

Duties of Loyalty and Fair Dealing

Duane Jones Co. v. Burke, et al

Facts: Plaintiff advertising agency sues defendant former employees for conspiring to take customers and employees. Defendant officers and directors of plaintiff hold a meeting to discuss buying out the plaintiff or forming their own firm, pre-sell the clients on the change, and lined up employees for the eventual new firm. They end up employing 70 or 130 employees. Jury finds for the plaintiff.

Standard: Officers, Directors & Employees are prohibited from acting in any manner inconsistent with the agency and trust of their position and are at all times bound to exercise the utmost good faith and loyalty in the performance of their duties.

Held: By pre-selling clients and lining up employees, defendants violated their fiduciary duties of good faith and fair dealing.

Ability Search v. Lawson & Raz

Facts: Defendants are employees of plaintiff search firm, and fail to follow office policies, have resumes sent to their homes, place newspaper adds that don't mention plaintiff, don't share job orders, place a candidate without disclosing, took candidate files when they left, etc. They get fired and quickly form their own firm, and do substantial business with both past clients and candidates.

Rules: An employee is generally not barred from competing with his former employer.

- May solicit customers of former employer who are openly engaged in the business or whose identify is readily or equally available.
- May NOT solicit former customers if they would have been unknown, but for info obtained during prior employment.
- Customer lists and files are protected trade secrets.
- Former employees are not required to refuse to do business with candidates who contact them.

Held: Plaintiff is not entitled to an injunction or damages because they failed to prove that the defendants utilized any information about such clients which was not readily available from public sources or readily ascertainable.