

Executive Legal Summary

Zomojo Pty Ltd v Hurd (No 2) [2012] FCA 1458

The Federal Court of Australia has today delivered an important and emphatic judgment in favour of Zomojo Pty Ltd against its former co-managing director and head of R&D, Matthew Hurd, Zeptonics Pty Ltd and others.

Background

Zomojo is an Australian financial technology development and high frequency trading company. Zomojo's trading activity is conducted overseas, primarily on the Korean Stock Exchange.

Since its establishment in 2005, Zomojo has invested significant resources in developing sophisticated high speed (or 'low latency') proprietary trading devices and technologies for use in a range of equity and derivative markets. Zomojo's trading devices and technologies allow for trades to be made at speeds that are arguably the fastest in the world.

From 2005 to February 2011, Mr Hurd was the head of Zomojo's R&D team and co-managing director. Over that time, Mr Hurd gained a detailed knowledge of the incremental advancements made by the specialised engineers in Zomojo's R&D team and the marketing of Zomojo's high speed trading devices to an international audience.

From at least September 2010 onwards, and whilst an employee of Zomojo, Mr Hurd, without Zomojo's knowledge, established Zeptonics and began developing and marketing what he claimed to be his own high speed trading devices. By the time of Mr Hurd's resignation from Zomojo in February 2011, Mr Hurd and Zeptonics were privately offering a suite of sophisticated high speed trading devices, claiming that they were the fastest in the world.

The similarities between Zomojo's high speed trading devices and those offered by Zeptonics were striking. Upon discovering Zeptonics' products, Zomojo commenced proceedings in the Federal Court of Australia alleging, amongst other things, that Mr Hurd had taken confidential technological information acquired when employed by Zomojo and used that information when creating the suite of high speed trading devices offered by Zeptonics. Zomojo alleged that Mr Hurd's conduct amounted to a breach of his employment contract, his fiduciary obligations and his directors' duties.

A five day trial on the question of liability was held before the Honourable Justice Gordon in October 2012.

Findings

Justice Gordon's judgment was published on 5 February 2013. Her Honour found in favour of Zomojo, describing Mr Hurd's conduct as "*dishonest*", "*reprehensible*" and "*nothing more than a flagrant and deplorable attempt to appropriate benefits for himself which were properly those of [Zomojo]*".

Justice Gordon found that Mr Hurd had breached his contractual, statutory and fiduciary obligations to Zomojo by:

- Failing to disclose trading devices he had developed whilst employed by Zomojo with the assistance of Zomojo's expert engineers;
- Using Zomojo's confidential information in developing and marketing the suite of trading devices offered by Zeptonics;
- Seeking to patent, in his own name, technologies developed by Zomojo;
- Failing to disclose business opportunities presented to Zomojo and, instead, directing those opportunities to Zeptonics and himself;
- Entering into lucrative international contracts dealing with Zomojo's confidential information and presenting it as his own during restraint periods; and
- Soliciting Zomojo employees during restraint periods.

Orders

In view of her findings, Justice Gordon ordered that:

- Mr Hurd and Zeptonics must cease all use of the suite of trading devices offered by Zeptonics known as the 'ZeptoLink', 'ZeptoNIC', 'ZeptoAccess KRX' and 'Crosswise ATS' and return them to Zomojo.
- Zeptonics holds all profits it has made from the sale of the trading devices on trust for Zomojo.
- Mr Hurd and Zeptonics are required to compensate Zomojo for the profits they have earned and the losses Zomojo has suffered as a result of the sale of the trading devices and Mr Hurd's misconduct.

A further hearing will be held later this year to determine the amount of compensation Mr Hurd and Zeptonics will be required to pay.

The complete judgment can be viewed at:

<http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2012/2012fca1458>

For further information, contact Janet Whiting, Partner, Corrs Chambers Westgarth, janet.whiting@corrs.com.au