

COURT OF APPEAL UPHOLDS FINDING OF A BREACH OF FIDUCIARY DUTY WHERE A CLIENT OF THE EMPLOYER SOLICITS THE DEPARTED FIDUCIARY

KJA Consultants Inc. v. Soberman, [2004] O.J. No. 4560 (Ont. C.A.)

The Plaintiff employer, KJA Consultants Inc. (“KJA”), brought an action against its former employee, Jonathan Soberman, for breach of fiduciary duty. Mr. Soberman had been employed by KJA for 13 years most recently as its general manager. The general manager was responsible for marketing and sales. There was no dispute that Mr. Soberman owed fiduciary duties to KJA.

Mr. Soberman resigned from his position and immediately started a competing business. He was contacted by a significant client of KJA and asked to submit a bid to complete a project that was being performed by KJA. Mr. Soberman’s bid was successful and he took over the KJA project. In marketing his new business, he also sent letters to some of KJA’s clients.

The trial judge found that Mr. Soberman had breached his fiduciary duty by sending letters to KJA’s clients. This finding was not appealed. The trial judge also found that Mr. Soberman had breached his fiduciary duty by taking over KJA’s project. This finding was appealed and upheld by the Court of Appeal. The Court of Appeal found that Mr. Soberman’s use of the knowledge he acquired at KJA to take over the project was sufficient to establish a breach of his fiduciary duty.

The significance of the Court of Appeal’s decision is that Mr. Soberman was held to have breached his fiduciary duty by taking over the project even though he did not solicit KJA’s client. Rather, KJA’s client contacted Mr. Soberman to take over the project. The decision suggests that a fiduciary may not do business with a former employer’s clients for a period of time even if the business is offered to them without any solicitation.

Notably, KJA was successful in earlier proceedings in obtaining an injunction preventing Mr. Soberman from contacting and doing business with KJA’s clients for a specified period of time.