

LEGAL NEWS BRIEF – NON-DISCLOSURE AGREEMENTS ARE NO PROTECTION IF THE DISCLOSING PARTY ACQUIESCES IN THE FLOW OF CONFIDENTIAL INFORMATION TO A THIRD PARTY

The Supreme Court of Jamaica recently found in favour of National Commercial Bank (NCB) which was sued by a software developer, HMA Solutions Limited (HMA) for breach of a confidentiality agreement between them. HMA contended that NCB disclosed information to a third party which was prohibited pursuant to their NDA (Non-Disclosure Agreement).

The judge found that email communication on which HMA relied on as evidence of the breach showed that they/HMA themselves were acquiescent in the flow of information to the third party.

The judge further opined that the Claimant was in the banking environment and their failure according to them to be aware of the breach up to the time of the termination of the contract between HMA and NCB justified his finding that the Claimant were aware of the sharing of confidential information but only cited breach of same when they were no longer in a contractual relationship. In other words HMA was not sincere in its law suit that they had suffered losses due to the sharing of confidential information with a third party.

Conclusion:- As soon as a disclosing party is aware of the sharing of confidential information to a third party the disclosing party must immediately file a NOTICE OF BREACH OF CONFIDENTIALITY to the Receiving Party with evidentiary proof of losses.

To sit on such a confidentiality breach until after a contract has soured will not provide the disclosing party with a claim in damages.