



THE HONOURABLE SOCIETY OF THE  
**MIDDLE TEMPLE**

## **Employment Law Research QS**

This Qualifying Session will provide background information on employment law. The first 30 minutes of the presentation will focus on resources, research, and key areas of employment law. This introduction will be followed by a 30-minute group discussion centred on a scenario involving a mock employment injunction. Lucy Bone, an experienced practitioner in commercial and employment disputes, will lead the discussion.

Please review the mock employment injunction below in advance of this Qualifying Session. In preparation for the training, reflect on the legal principles that will need to be addressed and consider whether an injunction should be granted. Please be prepared to discuss your views with the group.

Specifically, please answer the following questions:

1. What are the procedural requirements to prepare the injunction, including documents and notice to the other side?
2. What is the test to be applied, under American Cyanamid?
3. Think of 3 points in favour of granting the injunction, and 3 points against.
4. What is the effect of the order if the defendant breaches it, and what is the role of the cross-undertaking?



QR Code for presentation slides

IN THE HIGH COURT OF JUSTICE

CLAIM NO.

KING'S BENCH DIVISION

Before The Honourable Mrs Justice Smith

Court 37

B E T W E E N :

IDB

Applicant

-and-

(1) Desk Head

(2) Junior Broker

(3) RIVAL

Respondents

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SCENARIO FOR MOCK EMPLOYMENT INJUNCTION

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### Application

1. IDB have issued an application for an interim injunction against 3 Respondents. It has applied on 3 clear days notice.

### Background

2. The witness statement of Mr Keeper in support of IDB's application essentially sets out the following evidence.
3. IDB is an inter dealer broker operating in the financial services industry, broking various financial products to established trade connections consisting of individual traders at various investment banking institutions.
4. It has a small team broking foreign exchange ('**Forex**') transactions consisting of 10 brokers at different levels of seniority led by Desk Head, and which included Junior Broker ('**the Duo**'). The Duo had worked together for several years. Desk Head has a significant personal influence over the more junior members of the team.
5. The Duo secretly agreed to set up a new business venture together in competition with the Forex desk of IDB and staffed by some of its current brokers. They approached other brokers on the Forex desk and sought their agreement to become involved in the competing business, requiring them to keep silent about the new venture. The Duo also approached some of IDB's trade connections.

6. They obtained investment using a business plan which suggested that they would employ a hand-picked team of IDB's foreign exchange brokers.
7. On 1 January Desk Head and Junior Broker resigned. They were put on garden leave until the expiry of their 6 month notice periods on 30 June. On resigning they said that they intended to commence a start-up desk with RIVAL, a competitor of IDB.
8. RIVAL had supported the Duo's set-up activities both logistically and financially. RIVAL had agreed to enter into the new venture knowing that the Duo intended to bring with them Forex brokers, trade connections and confidential information for use in that business. RIVAL's financial backing for the new venture was given on the basis of the business plan. It was aware of the obstacles and restrictions that the IDB contracts of employment placed in the way of the Duo and other IDB Forex brokers.
9. On 1 February 7 Forex brokers who the Duo had approached resigned to join RIVAL. Subsequently 2 of them decided to stay at IDB and told IDB about the approaches. 1 Forex broker was approached but refused and remained with IDB, again spilling the beans.

### **Express contractual terms**

10. The IDB broker contracts included the following express terms:
  - (1) A clause agreeing to diligently and faithfully to perform such managerial, administrative and other duties as were associated with the broker's role or such other duties as may reasonably be assigned to him. The broker also undertook to use his best endeavours to promote and protect the interests of IDB.
  - (2) A clause agreeing that the broker would 'fully and properly disclose to the Board and the managing director all of the affairs of IDB of which he is aware'.
  - (3) A clause agreeing not to be directly or indirectly interested in any manner in other business.
  - (4) A clause agreeing not to make use of or divulge to any person, 'and to use his best endeavours to prevent the use, publication or disclosure of' any information of a confidential or secret nature as defined (without limitation of time).
  - (5) A clause entitling IDB in its absolute discretion to place the broker on garden leave for the duration of any notice period.
  - (6) 6 month post-termination restrictive covenants as follows:

*'Since you have obtained and are likely to obtain Confidential Information relating to the business of the Company or any Group Company and personal knowledge and influence concerning clients and customers of the Company or any Group Company in the course of your employment with the Company, you hereby agree with the Company that you will not during your Employment or:*

*(i) non-competition: For a period of six months from the Termination Date either on your own account or for any person, firm or company directly or indirectly be employed or engaged anywhere within the United Kingdom in any capacity involving substantially similar duties to those you performed for the Claimant for any other person, firm or company in competition with the Company or any Group Company without the prior written consent of the Company; or*

*(ii) non-dealing with customers: For a period of six months from the Termination Date either on your own account or for any person, firm or company directly or indirectly have any dealings in relation to the supply of goods or services dealt with by the Company or any Group Company for whom you have provided services under your contract of employment with any customer (including but not limited to any insured, broker and/or intermediary, whether actual or prospective) of the Company or Group company with whom you dealt, in the 12 months prior to the Termination Date; or*

*(iii) non-solicitation of customers: For a period of six months from the Termination Date either on your own account or for any person, firm or company directly or indirectly in relation to the supply of goods or services dealt with by the Company or any Group Company for whom you have been provided services under your contract of employment solicit or endeavour to solicit or entice the custom of any customer (including but not limited to any insured, broker and/or intermediary, whether actual or prospective) of the Company or any Group Company with whom you dealt in the 12 months prior to the Termination Date; or*

*(iv) non-enticement of employees: For a period of six months from the Termination Date either on your own account or for any person, firm or company directly or indirectly solicit or entice away or endeavour to solicit or entice away from the Company or any Group Company any person who was an agent, consultant or Key Employee during the 12 months prior to the Termination Date with whom you had personal contact or dealings in the 12 months prior to the Termination Date.'*

## **Undertakings**

11. Shortly before the Injunction hearing, RIVAL's solicitors offered written undertakings that:
  - (1) Desk Head and Junior Broker would comply with their contractual obligations to IDB of good faith and fidelity during garden leave, and not to deal or solicit customers or entice employees.
  - (2) Desk Head, Junior Broker and RIVAL would not induce any broker employed by IDB to breach their contractual obligations to IDB of good faith and fidelity during garden leave, and not to deal or solicit customers or entice employees.
  - (3) However, RIVAL contends that the non-competition clause is an unreasonable restraint of trade and unnecessary in the light of the offered undertakings.

## **Draft Order**

12. IDB seeks an Interim Injunction Order:
  - (1) enforcing the 6 month post-termination non-competition covenant of Desk Head and Junior Broker until its expiry on 31 December;
  - (2) prohibiting RIVAL from inducing a breach of contract by Desk Head and Junior Broker;
  - (3) 'springboard' relief restraining Rs from their unfair competitive advantage gained over IDB;
  - (4) directions for disclosure

(5) directions setting timetable for a speedy trial.