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Memorandum

To: Sylvia Baca

From: Applicant

Date: July 27, 2021

RE: Industrial Sandblasting, Inc. v Samuel Morgan

Introduction

Samuel Morgan, a client of Baca and Associates, P.C., is being sued by his former employer, Industrial Sandblasting, Inc. for breach of contract for a covenant not to compete. Industrial wants to enjoin Morgan from doing any work at his new employer, Columbia Coatings in the State of Columbia for one year.

Therefore, is it our opinion that the non-compete clause be invalidated because it exceeds a reasonable geographic scope and activity.

Argument

Morgan's contract contains the following non-compete clause: "For a period of one(1) year after the termination of Employee's employment for any reason, 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."

Geographic Area

"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

scope of prohibited activities, shall be permitted." (Knox)

Here, Industrial states that "employee will not own, operate or work at any business in direct competition with Employer...anywhere in the State of Columbia." As stated in *Knox* enforcement of non compete clauses will be as such as long as the restrictions are reasonable in geographic area. Mr. Morgan being restricted from working for a competitor in the whole state is unreasonable and would prohibit Mr. Morgan from making a living without having to move out of state for work. The restriction is a burden for Mr. Morgan. The weight of the Industrial's interest in prohibiting Mr. Morgan from working in the State of Columbis against the impact to Mr. Morgan is unbalanced.(Knox)

"This geographic area far exceeds the area within which Markham worked for Fawcett. This Court will accept as 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 the former employee." (CRS)

A restriction that covers a geographic area in which the employee never had contact with customers is over-broad and unreasonable. This covenant is unreasonably broad because it covers a region and areas of states where the plaintiff never worked." (CRS)

Mr. Morgan has stated that when he worked for Industrial it was only in Columbia City. Mr. Morgan stated that he did one job in Sidalia in the northeast part of the state. and Crescent about 20 miles outside of Columbia City.

Therefore, the geographical restriction is just as covered in CRS, in that it is over-broad and unreasonable and covers regions and areas of the state where Mr. Morgan has not worked during the course of his employment with Industrial, with a couple of exceptions.

Scope of Activity

"Under our cases, a former employer may validly restrict an employee from performing services for a competitor that are identical to those performed for the former employer." (CRS).

Mr. Morgan while working for Industrial specialized in commercial sandblasting, operated a crew and did estimates. The work that Mr. Morgan is performing at Columbia Coatings

is an office job more than a field job, hence a different capacity and activities. Further, when Mr. Morgan communicated to Industrial that he wanted an office job, Industrial said that they couldn't promote him to the office because they needed him in the field.

Therefore, Mr. Morgan should not be restricted from performing a different job than the one he had at Industrial because there is no valid reason or legitimate interest Industrial can provide to demonstrate the importance of this activity restriction on Mr. Morgan. By these standards Industrial is saying he cannot work "in any other capacity whatsoever." (CRS)

"Our courts have approved as reasonable restrictions that specifically state those activities related to the employer's business in which the employee was trained by the employer or worked for the employer. Such a restriction protects the employer's interests from competition in that area of service."(CRS)

Industrial has claimed that they trained Mr. Morgan while employed. However, Mr. Morgan was only paid for the days he attended training by Industrial, but Mr. Morgan paid for the courses and earned the certificates of his own accord.

Therefore, this claim by Industrial and reasoning for the restriction invalid.

Duration of Restriction

"Our cases do not state a specific time period past which a given time restriction is per se unreasonable. Instead, the cases require 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." (CRS) An employer must provide specific facts and circumstances that support a finding of necessity. Absent such proof our court have invalidated time periods as short as one year or less.

Here, the restriction is for one year from termination on Mr. Morgan. However, Industrial did not provide a legitimate purpose for the time frame. Industrial stated that they wanted Mr. Morgan "out of Columbia at least long enough for us to train someone they way we trained him." By these standards the restriction would take several years, as Mr. Morgan earned his certifications and while he was employed with Industrial since 2013.

Therefore, training another person to replace Mr. Morgan would take several years. However, to get a new employee acclimated with the starting job would likely be less than

two months. Thus this time restriction exceeds reasonable

Conclusion

As stated above, the covenant to non compete contained in Mr. Morgan's contract exceeds a reasonable geographic area, State of Columbia, which Mr. Morgan did not work while employed by Industrial and Industrial does not have a legitimate interest in imposing such a broad restriction. Second, the scope of activity

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