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To: Sylvia Baca

From: Applicant

Date: July 27, 2021

Re: Industrial Sandblasting, Inc. v. Samuel Morgan

I. Introduction

Samuel Morgan works as a sandblaster and a bid manager for Columbia Coatings Corporations. Initially, he worked for a competing firm named Industrial Sandblasting, Inc. (Industrial). Morgan had a contract of non compete with Industrial which contained the non compete covenant. The covenants in non compete are not valid in the light of the arguements presented.

II. Arguments

Covenants in non compete contract of Morgan is invalid.

According to Columbia Stat. Ann. section 24-6-53 (a) Enforcement of contracts that restrict competition during the term of a restrictive covenant, so long as such restrictions are reasonable in time, geographic area, and a scope of prohibited activities, shall be permitted.

Such covenants are allowed only when they are strictly limited time, territorial effect, and scope of the prohibited activities. In doing so, it is to be weighed the interest of employer seeks to protect against the impact the covenant will have on the employee. Strom.

Time limit

It is required by employers who seek to uphold a time restriction to demonstrate how the restriction is necessary to protection of the employer during the employee's transition to work for a competitor. Fawcett.

An employer must prove specific facts and circumstances that support a finishing of necessity. Absent such a proof, courts invalidate time periods as short as one year or less. id.

In Fawcett, it was held that Fawcett offered no proof of the relationship between the time restrictions and Fawcett's need for protection from competition.

In Storm, the court held that the time limit is appropriate as the restraining Storm from appearing on air is for six months, during which he will not appear on WCAP-TV but it permits Storm to appear on air after the transition period.

Here, Cole states that he wants Morgan not to work under the covenant till they find a replacement. However, as Morgan stated, Industrial has already found a replacement a week before he left. Moreover, the new hire already knew enough as Morgan did at the point in time Morgan was employed. Thus, it shouldn't take Industrial one year to hire and train someone new.

As stated in Fawcett, the employer is required to show how the restriction is necessary to protect employer during employee's transition, and Industrial had already covered that much before Morgan even left the job.

Geographical area

A restriction that covers a geographic area in which the employee never had contact with customers is overboard and unreasonable. Fawcett.

In Fawcett court held that covenant is unreasonably overbroad because it covers a region and areas of states where the plaintiff never worked.

Here, in our case, when Morgan worked for Industrial, he did one job in Sidalia, in the northeastern part of the state of Columbia and other work was in the northwest corner of the state. Whereas, with the competing firm at Coatings, Morgan would be working in south and southeast. His office work deals with work all over the state.

Industrial wants to enforce the covenant in the entire Columbia state. Cole stated in his questioning that he wants to keep Morgan out of Columbia city. As stated in Fawcett, the covenant is unreasonably overbroad as it covers regions and areas of states Morgan never worked at while he was at Industrial. Morgan had no contact with Southeast and south while he was with Industrial.

Scope of prohibited activities

A restrictive covenant that prohibits work for a competitor "in any capacity" does not protect legitimate interest of the employer and imposes a greater limitation on the employee that is necessary. Fawcett

In Storm, the court held that the scope of service is appropriate as it prohibits Strom from using an on air personality but Storm remains free to work for WCAP-TV as an off air consultant.

Here, the covenant of non compete states that employee will not own, operate, or work at any business in direct competition with employer by providing sandblasting, or similar industrial cleaning services to industries and businesses anywhere in the State of Columbia.

As stated in Fawcett, Morgan loses his job if this covenant is exercised whilst Industrial has other employee they can train as they did for Morgan. Morgan had also joined as a junior and reached to the level where he was as and the same can be done for other employees. There is a greater limitation on Morgan as an employee with the covenant than it is for Industrial as an employer.

III. Conclusion

Owing to all testimonies and evidences presented along with the arguments the covenants of the non compete clause present in the contract of Morgan with Industrial is invalid and thus Morgan should be allowed to work with the competing firm in his capacity as argued and presented.

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