed/agreement
- obtain advice about the enforceability of a restraint clause in an employment agreement from an employment lawyer
- avoid the pessimistic (and incorrect) assumption that restraint clauses in employment agreements are unenforceable
- act quickly if a breach of a restraint clause in an employment agreement is suspected as some remedies, in part, require an employer to take prompt steps to seek them
- ascertain the likely damage that is or may be caused by a breach of a restraint clause in an employment agreement and consult an employment lawyer to see whether that can be recovered
- also consider revising other clauses within an employment agreement that support or relate to the restraint clause such as severability provisions, indemnities, choice of law/jurisdiction, confidential information and intellectual property provisions



More Information

Please call the leading employment lawyers in Parramatta, the **Matthews Folbigg Workplace Solutions** team on **02 9635 7966** to speak with one of our employment lawyers.