

Non-Compete Covenants Must be Reasonable for Preliminary Injunction, Nevada Supreme Court Affirms

By Joshua A. Sliker

August 27, 2018

Meet the Authors



Joshua A. Sliker

(He/Him)

Principal and Office Litigation
Manager

Joshua.Sliker@jacksonlewis.com

Related Services

Construction

Energy and Utilities

Entertainment and Media

Financial Services

Government Contractors

Healthcare

Higher Education

Hospitality

Insurance

Life Sciences

Manufacturing

Real Estate

Restrictive Covenants, Trade

Secrets and Unfair Competition

Retail

Staffing and Independent

Workforce

Technology

Transportation and Logistics

A non-compete agreement in Nevada “must be limited to the geographical areas in which an employer has particular business interests,” the Nevada Supreme Court has affirmed.

Shores v. Global Experience Specialists, Inc., 134 Nev. Adv. Op. 61 (Aug. 2, 2018).

The Court also concluded that when an employer seeks to enforce a non-compete covenant through a preliminary injunction, it is the employer’s obligation to present substantial evidence that the covenant is reasonable. This may result in trial courts less willing to grant preliminary injunctions if they are not supported by evidence for each restriction in the non-compete agreement.

Background

The employee, Landon Shores, was a sales associate for Global Experience Specialists, Inc. (GES) for more than three years. He subsequently was promoted to sales manager, responsible for “soliciting trade shows and conventions to contract with GES to build show floors and exhibits.” The promotion required him to sign a Confidentiality and Non-Competition Agreement (NCA) that prohibited him from competing with GES, directly or indirectly, or working for any of GES’s competitors in a similar capacity anywhere in the United States for 12 months following the end of his employment.

Shores resigned from GES and a few months later took a substantially similar position with a competitor.

GES filed suit alleging breach of contract, implied covenant of good faith and fair dealing, and unjust enrichment. GES also sought damages and injunctive relief. It then moved for a preliminary injunction to enforce the NCA and submitted evidence showing it had conducted business “with clients in at least one city in 33 states, the District of Columbia, and Puerto Rico.”

The district court found this evidence sufficient to grant the injunction, concluding:

- (1) GES’s contracts in 33 states established that it had a national client base and Shores had interacted with clients on behalf of GES in a number of major American cities;
- (2) by actively marketing to customers in competition with GES, Shores obtained an unfair advantage and GES suffered a corresponding unfair disadvantage;
- (3) the geographic scope of the NCA was reasonable given GES’s nationwide dealings;
- (4) if Shores was knowingly and intentionally accepting competing employment in violation of the NCA, the balance hardships would weigh in favor of GES based on GES’s potential loss of clients; and
- (5) Shores’ competitive conduct created an unreasonable interference with GES’s business.

Standard for Preliminary Injunction

On appeal, Shores argued that the district court erred in granting the injunction because the evidence presented by GES demonstrated that its client base was “limited to 33 states” (often, just one city within those states), which did not automatically render a nationwide restriction reasonable. In other words, the “preliminary injunction improperly prevent[ed] the plaintiff[...] from working in his chosen profession in a number of jurisdictions for which GES [did not present any] evidence of previous business contacts.” The Nevada Supreme Court agreed with Shores, holding that GES’s evidence was an insufficient basis upon which to conclude the nationwide restriction was reasonable.

Significantly, the Court stated that an employer seeking to enforce a non-compete agreement through a preliminary injunction must present “substantial evidence” to establish the terms of the agreement likely will be found reasonable at trial. The employer demonstrates the reasonableness of the restrictions, the Court said, by showing they are “reasonably necessary to protect the business and goodwill of the employer.” Accordingly, the scope of geographic restrictions “must be limited to areas where the employer has established customer contacts and good will.”

In a footnote, the Supreme Court explained that it was not overruling or abrogating its prior case law allowing a court to modify the terms of a preliminary injunction even if the underlying non-compete agreement is unreasonable. Nonetheless, as neither party argued for modification of the preliminary injunction, the Court did not address it.

Takeaways

While *Shores* does not alter the non-compete landscape in Nevada, it highlights the need to carefully consider the geographic scope in non-compete agreements. Indeed, all employers should closely review their existing non-compete forms or template agreements to ensure the restrictions are supported by evidence demonstrating the existence of customer contacts and goodwill in the jurisdictions covered by the non-compete agreement.

Please contact your Jackson Lewis attorney to discuss these developments and your specific organizational needs.

©2018 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.’s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients’ goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.