

Discretion Pays Off When an Ex-Employee Joins Your Competitor

If you believe an ex-employee has gone to work for your competitor with your business secrets, you have a lot at stake. Your competitive edge comes to mind. Also, how you handle the situation could expose you and your company to a defamation claim.

In *Spring v. Walthall, Sachse & Pipes, Inc.*, the company thought an ex-employee had copied and deleted its customer files. So the company set about calling its customers to reproduce the missing files. When talking to one customer, the company said that the ex-employee had stolen and destroyed its files. The ex-employee sued for defamation.

The San Antonio Court of Appeals let the defamation claim go to trial. Yes, an employer has a qualified privilege to disclose its suspicions during an investigation to people who have an interest in the investigation. But the company couldn't show that its customer was legitimately interested in the investigation, or even that it was investigating anything.

From the moment you first suspect an ex-employee has taken your business secrets, you are preparing for a potential lawsuit. You should treat the situation that seriously. Avoid tipping your hand (and your allegations) to people who don't need to know. Those people may tell your ex-employee that you're onto him. An ex-employee who knows nothing about your suspicions may get sloppy and make it easier for you to prove your case. And you steer clear of a defamation claim to boot.



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