

Repeating a restrictive covenant in an undertaking

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The High Court held that it was not proportionate to order an injunction against the former employees of Capgemini to enforce their post-termination restrictions. The restrictions, if enforced, would have prevented the employees from working for a competitor of Capgemini who had been awarded the contract that Capgemini had lost. The court, with a view to

the fact that there was no prospect of Capgemini regaining the contract and the pending expiry of the restrictive covenants, held that damages were an adequate remedy and refused to grant the injunction.

The defendant, Mr Krishnan, and two of his colleagues were employed by Capgemini India Private Ltd and Capgemini Financial Services UK ('Capgemini'). Their contracts had a post-termination restriction preventing them from dealing with customers with whom they had had business dealings or whose confidential information they had had access to in the last six months of their contract for six months after the end of their employment.

The employees were working on a Vision Plus Service for First Data and their contracts were due to end in March 2014, however, the employees resigned on notice in August 2013 when Capgemini lost the Vision Plus Service contract to Infosys Ltd. After their resignations, they began work for Infosys. Capgemini wrote to the employees in January 2014 seeking undertakings that they would observe the post-termination restriction and advising that they would seek an injunction if they would not. The employees, after seeking advice from lawyers, gave Capgemini these undertakings to avoid the financial risks of the injunction proceedings (which could have included the costs of Capgemini). Infosys then told the employees that they would meet the costs of litigation on their behalf. The employees therefore subsequently and subsequently informed Capgemini that they were withdrawing their undertakings.

Capgemini issued a claim for an injunction to prevent the employees from working for Capgemini which the High Court refused to grant. It held that the real point for it to consider was whether Capgemini had proved that it was appropriate to protect its interests with an injunction and that while it was arguable that the employees had commercially sensitive information, because Capgemini had lost the Vision

Plus Service contract and there was no chance of it being recovered (even if the employees abided by their undertakings) it would not be useful or proportionate to issue an injunction. The High Court also had regard to the fact that the post-termination restrictions were near their expiry and was unconvinced by Capgemini's assertion that their losses could not be compensated by damages.

Capgemini India Private Ltd v Krishnan and others [2014] EWHC 1092 (QB)

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