

6 November 2012

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## Restrictive Covenants and Fiduciary Duties

[Thanks to [Laurie Anstis](#) of Boyes Turner who is standing in for Daniel Barnett. Thanks also to [Caroline Field](#) of Fox for preparing this case summary]

Was there a breach of a non-solicitation clause and fiduciary duty, in a case where the former customers denied having been solicited?

Yes, says the High Court in [Safetynet Security Limited v Coppage](#), which found the Claimant's former customers to be "lying and acting under the control of [the defendant]" in denying solicitation.

Mr Coppage was a director of the Claimant company (a security company). Within two days of his resignation, two customers had terminated their relationship with the Claimant in favour of a new company, which had not produced any marketing material and had no "shop-front". The start-up was incorporated by Mr Hadley, a trainee electrician who resigned from the Claimant company within an hour of Mr Coppage and had limited security experience. Disclosure revealed significant text and telephone traffic between the defendant and both Mr Hadley and the Claimant's customers, with whom the judge observed an "unusually close relationship" over a key period. This evidence was in direct contradiction with Mr Coppage's earlier correspondence.

Even if the non-solicitation clause had been deemed unenforceable, solicitation may have been a breach of Mr Coppage's duty to avoid situations where his own interests conflict with the Claimant's interests.

The case stresses the importance of credible testimony, which is consistent with what a witness has said on other occasions and contemporaneous documents.

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