

Non-Compete Covering Future Customers Overbroad and Unenforceable, Arkansas Court Rules

May 30, 2014

A non-competition agreement that prohibited employees from soliciting the employer's "past, present or prospective future customers or clients" is overbroad, a federal district court in Arkansas has ruled, striking down the agreement and granting summary judgment in favor of two employees. *Morgan v. West Memphis Steel & Pipe, Inc.*, No. 3:14-CV-00015-BRW (E.D. Ark. May 20, 2014).

Although the court recognized the employer had a legitimate interest in protecting customers whom the employees helped obtain and with whom they worked, it found the non-competition covenant went "a step too far" by attempting to protect future relationships.

Background

Scott Morgan and Chris Morgan worked for West Memphis Steel & Pipe, Inc. beginning in 2000 and 2005, respectively. In 2009, the employees each signed an Employment, Non-disclosure, and Non-competition Agreement (the "non-compete") that prohibited them from soliciting the business of West Memphis Steel's "past, present, or prospective future customers or clients" within a 175-mile radius of West Memphis, Arkansas for two year following their resignation from employment. In 2014, the employees resigned and filed a lawsuit against the employer and sought a declaratory judgment that the non-compete was overly broad and unenforceable.

Applicable Law

Arkansas law disfavors non-competition agreements, particularly those related to employment. However, Arkansas law will enforce non-competition agreements where: (1) the employer has a valid interest to protect; (2) the geographic restriction is not overly broad; and (3) a reasonable time limit is given. Non-competition agreements clauses must be valid as written, because Arkansas courts will neither rewrite nor vary their terms.

Agreement Unenforceable

The employees argued the non-compete was overbroad and unenforceable because it covered future customers. The employer maintained the reference to future customers applied only to prospects the employees had been developing.

The court sided with the employees, finding the employer had no legitimate interest in seeking to protect relationship with customers with whom it had not done business, although it did recognize the employer had a legitimate interest in customer relationships that the employees already had established.

Further, the non-compete did not define "prospective or future customers and clients," and the court could not rewrite the non-compete to supply the definition suggested by the employer. Accordingly, the court struck the non-competition agreement as unenforceable and granted summary judgment in favor of the employees.

This case reminds employers that non-competition agreements must be narrowly tailored to cover only legitimate protectable interests. Employers should work closely with experienced counsel to identify those interests as specifically as possible. This is particularly important in states such as Arkansas that do not "blue-pencil" or rewrite overly broad non-competition agreements to make them enforceable.

For additional information on this case or assistance with drafting agreements, please contact the Jackson Lewis attorney with whom you regularly work.

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