

Court overlooks drafting error to enforce restrictive covenant

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In *Prophet plc v Huggett* [2014] EWHC 615, the High Court overlooked a drafting error to enforce a 12 month restrictive

covenant which, if interpreted literally, would have been unenforceable. The clause restricted the employee from being engaged or employed in connection with products he was involved with during his employment. As these exact same products would not be sold by a competitor, the clause was effectively useless but the court treated this as a drafting error adopting what it believed to be the true intentions of the parties to cover products similar to those that the employee had dealt with whilst employed.

Mr Huggett was a sales manager who was a software developer and supplier in the fresh produce industry. He was responsible for developing new business and managing existing company accounts. His contract, if read literally, prevented him from working for a competitor in connection with products that he had sold whilst at Prophet. Following a request from Mr Huggett, Prophet released him from his 12 week notice period because he said that he had been offered a role heading up European marketing in food manufacturing. However, it emerged that he would be working for a direct competitor of Prophet.

Prophet brought proceedings against Mr Huggett; however, on a literal construction of the restrictive covenant, Prophet were unprotected because none of their products would be sold by a competitor. The High Court held that by inserting the words 'or similar thereto' after the reference to products sold by Prophet a commercially sensible result could be reached and that this was the probable true intention of the parties.

While the courts will not uphold a covenant purely for the purpose of protecting an employer from competition, it will uphold covenants where they are necessary to protect trade secrets or confidential information. In this case, the court found that Mr Huggett, who had transferred confidential documents to himself, lacked credibility and the court was not assured that he had not copied confidential documents and it was likely that he had retained some memory of confidential information.

The court also queried the usefulness of the general principle that injunctions will only be granted where damages are not be adequate in employment law given that damages would be unpredictable and in each instance Prophet would have to establish a separate claim. Arguments about financial hardship caused by a 12 month injunction were raised by Mr Huggett, however the court found that he had already accepted this risk by agreeing to the restriction in his contract.

Prophet plc v Huggett [2014] EWHC 615

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