

BUSINESS ORGANISATIONS LAW GUIDEBOOK

SECOND EDITION

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CHAPTER 2

PROBLEM QUESTION

James was a senior manager of Gable Ltd. His contract of employment provided that, after he left the company, he cannot compete with Gable Ltd for the first two years. In June 2013, James had a dispute with one of the directors of the company and resigned from his position. James was concerned that he would not find a job due to the financial crisis and he shared his concern with his friend, Emilie. Emilie brushed his concerns aside and informed him that he could run his own business in competition with Gable Ltd. When he told her about the restriction in his employment contract, she advised him that he could create a company that would run the competing business. In August 2013, James and Emilie decide to create such a company, Major Pty Ltd. It opened a competing business next door to Gable Ltd.

Advise Gable Ltd on whether the company can seek a court injunction to prevent Major Pty Ltd from competing with its business.

ANSWER

The question relates the principle of separate legal entity and lifting of the corporate veil.

Based on *Salomon v Salomon Ltd* [1897] AC 22 and s 124 of the *Corporations Act* a company is a separate legal entity from its members and directors. Accordingly, Major Pty Ltd and James are two separate persons and Major Pty Ltd is not bound by the James' employment contract.

However, the court is likely to lift the corporate veil if the company seems to have been created to avoid legal obligation, as held in *Gilford Motor Co Ltd v Horne* [1933] 1 Ch 935. There is strong evidence in this case that Major Pty Ltd was created by James to avoid the

contractual obligation. Some of the facts that illustrate this are the timing of the creation of the company, the concerns of James, and his discussion with Emilie.

All this is likely to lead the court to lift the corporate veil and consider Major Pty Ltd and James to be the same person. As a result, Gable Ltd would have a strong case if it sought a court injunction to stop Major Pty Ltd from competing with it.