Hairstylist's Non-compete Agreement Deemed Unassignable

Description

Lawyers say a recent Superior Court decision finding an employee's non-compete agreement not assignable to a purchasing business entity is a cue for practitioners to take a closer look at their clients' employment contracts.

The plaintiff business in the case purchased the assets of a salon and spa in October 2014. When one of its employees took a job with another salon in June 2016, the plaintiff sought a preliminary injunction to enforce a non-compete agreement that the employee had signed with the predecessor owners.

A key factor in Judge Brian P. Stern's refusal to grant relief was the absence of an assignability clause in the agreement.

"This court concludes that absent specific language providing for its assignment, a non-compete provision in the employment context is not assignable," Stern concluded.

The judge viewed the case through the broader lens of non-compete employment contracts being generally disfavored in Rhode Island, writing that they "must be scrutinized carefully to see that they go no further than necessary to protect an employer's legitimate interests, such as trade secrets or confidential customer information."

But beyond the assignability question, the judge held that the non-compete did not transfer with the purchase of assets and that the one-year non-compete period began to run when the sale closed in October 2014.

With three factors militating against a reasonable likelihood of success on the merits, Stern denied the plaintiff's request for injunctive relief.

The 18-page decision is BlueZ4 Corp. v. Macari, et al., Lawyers Weekly No. 61-053-17.

Fact-based scrutiny

Edward F. Grourke of Pawtucket represented the plaintiff, and Warwick's Dante J. Giammarco defended the employee. Neither was available for comment.berg-andrew-web

But Andrew H. Berg, who represents both employers and employees on labor issues, said Stern's decision gives lawyers an additional incentive to carefully review employment contracts.

"Most business contracts already have assignability clauses, but this case definitely puts the issue on everyone's radar screen," he said. "Lawyers for businesses that have non-competes will definitely have to give advice consistent with this holding. It may be that you have to take a close look and advise your clients to do new ones."

He added that the value of a business being acquired could be affected if its critical employees have non-competes, as they may not be enforceable by the purchaser.

The Providence attorney said the case also confirms that courts will give a strict construction to non-compete provisions, with any doubts being construed in favor of the employee.

"Courts don't like to interfere with a person's ability to make a living. In that regard, the holding is consistent

with other cases on non-compete agreements," Berg said.

Employee-side attorney John N. Mansella of Pawtucket noted the judge's reference to other jurisdictions in considering whether a non-compete is assignable without an assignment clause.

"Rhode Island has its factors pertaining to the enforcement of non-compete agreements, but the court's analysis of other jurisdictions is something that both employer- and employee-side attorneys should be mindful of," Mansella said.

The outcome can turn on the specific facts presented, he noted. The result in the case before Stern may have been different, for example, if the defendant had consented to the transfer or if the non-compete agreement had been explicitly listed as an asset in the purchase agreement, he said.

Mansella also emphasized that alternate remedies may be available to both employers and employees, with Stern outlining the possibilities in a lengthy footnote in the decision. They include relief for the misappropriation of trade secrets, actions constituting unfair completion, or disclosure of confidential information.

"Each non-compete needs to be carefully scrutinized in light of the relevant case decisions and statutes," he said. "The takeaway is that non-compete agreements certainly have their place and purpose in commerce, but like any other legal instrument they shouldn't be abused."

'Three different rulings'

Providence employer-side attorney Alicia J. Samolis viewed the opinion as one with three different rulings.

"The easiest piece was the assignability issue, and most jurisdictions have gone in the same direction," she said. "It's a reminder for all attorneys to put in an assignment clause, but that doesn't answer the harder question of what such a provision should actually say. Since non-competes are so disfavored, a judge may be looking for any reason to rule against it."

A purchaser will often be the party most interested in an assignment, she said, but agreed with Berg that sellers should take notice because the value of their business could be lessened if non-competes cannot be enforced.

As for Stern's conclusion that the non-compete did not transfer, Samolis said non-competes typically would be referenced in the asset purchase agreement if the buyer intended to enforce them. So the fact that they were not listed may have been a mistake in the underlying purchase, she said.

"As a practical matter, a purchaser should tell prospective employees about any agreements they expect to have in place," Samolis said.

The most significant part of the decision was the confirmation that the defendant employee's non-compete period ran from the sale's closing date, she said.

"The buyer only gets the same rights that the seller would have had," she explained. "The period will start running on the date of the transaction, even if the employee is immediately re-hired."

The bottom line is that asset purchasers should execute new non-compete agreements, according to Samolis.

"The best practice is to present the employee with a new non-compete when they re-apply, and then you'll only be having these kinds of arguments with those who refuse to sign," she said.

Guidance from other states

Plaintiff BlueZ4 Corp. purchased a salon and spa and related assets from Blue Sky Spaworks & Gallery in October 2014. The defendant, Blue Sky employee Rebecca Macari, had signed a one-year non-compete agreement in 2004 as a condition of her employment as a hairstylist.

Upon the closing date of the sale, the defendant was terminated from Blue Sky but immediately commenced employment as a hairstylist for BlueZ4 after filling out an application with the salon's new owners.

When the defendant took a job with Astra Salon in June 2016, BlueZ4 claimed that she was in breach of the non-compete and brought a declaratory action seeking to enforce the agreement.

Stern rejected the plaintiff's request for a preliminary injunction, with the absence of an assignment clause being paramount.

Since Rhode Island case law does not directly address whether a non-compete is assignable without an assignment clause, the judge looked at the approach of other states in analyzing the issue.

While some jurisdictions resist restrictions on assignability, the judge explained that other courts have found non-compete provisions in employment contracts to be unenforceable in the absence of an assignability clause on the theory that such provisions are personal to the holder or involve personal services that cannot be delegated.

"This court finds persuasive the reasoning not only of those states concluding that non-compete provisions in employment contracts are unassignable personal services contracts, but also of those treating [such provisions] as personal in nature," Stern wrote.

He thus concluded that the defendant's non-compete was not assigned to BlueZ4.

But he went further and said that even if assignable, the non-compete agreement did not transfer as part of the asset purchase agreement between the parties. He observed that the purchase agreement and an accompanying list of assets making up the business's purchase price made no reference to non-competes.

Further, he concluded that the one-year agreement began to run when the defendant was terminated from Blue Sky upon the sale of the business in 2014, meaning that the non-compete period ended prior to her employment with Astra in 2016.

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