

Limits to Enforcement of Non-Compete Agreements

Working Together

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Business clients often ask us whether their non-compete agreements with key employees will actually be enforced by the courts. A recent decision from the Connecticut Superior Court illustrates the limits to enforcing these agreements. Typical of non-compete enforcement situations, the plaintiff company learned that an executive employee who had just resigned had been hired by a key competitor. The former employee had signed a “Confidential Information, Non-Compete and Inventions Assignment and Assumption Agreement” at the start of her employment. The company sought to enforce the agreement by obtaining an injunction to prevent the former employee from working for the competitor.

The Court started with an historical review of enforcement of non-compete agreements, arriving at the current general rule that such agreements will be enforced if the restraint of trade is “reasonable.” The court then provided a useful summary of five factors used by Connecticut courts in reviewing the reasonableness of non-compete agreements: (1) the length of time that the restriction was to be in effect; (2) the geographical area covered by the restriction; (3) the degree of protection afforded to the former employer; (4) the restrictions imposed on the former employee’s ability to pursue her occupation; and (5) the potential for undue interference with the public interest. The Court pointed out that a finding of unreasonableness on any one of these factors is sufficient to prevent enforcement of the non-compete agreement.

The company and its competitor were in the relocation management business, with clientele and potential customers in multi-national corporations which relocated their employees around the world. The Court found that a one-year restriction on working for a competitor anywhere in the world was reasonable as to time and geography, given the global nature of the business and the fact that the former employee was well-versed in the technology on which the relocation services were based. The Court also found that the substantial degree of protection given to the former employer’s interests was reasonable under the circumstances.

However, as to the fourth factor, the Court found that by preventing the individual from performing any work or services, whether as an employee, consultant or independent contractor, for any competitor, the agreement went beyond the limits of reasonableness. The former employee had worked in the industry for over 20 years and was a recognized expert in international relocations. The Court concluded that the agreement was so broad in its application that it effectively prevented her from pursuing her profession and earning a livelihood. The Court noted that a lesser restriction, such as to a specific competitor, would have favored enforcement.

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This decision may be something of an outlier, since one of the chief purposes of a non-compete agreement is to prevent a senior executive from immediately transferring his or her knowledge and skills to a competitor, especially when, as in this case, the former employee had earned a significant six-figure salary (which supports an argument that the employee had been compensated for the hiatus from work resulting from compliance with the non-compete agreement). The real take-away here is that ultimately enforcement of a non-compete agreement depends on a perception of reasonableness by the trial judge, so that an extremely broad restriction carries the risk that in the end there will be no restriction at all.

Tags: Non-Compete