



Can Employee Actions Trigger Unexpected Liabilities?

Employer-employee relationships can be complicated, and sometimes strained relationships become liabilities that trigger lawsuits. This was certainly the scenario spurring a recent case, *Governo Law Firm LLC v. Kendra Ann Bergeron & others*. A group of employee attorneys from Governo Law Firm (“Governo”) stole firm-owned databases while still employed by the firm. They used those materials for their own benefit to start a competing law firm. This case teaches us some interesting things about liability under G.L. c 93A, §11 — the Consumer Protection law that protects individuals and businesses from “unfair and deceptive” behavior in the marketplace.

This new decision from the SJC clarifies how certain employee actions may be subject to liability through unfair and deceptive business behaviors. Normally, disputes between employers and employees do not implicate unfair and deceptive practices under the Consumer Protection Law as the statute only contemplates business transactions in the marketplace, not intra-company matters. However, certain situations may have effects extending beyond

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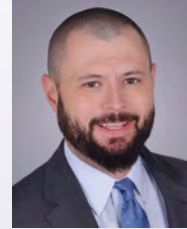
the employer-employee relationship that may constitute unfair or deceptive practices. In the *Governo* case, the defendant attorneys used the materials they stole from their previous employer in the marketplace. As a result, the SJC stated the jury should consider the theft the defendants committed while they were still employees when determining liability.

Governo represents clients in asbestos litigation. Over the years, the firm collected and archived resources into an extensive, searchable library of materials. Over 100,000 documents containing “witness interviews, expert

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Firm News



Brendan Cox

Brendan Cox joined the Board of Directors of the South Boston Neighborhood House, the oldest continuously operating community based non-profit in South Boston.

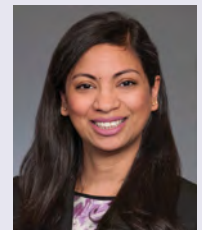


Matthew Kane

Matt Kane authored a case comment for the Massachusetts Law Review outlining useful guidance on restrictive covenants.



Marc Laredo



Payal Salsburg

Marc Laredo and Payal Salsburg co-presented a BBA program, “Planning For the Transfer of Ownership and Operating Control of a Privately-Held Business from One Generation to Next.”

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reports ... investigative reports,” and more were stored in this library, which cost upwards of \$100,000 to accumulate, making this collection not only extremely valuable monetarily, but also strategically and competitively in the field of asbestos litigation.

In 2016, several attorneys at Governo decided to attempt to purchase the firm or break away to start their own practice if their bid was rejected. The attorneys secretly downloaded the files from the asbestos research database onto hard-drives for their own use at their new firm. The defendant’s bid for the purchase of the firm was rejected. Shortly thereafter, they began to practice under their new moniker, CMBG3 Law LLC (“CMBG3”), using the data they took from Governo.

Governo filed a complaint asserting several claims including a violation of 93A, § 11. Under normal circumstances, 93A protects consumers (and sometimes other companies) from “unfair and deceptive practices” of businesses. For example, if a business were to charge a customer higher rates than advertised, or fails to give relevant information about the product or service being sold, then there may be liability under the statute.

The jury found the defendants liable for all counts except for 93A. As a result, Governo received \$900,000 in damages based on the defendants’ net profits. The judge also ruled that the defendants were banned from using some of the stolen documents and ordered the removal of materials from their devices. Governo appealed the decision, arguing that the jury should have been able to consider the actions of the defendant attorneys while they were still employees for the sake of the 93A claim. The Judge precluded them from doing so since normally it is only actions in the marketplace that implicate that particular statute, not those which are done by an employee. The Supreme Judicial Court agreed with Governo.

This case presents interesting circumstances businesses need to know when faced with intra-enterprise disputes. Essentially, employees who mis-use company-owned materials outside of their company relationships are subject to unfair or deceptive practices liability under 93A. For example, an employee misappropriating a trade secret owned by their employer for their own benefit in another enterprise could run afoul based on this case. Regardless of the employee status of the defendant at the time of the misappropriation, they may still be liable.

In the Governo case, the SJC clarified that the jury should have been able to consider the defendants’ theft while deciding on the 93A issue even if it had occurred when they were still employees. The theft and use of stolen property to gain a competitive advantage in the marketplace could have been determined by the jury to have violated the statute. Therefore, it is important to keep in mind that there may be additional liability for employees who mis-use company materials for their own gain when using them in the marketplace.

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