



Restrictive Covenant can be Imposed Against Former Employees to Protect Trade Secrets

03.23.2012

On February 3, 2012, PSI filed a complaint against one of its former employees, Steven Souza, alleging claims for violation of the Computer Fraud and Abuse Act, violation of California Penal Code section 502, breach of contract, breach of loyalty, breach of the implied covenant of good faith and fair dealing, misappropriation of trade secrets, tortious interference with prospective economic relationship and economic advantage, unfair business practices, and conversion. *Pyro Spectaculars Inc., Pyro Spectaculars North Inc., and Pyro Events Inc. (PSI) v. Steven Souza* [PDF], Case No. CIV S-12-0299 GGH.

After 17 years, Souza left PSI, joined a competitor, and solicited PSI customers. Souza had signed a confidentiality agreement with PSI acknowledging that he was not to disclose PSI trade secrets including customer information. Using a computer forensics expert, PSI discovered that Souza had transferred PSI files from his laptop to an external hard drive and additional USB drives. Souza then wiped his laptop to delete and write over the files.

This case is important because it (1) permits a restrictive covenant to be imposed against a former employee to protect against the misuse of trade secrets and (2) addresses the relationship between Business and Professions Code section 16600 – which prevents covenants which prohibit competition [except in a few circumstances] and the California Uniform Trade Secrets Act – which recognizes that, under certain circumstances, a restrictive covenant can be imposed on a party in litigation.