

EMPLOYMENT LAW UPDATE

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***Eckard Brandes, Inc. v. Riley (9<sup>th</sup> Cir., August 11, 2003)***

***An Employee Who Operates A Competing Business During His Employment Breaches The Duty of Loyalty To The Employer.***

*By Jason A. Geller*

This case involves the circumstances in which an employer may sue an employee for breach of the duty of loyalty.

Eckard Brandes, Inc. (“EBI”) employed Randall Riley as a superintendent and Lee Kunimitsu as a laborer. During their employment, the two employees formed a business that competed with EBI. The employees submitted bid on a public works project on which EBI was also competing. The employees ultimately received the project. After learning about their competition, EBI terminated these employees.

Thereafter, in response to a wage and hour claim filed by the employees against EBI, EBI filed a counterclaim against them for breach of the duty of loyalty.

The Ninth Circuit Court of Appeal affirmed the District Court’s granting of summary judgment in favor of EBI. The Restatement (2d.) of Agency prohibits employees from soliciting customers for a competing business during their employment. The Restatement also

permits the employer to bring a claim against the employees for the breach. Even though these two employees were low-level workers and not officers or directors of EBI, they were still held liable for breach of the duty of loyalty.

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