

## Business Law Presentation

### **Intro**

Good morning, Justices.

Group 2 is presenting the case of the United States v. Nosal, 676 F.3d 854 (9th Cir. 2012).

Tom (Kuixu) Liu will be representing the United States ("the Government") in this case.

Allison Harvey will be representing David Nosal, and will be presenting background law, the issue, and the Ninth Circuit Court of Appeals' actual conclusion in this case.

I, Aditi Teriar, will be presenting the Background Facts and Procedural Posture in this case.

Justices, please review the Group 2 page in the Group Presentation Documents module in Modules.

### **Live Commentary Document for Procedural Posture**

A motion to dismiss is when a party requests a court to dismiss a case due to either a voluntary withdrawal, a settlement, procedural defect, or claim. Specific reasons for requesting this motion include:

Insufficient service of process

Statute of limitations has expired

Lack of subject matter jurisdiction

Lack of personal jurisdiction

Improper venue

Failure to state a claim for which relief can be granted

This case is considered a civil case, because it is a private dispute between an individual and an organization

The current employees were charged with violations. Nosal was charged as a co-conspirator, due to his aiding and abetting the current employees.

Although Nosal filed a motion to dismiss the CFAA counts he was being charged with, the district court initially rejected this argument. However, after the ruling in the LVRC Holdings LLC v. Brekka, 581 F.3d 1127 (9th Cir.2009), there was more scrutiny regarding the terminology of the phrase “without authorization” and “exceeds authorized access” in the CFAA. This was monumental, as it led to the court accepting Nosal’s motion for reconsideration and motion to dismiss. The Government's appeal was based on the trial court's ruling on its second motion.

Ms. Harvey will now present background law for this case.

### **Case Document for Procedural Posture**

The Government indicted David Nosal in the United States District Court for the Northern District of California on twenty counts. These counts included trade secret theft, mail fraud, conspiracy, and violations of the Consumer Fraud and Abuse Act (CFAA).

Nosal filed a motion to dismiss the CFAA counts, claiming that the CFAA only applied to hackers, not to individuals accessing a computer with prior authorization, who then misuse the information they obtain by means of that access. The district court rejected Nosal’s argument. Nosal filed a motion for reconsideration, and a second motion to dismiss, after the Ninth Circuit Court of Appeals decided another case dealing with the CFAA, and this time, the district court granted the motion. The district court dismissed five of the counts related to the CFAA. The Government then appealed to the Ninth Circuit Court of Appeals.

## **Case Document for Background Facts**

### Employment with Korn/Ferry

- David Nosal began working as a high-level regional director at Korn/Ferry International, a global executive search firm, in April 1996.
- After Nosal was passed over for a job promotion in 2004, he announced his intention to leave the company.
- Nosal signed a contract that allowed him to serve as an independent contractor with Korn/Ferry, as well as to not compete with Korn/Ferry for one year. Korn/Ferry paid Nosal two lump sum payments as well as 12 monthly payments of \$25,000, pursuant to their non-compete agreement.

### During the Interim period

- Shortly after his resignation, and while still within the one-year non-compete period, Nosal began secretly forming his own executive search firm.
- Nosal solicited three Korn/Ferry employees, Becky Christian, Mark Jacobson and Jacqueline Froehlich-L'Heureaux, to join him in launching the competing executive search firm.
- By the 24th of December 2004, Nosal's access to the company's computers was revoked by the company, although he still had permission to ask the employees of Korn/Ferry for research help on the remaining assignments for the company.

### Startup Company

- Christian left Korn/Ferry in 2005 and started up Christian & Associates, an executive search firm, under Nosal's instructions.
- Nosal owned an 80% stake in that company.
- Jacobson later joined the company.
- Their new company did not have Korn/Ferry's confidential Searcher database.
- Nosal and his colleagues downloaded source lists and information from Korn/Ferry's Searcher database as they were preparing to launch their new company.
- Prior to leaving the company, the three employees used company usernames and passwords to compile Korn/Ferry's data, which was a violation of the company's computer use policy.
- Christian also used Froehlich-L'Heureaux's (FH's) credentials to access Korn/Ferry's proprietary database and sent the information to Nosal, for the benefit of the competing executive search firm.

## **Live Commentary Document for Background Facts**

Nosal convinced former colleagues who were still working for the company to help him in starting up a competing business

These employees used their company log-in credentials to download information that included contact information, names, and lists from the company's confidential database on Korn/Ferry's computer. Searcher was the confidential database used by this company, and it contained information on more than one million executives, such as contact information, employment history, salaries, biographies and resumes. Searcher was integrated on the company's internal computer network and was considered

privileged, only to be used by Korn/Ferry. And while the employees had authorization to access the company's database, Korn/Ferry had a company policy that forbade disclosure of any confidential information, and Korn/Ferry took several measures to secure its confidential database.

Employees signed documents to ensure that they keep sensitive information confidential. They were instructed to strictly adhere to keeping privileged information within company use, and a component of this is keeping login information private from external sources.

Nosal's former colleagues accessed this sensitive information, and transmitted it to Nosal.

Ultimately, an anonymous tip about Nosal's involvement in illegal financial activity is what resulted in the company launching an investigation and contacting the authorities.

Justices, please review the procedural posture document in the Group 2 page in Modules.