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LAW OF EQUITY PROTECTS CUSTOMER INVOICES AS CONFIDENTIAL

The case of **JN Dairies Ltd vs Johal Dairies Ltd, High Court 2009 EWHC 1331(Ch.D.)** illustrates the fierce competition between wholesale dairies. The case was particularly interesting because the claim was brought in equity for breach of confidence, as opposed to breach of an Employee's Contract of Employment in not making use of trade secrets or similar equally confidential material once an Employee's Contract had ended.

Two days after his employment with JN Dairies Ltd had expired at about 2:00 am, S entered its warehouse and removed customer invoices from trays where drivers collect and distribute them to customers. He then passed them to JD Ltd, a competitor, went out with the latter's drivers, visited the former customers and offered to supply products at a cheaper rate. The Director of the latter and S had planned the theft together and S would receive £40,000.00 and the cost of travel to India.

The case was dealt with at a preliminary Hearing as to whether or not there was an actionable breach of confidence or misuse of confidential information by either JD Ltd or S.

JD Ltd argued that the information was not confidential in the commercial sense because the market was transparent and it was also something the Employee had learnt and became part of his skill and knowledge and could not be restrained from using after the employment was finished.

The Judge was not in the least bit convinced. He found the information on the invoices was of considerable and commercial value and treated as confidential by both dairies, as evidenced by the fact there was intense competition between them and that each tried to win business from the others' customers. Price was an important factor.

He found there was indeed commercial advantage in knowing competitors' prices, which was not simply available by asking customers because they invariably stated they were paying a lower price than they actually were as a negotiating strategy. Further more £40,000.00 had been paid for the information demonstrating its' value in the eyes of JD Ltd.

The Judge rejected the suggestion that unlawfully obtained documents may not be actionable, unless the content of those documents satisfied a stringent test of confidentiality or potential to cause commercial harm, instead he relied upon the principles underlying a claim in equity to protect breaches of confidence, irrespective of any Contract between the Parties.



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The following 3 elements had to be satisfied for such a claim.

- The information itself must have the necessary quality of confidence about it.
- It must have been communicated in circumstances importing an obligation of confidence.
- There must be an unauthorised use of that information to the detriment of the Party communicating it.

In the above case therefore, the invoices and the information on them were not in the public domain and if disclosed by an Employee would be in breach of their duty of good faith. It would not normally be disclosed by the Employer because competitors could gain a commercial advantage from the information.

S also knew the information was commercially valuable and he had no right to get it or pass it on without his former Employer's authority. This was also known by JD Ltd and so was subject to the same duty of confidentiality.

Finally it was plainly the case that the use of the information had been unauthorised and that JN Dairies Ltd had suffered detriment in that business had been lost even if only temporarily or more keen terms had, had to be offered to get customers back or win business.

This is a useful case as it deals with the protection of confidential information outside the realms of Contracts of Employment and within the general duty of confidence protected by the law of equity.

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