



**Sam Hood**

## **Injunctions**

Don Brash used one to prevent the disclosure of stolen emails. United Future wanted one in order to participate in the 2005 Leaders Debate. The Canterbury Bulldogs were granted one to prevent Sonny Bill Williams from defecting to Rugby Union.

With volatile times ahead, the Court injunction will be an effective tool for businesses seeking to protect their interests. The trick is to know when an injunction may be available and to act quickly. Today we look at three scenarios where businesses have used injunctions to prevent a major catastrophe.

### **Scenario 1**

A Hotel Owner owed a Business \$40,000 for goods supplied. After several letters of demand were ignored, the Business sued the Hotel owner for \$40,000 in damages.

The Hotel Owner then tried to sell the hotel. The Business Owner believed that if the hotel was sold, the Hotel Owner would have no assets with which to pay the \$40,000 that the Business was seeking.

The Business obtained a Mareva Injunction from the High Court preventing the sale of the Hotel until the dispute between the Hotel Owner and the Business was determined by the Court.

A person in the position of the Hotel Owner (faced with a lengthy delay in the sale of the hotel) will invariably agree to pay the \$40,000 into Court so that the injunction is lifted.

By acting quickly, the Business ensured that the \$40,000 it claimed was paid into Court by the Hotel Owner. If the Business is successful in proving their claim to the \$40,000, the Business has a \$40,000 'pot of gold' waiting for them.

**Scenario 2**

Two men were sales representatives for a Company. After a disagreement with the Manager, they both left to work for the Opposition.

The Company wanted to enforce a restraint of trade clause that prevented the men from working for any competitor for six months. The High Court awarded the Company an interim injunction, preventing the men from working for the Opposition. Humbled by the experience, the men negotiated a resolution with the Company. In return for payment of the Company's legal expenses, the Company agreed to drop the legal proceedings. By this stage, the men had been out of work for four months. The actions of the Company sent a clear warning to the men (and others) that any interference with their customers would not be tolerated.

**Scenario 3**

A Manager with more than 15 years experience at a Business resigned with little warning. The Business Owners soon discovered that the Manager was working for an Opposition Company and had taken confidential information, including customer lists, to the Opposition.

There was no restraint of trade clause in the Manager's employment agreement so the Business was not able to obtain an injunction preventing the Manager from working for the Opposition. The immediate priority was the return of the confidential information, however the Business Owners feared that if they obtained an injunction forcing the return of their information, the Manager would simply make copies of the confidential information. Time was of the essence and the element of surprise was critical.

The Business obtained an Anton Piller Order from the High Court which authorised their lawyers to enter the premises of the Opposition Company and the home of the Manager to locate and recover their confidential information. The Order was executed without warning and the confidential information was found on the Manager's desk. The Business is now suing the Manager and the Opposition for damages. The Order was accompanied by an injunction preventing further use of the Business's confidential information.

**Lessons Learnt**

An injunction is a powerful device that can be deployed to protect the various interests of a business. It can often bring a quick resolution to an otherwise protracted and costly legal dispute. Invariably, an injunction provides a fast, flexible and practical avenue that the normal litigation process may not provide.

A word of warning - in all cases, speed is fundamental and surprise is often necessary. So to is an awareness of situations in which an injunction may be available. If you are faced with a situation in which you think fast action is necessary to prevent a damage to your Business, consult your lawyer immediately.

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