

Defense against a Fraudulent Whistleblower

A Co-op Union dismissed an employee for reasons including fraudulent theft of information. The former employee sued the Co-op Union for unpaid wages and a declaration that he was still an employee of the Co-op Union, claiming that his termination was unlawful because the purpose of his information theft was to be a whistleblower serving the public interest.

The court in the first trial avoided a direct judgment as to whether the acts of the former employee were in the public's interest, reasoning that whatever its motives or effect, the impact of the theft of information was ultimately not high enough in the circumstances to justify former employee's termination or prejudice his rights.

The Co-op Union appealed that judgment, and KLO was appointed to defend the Co-op Union by the appellate court.

During the appeal, KLO investigated the computer that the former employee used at the Co-op Union, and we found that the two USB memory devices that the former employee had used to steal the information had been inserted into that computer much more frequently than the former employee had confessed. We assumed that he stole more information than information that was recorded in the USB memory devices. Upon KLO's request, the court commissioned a forensic appraisal of the USB memory devices. The court discovered, from the forensic appraisal, that the former employee had taken extremely large amounts of information from the Co-op Union, unrelated to the public interest whistleblowing which he had claimed to be his sole motive.

Considering the timing of the acquisition of the information and the unfair demands that the former employee had made while in possession of that information, the appellate court judged that the former employee's motive was not the public's interest, but rather the realization of an extortion scheme. Accordingly, the court dismissed the claims of the former employee.

KLO continued to work to defend the Co-op Union against the former employee's further attempts to appeal to the Supreme Court until those attempts finally failed and the appellate court's judgment against the former employee was finalized.