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To: Sylvia Baca

Date: July 27,2021

Re: Industrial Sandblasting, Inc. v. Samuel Morgan

Greetings Mrs. Baca, below I have provided you all legal cases and authority on the case of Industrial Sandblasting Inc v. Samuel Morgan.

Oral Argument

Whether the covenants are valid?

Under Columbia Stat. Ann, this statute applies to contracts between employers and employees:

(a) enforcement of contracts that restrict competition during the term of a restrict covenant, so long as such restrictions are reasonable in time, geographic area, and scope of prohibited activities, shall be permitted.

Time limit

The Court held in Fawcett that a specific time is per se unreasonable. However, employers who seek to uphold a time restriction to demonstrate how the restriction is necessary to the protection of the employer during the employee's transition to work for a competitor. An employer must prove specific facts and circumstances that support a finding of necessity. Absent such proof, the Court held that time periods as short as one year or less is invalid. The

Court held that it did not see an error in Court's conclusion that the three-year restriction was unreasonable.

Here, Morgan started working for Industrial in 2013. The Court held in *Fawcett* that a specific time is unreasonable. In our case, Cole wanted Morgan to remain after the termination of his employment contract after one year. However, Cole did not specify to Attorney Rice why it was necessary to keep Cole. He simply stated that Cole was a necessary employee when it came to pricing out jobs, but he never specified as to why it was necessary to keep him. At a minimum, Cole wanted to keep him out of Columbia City, so he could train someone the way they trained them. On the contrary, Morgan stated they never trained him nor did they help him with the QP certification courses. Thereby, a court most likely would not find Cole's restriction as not necessary. In *Storm*, the Court held that time is appropriate because it restrained Storm from appearing on air for six months, during which time he will not appear on WCAP-TV. Similarly, Cole would argue that for a period of one year after termination of Morgan's contract that it would not be unreasonable as they needed to find someone to replace Morgan as he was a key figure to the company. However, Morgan would argue because the Court found that time periods short as one year or less is invalid, he would argue because the contract even if it was for more than one year should be deemed invalid because Cole never gave a strong necessity as to why he held him

Therefore, this element is met.

Geographical scope is appropriate

Prima facie valid a restriction that covers the territory where the employee worked and the employer does business. However, a restriction that extends that territory to areas in which the employee did not work is overly broad on its face, absent a strong justification other than the desire not to compete with former employee. A restriction that covers a geographic area in which the employee never had contact with customers is over broad and unreasonable. *Fawcett*.

In *Storm*, the Court held that it applies only to Broadcast area surrounding Columbia City. The provision restricted Storm's activity in the same media market as in which his former employer operates. On the contrary, the employment contract stated that "work at any business in direct competition with an employer", which Morgan would argue is over-broad because the Storm case was specific as it applied to only Broadcast area surrounding the Columbia City. Additionally, Morgan would argue that the employment contract is very restricted because Cole was restricting him from having contact with other customers and because of how ambiguous

"work at any business" meant it would be unreasonable. Morgan was specific as to had done only job in Sidalia, northeast par of the State. However, the fact that he worked 20 miles from Columbia City in Crescent. He would be restricted because the employment contract is so broad that although he was working 20 miles from Columbia City. It still would have been restricted him.

Also, Morgan would argue because he paid for the QP certifications himself, did all the coursework during hours, and that Cole did not pay for it. He would argue because of how much he was bringing to Industrial that Cole never justified as to why he needed him really. Cole only stated that they provided Morgan to support and equip him with projects. As a result of this, Cole never was overly broad because the Court in Storm held that the court held that one must weigh the interest the employer seeks to protect against the impact the covenant will have on the employee. The only argument that Cole really made was he was trying to keep Morgan out of Columbia City, so he could train someone for "long enough" (which could be deemed unreasonable by a court).

All in all, Cole never gave a strong justification as to why he was restricting the geographical scope of Morgan.

Scope of the services provided

A former employer may validly restrict an employee from performing services for a competitor that are identical to those performed for the former employer. These activities related to the employer's business in which the employee was trained by the employer or worked for the employer. Fawcett.

Here, the facts indicate that the contract stated that "similar industrial cleaning services to industries and businesses anywhere in the State of Columbia. This is important because the language of the contract is overly broad. In Fawcett, the court held that a restrictive covenant that prohibits work for a competitor "in any capacity" does not protect a legitimate interest of the employer and imposes a greater limitation on the employee than is necessary. Fawcett. The court held that the contract prohibiting Markham was unreasonably broad as it had nothing to do

with the services performed by Fawcett. Similarly, Morgan had received certification on QP1, external structures, QP2 for removing hazardous coatings, QP6 for applying metabolized coatings, and a QP8 for coating concrete polymer. This is because his specialization for Industrial Inc was commercial sandblasting. He would take paint and rust of the buildings, industrial equipment, pipelines, and then recoat them with a more durable covering. The language is so broad that it just imposed a greater limitation on Morgan. This is because as the work he is doing with the levels of QP3 and wanting to work for Columbia Coatings (which do similar work as Industrial Inc). He would be restricted because Cole is only protecting his own legitimate interest and Morgan would not be able to work anywhere else because the contract is stating that Morgan would not be able to work anywhere in the State of Columbia if the work they are doing is similar to Cole's.

On the other hand, Cole would argue that he should be permitted to restrict Morgan because he has signed Morgan five years ago. During this duration, Morgan had inherited a lot of experience and because the work Industrial Inc is doing is similar to Columbia Coatings. Morgan should be restricted. In Storm, the Court Held that the contract prohibited Storm from using an on-air personality in which Knox had a legitimate and protectable interest.

On the contrary, Morgan would argue that the legitimate interest Cole had was for his personal benefit because he was not willing to pay Morgan more. This is important because Morgan had paid for all his certifications. Moreover, Columbia Coating was willing to pay him 20K more.

Enforcing the covenant

In Storm, the court held that enforcing the covenant represents a fair balance of a distinct and substantial harm to Knox, when compared to a relatively minor and incidental harm to Storm. On the contrary to the Storm case, Morgan was very satisfied with his performance that Industrial Inc had promoted him to learn from the manager. He always was willing to help out his colleagues in need and even took on more jobs and worked overtime. The hard work and value that Morgan was bringing was creating a bigger substantial harm to himself unlike to Knox. In our case, Cole was benefitting more and balancing the work that Morgan was doing with paying for all QP certifications himself and the fact that Cole did not pay for it, but was benefitting from the services that Morgan was providing was significant to Cole and Industrial Inc. Moreover, Morgan wanted to leave the company, so he could be valued more for the services he was providing to the company. Comparing this to the work Cole was doing as a manager to him. A court would find that the fair balance was more of a substantial harm to Morgan (employee) than Cole (employer). Also, the fact that after termination of Morgan's contract. The contract unambiguously made it clear that "Employee will not own, operate, or work at any business in

direct competition." This is important because when balancing the interests of a company such as Columbia Inc that is in the business for only three years, wanting to pay Morgan more, as well as not coercing him into threats or cursing towards Morgan that he would not be able to work again in the industry that Morgan had flourished in. A court most likely would find the substantial harm this would cause upon Morgan is more detrimental than to Cole,

Thus, the Court most likely would not enforce the covenant.

Conclusion

The court most likely would not find the covenant to restrict as valid

Question #1 Final Word Count = 1608

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