



State Court Holds Employers Must Protect Trade Secrets From Independent Contractors

Insights

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A recent Massachusetts Superior Court decision held that employers risk losing trade secrets and confidential information if they do not protect that information from independent contractors. The court held that employers who do not take active steps to protect their proprietary information from disclosure cannot recover from independent contractors who take that information for their own purposes. *C.R.T.R. v. Lao*

The employer in this case, C.R.T.R. Inc., is in the business of recycling nonfunctioning electronics (“e-waste”). In 2007, Jimmy Lao became one of approximately 20 buyers of e-waste for C.R.T.R., reselling it to buyers in Asia.

At some point, Lao began negotiating to purchase C.R.T.R. through his own company, Honour Crown Asia, Inc. In 2009, Kenneth Lao, Jimmy Lao’s nephew, began working at C.R.T.R. as an independent contractor. At the same time, Kenneth Lao was also working for Honour Crown Asia, with C.R.T.R.’s knowledge. After the negotiations for the purchase of C.R.T.R. fell apart, Kenneth Lao resigned from his position at C.R.T.R. and took with him C.R.T.R.’s customer lists, accounting information, and other confidential information, according to the pleadings.

C.R.T.R. sued Kenneth Lao for misappropriation of trade secrets and sued Jimmy Lao and Honour Crown Asia for unfair and deceptive business practices. Following discovery, all three defendants moved for summary judgment on both counts.

The court granted summary judgment to Kenneth Lao on the misappropriation of trade secrets, holding that C.R.T.R. had not taken sufficient steps to protect its purported trade secrets even though it knew that Lao was simultaneously working for Honour Crown Asia. The court found it particularly significant that C.R.T.R. never required Lao to sign a confidentiality agreement or maintained any kind of policy to protect the confidentiality of its information.

The Court also granted summary judgment to Jimmy Lao and Honour Crown Asia, holding that C.R.T.R. “ha[d] not presented any evidence that the defendants’ conduct was immoral, unethical, oppressive, or unscrupulous.”

This case should serve as a cautionary tale to all employers who work with independent contractors. It is easy for employers to become lax in protection of their proprietary information, particularly

when independent contractors work closely with the rest of the workforce. But this complacency can be costly.

Our advice? Require all your independent contractors to sign a confidentiality agreement, protecting confidential information during the term of their contract and afterward. Additionally take basic steps to protect confidential information, such as limiting access to key employees and maintaining up-to-date confidentiality policies in their handbooks.

For additional information on how this ruling may affect your business, please contact any attorney in the Boston office at (617) 722-044, or your regular Fisher Phillips attorney.

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