



EMPLOYERS MAY BRING CHAPTER 93A CLAIMS AGAINST FORMER EMPLOYEES WHO MISAPPROPRIATE MATERIALS DURING EMPLOYMENT

The Massachusetts Supreme Judicial Court (“SJC”) recently made clear that Chapter 93A applies to employees who misappropriate their employer’s proprietary information during their employment and then use that information to their benefit in the marketplace.

In *Governo Law Firm LLC v. Bergeron*, the plaintiff, Governo Law Firm LLC (“GLF”), spent over twenty years amassing an electronic database of information that gave it a competitive edge in providing legal services to clients in the field of asbestos litigation. In 2016, a group of GLF attorney employees took GLF’s proprietary materials by downloading them onto thumb drives and removing them from GLF’s offices. The defendants performed these secret downloads while still employed by GLF. The defendants then used those materials to start a new law firm called CMBG3 Law LLC (“CMBG3”). GLF brought suit against its former employees and CMBG3, and a jury found in favor of GLF on its claims for conversion, breach of the duty of loyalty, and conspiracy. The jury did not, however, find that defendants violated Chapter 93A.

On appeal, GLF challenged the trial judge’s jury instruction regarding Chapter 93A, in which the judge advised the jury that Chapter 93A did “not apply” to anything the defendants did while still employed by GLF. The SJC agreed with GLF that this instruction was incorrect and prejudicial and remanded for a new trial on that count. The SJC explained that, although Chapter 93A generally does not apply to disputes arising from an employment relationship, that does not mean that an employee may never be liable to his or her employer under that statute. The SJC stated, “[w]here an employee misappropriates his or her employer’s proprietary materials during the course of employment and then uses the purloined materials in the marketplace, that conduct is not purely an internal matter; rather, it comprises a marketplace transaction that may give rise to a claim under G.L. c. 93A, § 11.” The fact that individuals were employees at the time of the misappropriation does not shield them from liability under Chapter 93A if they subsequently used the misappropriated materials to compete with their former employer.

The interplay between the intra-enterprise doctrine under Chapter 93A and employees who misappropriate information has been the subject of some conflicting case law in the past, so the *Governo* decision should provide needed clarity in this area.

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