

Relying on legal advice can provide a defence

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Taking legal advice and honestly relying on it can stand as a defence to claims where a defendant's necessary belief must be demonstrated for the claim to be successful.

In the recent Court of Appeal case [David Allen t/a David Allen Chartered Accountants v Dodd & Co Limited](#), Dodd & Co escaped liability for inducing a breach of contract, because they had sought legal advice on their intentions before acting. They successfully demonstrated that they had honestly relied upon the legal advice they were given, even though that advice turned out to be incorrect.

Facts

Mr Pollock worked at David Allen Chartered Accountants (David Allen). His contract of employment contained non-compete and non-solicitation clauses, commonly known as post-termination restrictions or restrictive covenants. Dodd & Co wished to employ Mr Pollock and were aware of his restrictive covenants. Before employing him, Dodd & Co sought legal advice on the enforceability of Mr Pollock's restrictive covenants, and were advised:

"...the restrictive covenant hasn't got a lot going for it. You could, therefore, act and allow [Mr Pollock] to act on the basis that it isn't enforceable and contact David Allen's clients. This is almost certain to provoke a strong reaction. He will probably write to [Mr Pollock] setting out why he believes [Mr Pollock] is in breach..."

As a result of that advice, Dodd & Co employed Mr Pollock, as whilst not entirely without risk, it was more likely than not that the restrictive covenants were unenforceable. In fact, the court held that the covenants were enforceable and by working for Dodd & Co, Mr Pollock was in breach. Nonetheless, the court rejected the claim against Dodd & Co, brought by David Allen, for

inducing the breach by Mr Pollock, on the basis that they had placed honest reliance on the legal advice they had obtained.

The Court of Appeal's decision

The decision was subject to appeal, and the Court of Appeal upheld the High Court's decision. It found that Dodd & Co were not ignorant of Mr Pollock's contractual obligations and had gone to the trouble of obtaining legal advice before offering him employment. The fact that the legal advice turned out to be wrong was not enough for David Allen to be successful in his claim against Dodd & Co. During the appeal David Allen argued that there should be liability whenever a defendant believes there is a risk that its conduct, in this case employing Mr Pollock, would cause a breach. The argument was rejected by the court:

"As everyone knows, lawyers rarely give unequivocal advice; and even if they do the client must appreciate that there is always a risk ...that the advice will turn out to be wrong."

Lesson to be learned: Always seek early legal advice

Although this case focuses on restrictive covenants in an employment setting, it is important to remember that the tort of inducing a breach of contract applies to all manner of contracts, and it is best practice to seek legal advice early on. Where a party honestly relies on such advice, it may prove to be a defence to the tort of inducing a breach of contract.

The courts accept that a solicitor's advice is rarely definitive and will inherently attach an element of risk. Generally, the party seeking that advice must weigh up any risks identified within the advice before acting upon it

even if, in some circumstances, it may still provide a suitable defence.

The message is clear, always consult a solicitor before acting! For advice and information contact [Karen Cole](#) today.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

