

Twas the Night Before Christmas -- Non-Compete Style

Insights

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Twas the night before Christmas, when all through the company;
A disgruntled employee kept saying “please jump with me.”
She was trying to line up a grand, mass departure;
Of which she was certain no one could outsmart her.

Her files had been copied, her clients all contacted;
She’d consulted a lawyer ‘bout things she had contracted.
He said that her covenants were quite overbroad;
Of this she was certain, they’d all be deemed flawed.

She proceeded to upload the secrets she’d learned;
On to flash drives, and emails and discs she had burned.
With not one regret, she reamed out her boss;
Quite sure she’d not erred, it would soon be his loss.

With eyes all upon her, out the door she receded;
Two colleagues joined with her, at least that’s what she tweeted.
The office was stunned, and management surprised;
No one had foreseen that they’d soon be downsized.

“Let’s call up the lawyers. What options have we?
We’ll file a lawsuit, and then she will see!

Without our permission, our computers she hacked!
This must run afoul of the Defend Trade Secrets Act."

"We must stop her now, her acts are illicit.
Without an injunction, our clients she'll solicit.
And don't forget the others who joined her, you see;
Together they formed a civil conspiracy."

"Hold your horses," say the lawyers, "don't get carried away.
Let's pull out their contracts and see what they say.
But where are they kept? We've got piles and piles.
For sure they'll be found in personnel files."

"Let's draft the complaint, and seek an injunction.
The defendants, you see, acted without compunction."
The Court set a hearing, the plaintiff went first.
"Your Honor, it's horrible, obscene and the worst!!"

"She's taken our staff, our trade secrets, purloined;
She must be shut down, she must be enjoined!
In her contract she promised, she swore, she agreed.
The protections we seek are all guaranteed."

"She may not solicit. It's in simple prose.
She may not take secrets, or use or disclose.
But even without the help of contract;
Her conduct defies the trade secrets act."

The lawyer sat down, feeling smart, feeling pleased;
The defense will be begging, they'll get down on their knees.
So the court turned to the left where defense counsel sat;
And asked, "My dear sir, what do you say to that?"

"Your Honor, you see, they've got it all wrong.
Just hear me out, this won't take too long.
The data at issue are far from trade secrets.
You'll find it in public, in brochures and on leaflets."

"The contract is void, it lacks consideration.
And the covenants purport to cover the nation.
My clients, they acted at all times with great reason.
In contrast, the plaintiffs use contracts adhesion."

Defense counsel sat, while the court thought about it;
Parsing through the arguments each party had spouted.
And finally the court was ready to rule;
To give its decision at this time of Yule.

“First let me address the non-compete clause;
Please wait ‘til I’m finished; please hold your applause.
The non-compete is too onerous, it’s unreasonable;
But I find that the covenants are quite severable.”

“Defendants have breached the clause nondisclosure;
Confidential information – indecent exposure.
And let’s not forget the non-solicitation;
That covenant is of reasonable duration.”

“So I’m going to issue a restraining order;
Please take this down, my dear court reporter;
A bond shall be posted at ten thousand dollars;

I say this to both parties and their legal scholars:

Explore resolution. Think how not to fight.
Merry Christmas to all, and to all a good night.”

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