

## Carter Ledyard Wins Reargument on Discovery of Post-Employment Damages

July 26, 2023

A recent decision by Kings County Commercial Division Justice Leon Ruchelsman granted Carter Ledyard's motion for reargument and compelled the defendants—a former employee of the plaintiff and his competing businesses—to provide discovery into their competing business and actions directed at the plaintiff's customers after leaving the plaintiff's employ.

According to the complaint, the individual defendant was a long-time employee of the plaintiff, facilitating the plaintiff's sourcing and production of garments overseas on behalf of domestic retailers. While still employed, the defendant misrepresented to his employer that COVID-19 has caused a slowdown of customer orders while he was actually diverting customer orders and payments to his own companies. After his termination, the defendant continues to do business with the plaintiff's customers through his new companies, has driven customers away from the plaintiff and profits immensely at the plaintiff's expense.

An earlier decision denied the plaintiff's motion to compel post-employment discovery about the defendants' manufacturing and sales of garments to the plaintiff's wholesale customers. The Court reasoned that, although the plaintiff had sufficiently alleged the defendant's violations of his fiduciary duties during the period of his employment, the plaintiff had not done so for post-employment conduct. In the absence of an employment agreement with a nonsolicitation provision, the Court initially reasoned, the individual defendant was free to compete with his former employer—provided that he did not use misappropriated proprietary information.

On reargument, the Court reversed itself and compelled the defendants to produce discovery concerning their business with Plaintiff's customers post-employment. According to the recent decision, the plaintiff had sufficiently alleged that violations of the defendant's employee fiduciary duties began during his employment. These allegations included the defendant's misuse of the plaintiff's time and facilities to compete, and that his solicitation of the plaintiff's customers during employment constituted improper profiting from a business opportunity belonging to the plaintiff. Because these actions were alleged to have continued unabated after his termination, they were sufficient to state a claim against all of the defendants for post-employment conduct.

Consequently, the plaintiff was entitled to discovery concerning post-employment conduct stemming from the alleged wrongful conduct that began during employment.

Carter Ledyard partner Jacob H. Nemon represents the plaintiff.

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