



## Contracting a former employee of another company who is subject to a non-compete agreement is not *per se* disloyal

*Judgment of the Supreme Court (1st Chamber) of 3 September 2014*

### Background

This case goes back to the time when Alliance Healthcare decided to terminate the employment agreement with its Managing Director.

In mediation, the company recognized that the termination was unfair and agreed to pay compensation. Both parties, furthermore, entered into a one year non-compete agreement, in consideration for which the former Managing Director received compensation.

Five months after the signature of the non-compete provision, Alliance knew that Hefame was interested in offering a position to the former employee. In response, Alliance sent cease and desist letters to both Hefame and the ex-employee, raising the existence of a non-compete agreement.

Hefame did not answer, and contracted Alliance's former employee. The former employee did answer, and said that she wanted to withdraw from the non-compete agreement, and agreed to pay Alliance back the part of the compensation that applied to the rest of the non-compete period.

Alliance did not agree to this and filed suit against Hefame, claiming it had acted unfairly by inducing the employee to breach the non-compete agreement.

### Relevance of the conduct of the employee

In its judgment, the Supreme Court starts off recalling that when applying the Unfair Competition Act, the situations where a conduct may be considered unfair must be interpreted in a restrictive manner. The Court did not discuss whether the former employee could unilaterally terminate the non-compete agreement, because this was a matter for another process. The Court, however, does discuss the eventual liability of Hefame because of this termination. To this regard, the Court understands that if an employee has decided by herself to join the new company, then Hefame should not be considered *per se* as having acted in breach of the unfair competition law, and this even if Hefame had offered conditions that were very advantageous for the employee.

This is what happened in this case. The Court understands that the employee was the one who decided to amend her previous decision and retain the services of a headhunter and, in this manner, she entered into contact with Hefame, who contracted her. The Court rules that, under these circumstances, Hefame cannot be considered to have acted unfairly against Alliance Healthcare.