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To: Sylvia Baca

From: Applicanant

Date: 27 July 2021

Re: Draft Closing argument - Industrial Sandbalsting, Inc v. Samuel Morgan

This closing argument, examines the enforceability of the noncompete clause within the contract between Industrial Inc. and Samuel Morgan. It will be argued and established here that the non-compete clause proposed by Industrial is not only excessive but is not reasonable and therefore should not be enforced.

The interest industrial seeks to protect is far outweighed by the impact of the covenant to Morgan

Columbia Stat. Ann section 24-6-53, prescribes for the enforcement of a contract that restricts competition during the term of restrictive covenants only where the clause is reasonable based on:

1. restriction is reasonable in time
2. geographic area
3. scope of prohibited activities

Furthermore, the supreme court of Columbia in Storm v. Knox enforced a none-compete clause due to the far reaching impact it would have on the employer in comparison to the employee. In the case of Storm, the court based its decsion on the limitation of the clause in time, its rational relation to the aim of the employer in protecting its business for a set period of time (6 months) and finally due to the limited impact it would have on the employee.

In the case at hand the clause sought to be imposed by Industrial is distinct from the case in Storm. This is firstly evident via the interst industrial alleges it would like to protect. Industrial asserts that Morgan is a key emplyee without whom its business loses clients

and it cannot perform tasks such as bidding, sandblasting and estimating. This however is false due to the fact that Industrail was able to hire a foreman within a week of Morgans departure, further more, the foremare possessed the same knowledge as morgan. Additionally, it is evident that other foreman under employment with Industrial hold the certification that Morgan held, therefore showing the ability of Industrial to perfrom their regular business in the absence of Morgan, as such there is no dire interest that industrial seeks to protect.

Further the harm to Morgan far outweighs the interest to Industrial, even if such interest exists. In the case of storm the employee was not prevented from work and earning a living diuring the limitation of the none compete and the subsequent employer did not require work on camera (as the clause prevent in the case) to be done. In stark contrast to the case at hand, the none compete not only states an excessive time (1 year) it also prevents Morgan from working in any capacity with a competitor. This is highly unreasonable and would cause great harm to Morgan financially. Evident in the fact that his new employer will require him to work all over the state and it is implied he will need to start immediately.

The geographic scope of this clause is also unreasonable as it provides no basis for or limitation, but rather covers the whole state of Columbia. this does not meet the standard required in the state statute or as applied in Storm.

As such based on the law stated in Columbia State. Ann 24-6-53, the none compete should not be enforced do to its unreasonable restriction on time, geographic area and scope. Further based on the application of this starndard in storm the clause is unreasonable due to the unnecessary and unjustified harm it would afford Morgan which far outweighs any stated interest Industrial aims to protect.

Restriction on the scope of activity proposed by Industrial is not reasonable in relation to the apparent training Industrial provided Morgan

As stated in Fawcet courts have permitted a reasonable restriction where this restriction stste in the none compete clause of a contract, is specifically limited to those areas of traing. The intention of the court here, is that the employers interests in that service area are protected.

In this case however industria not only did not provide training to Morgan their none

compete clause is not limited enough to the scope of the traing.

The proof of the lack of adequate training is evident, as Morgan paid for the training himself. This is in contrast to the case of Storm v. Knox, where the TV station Knox invested over a million dollars in promotibg and developing the employee. In this case however Industrial has provided no such investment. requiring a limitation of the scope as prescribed in the contract.

Industrials request preventing Morgan from working in the whole State of Columbia is excessive and unreasonable and should not be upheld

As stated in fawsett and in Dtorm, a restriction on geograph area must be limited and warranted. further stated in fawcett, such a limitation if it encompasses areas in which the employee did not work in while under employment is not enforceable.

In this case, Industrial seeks to limit Morgans ability to work to cover the whole state of columbia, this following the standard is unreasonable alone, but is further unreasonable when applying the precedent set in Fawsett. Morgan has completed work mainly in columbia city and in the north east parts of the state, further his contract with Columbia requires he works in the South and South east and all over the state. Limitation of his new duties based on the limited scope of work performed while with Industrial is therefore unreasonable and should not be adhered to

In conclusion, the court should decide in favor oF Morgan and not enforce the clause as stated by Industrial.

Question #1 Final Word Count = 917

END OF EXAM