

# BUSINESS EMAIL COMPROMISE

## Liability for Loss due to Fraudulent Change of Banking Details

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### A. INTRODUCTION

1. As you may be aware, the Johannesburg High Court handed down a decision on 16 January 2023 in the matter between J Hawarden v Edward Nathan Sonnenbergs Inc (ENS). A link to the full judgment is [03.hawarden\\_vs\\_edward\\_nathan\\_sonnenbergs\\_inc.pdf - Google Drive](#).
2. The summarised facts of the case are as follows:
  - 2.1. ENS sent an email to the Ms Hawarden requesting the payment of R5 500 000 in a conveyancing transaction;
  - 2.2. The email was intercepted by fraudsters who changed the banking details; and
  - 2.3. Ms Hawarden paid the amount into the fraudsters' account.
3. The Court decided in favour of Ms Hawarden and held that:
  - 3.1. ENS had a duty of care to warn Ms Hawarden of the known risks of email and PDF manipulation and of the precautions that could be taken against Business Email Compromise (BEC);
  - 3.2. ENS was negligent in failing to take steps to avoid such harm; and
  - 3.3. ENS had to pay the lost amount (R5 500 000) to Ms Hawarden.

### B. POTENTIAL IMPLICATIONS ON YOUR BUSINESSES/ORGANISATION

4. The potential implications of this decision on businesses/organisations (regardless of whether they are a law firm and not) include the following:
  - 4.1. A duty of care to existing or potential customers/clients to warn them of the risks of cybercrime, and business email compromise.
  - 4.2. A duty to inform such customers/clients of steps they may take in order to prevent losses through cybercrime.
5. Failing to foresee the reasonable risk of cybercrime and failure to take reasonable preventative measures would render the businesses/organisations negligent and potentially liable for the losses suffered by the customer/client.

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6. Therefore, it may be most prudent for businesses/organisations to advise existing and potential customers/clients of the risks of cybercrime as well as the steps that the customers/clients may take in order to reduce such risks.

### C. IMPORTANT CAVEAT – POPI AND OTHER OBLIGATIONS

7. It is important to emphasise that the duty of care is in addition to obligations in terms of legislation such as POPI and PAIA – it does not replace or substitute these obligations.
8. In particular, there is a statutory obligations on responsible parties to put security measures in place to protect the integrity and confidentiality of personal information. As stipulated in one of our previous articles, failure to do so may result in the business/organisation being fully liable for the loss suffered by the data subject regardless of whether they were negligent.

*~ By Paton J Dennison*

NEED MORE INFORMATION, PLEASE CONTACT



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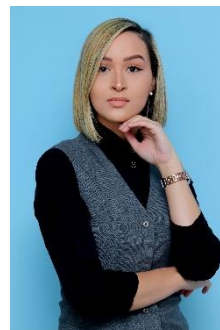
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