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Noncompete covenant gets quick exit; pact termed unenforceable

LABOR DAZE

LAURA B. BACON

LAURA B. BACON *of Nixon Peabody LLP, focuses her practice on commercial litigation and labor and employment. She represents clients in both state and federal courts in addition to various administrative venues.*

The Illinois Appellate Court recently affirmed dismissal of an employer's suit to enforce post-employment restrictive covenants, sending a strong message to Illinois employers on the unenforceability of overly broad geographic and activity restrictions and the court's unwillingness to engage in "blue penciling" to reform contract language.

In *Mazzetta Co. v. Felsenthal, et al.*, plaintiff Mazzetta Co.'s suit to enforce its employment agreement against a former sales associate was first dismissed by the trial court on a motion pursuant to Section 2-619.1 of the Code of Civil Procedure, declaring that "in my 30 years on the bench, I don't think I've ever seen an employment covenant that was more draconian than this." (Slip Op. at 8.)

Mazzetta fared no better on appeal where its complaint was deemed deficient for failure to allege a valid, enforceable contract. The court clarified that its affirmation of dismissal was based on the standard set forth by Illinois Code of Civil Procedure Section 2-615: No set of facts can be proved that would entitle the plaintiff to relief.

Defendant Stephen Felsenthal signed an employment agreement containing several restrictive covenants when he started with Mazzetta, a wholesale seafood company, in June 2013 as a sales associate.

In October 2017, he resigned and began a business development manager position with (alleged) competitor Fortune International, a seafood distribution company.

Mazzetta sent threatening letters and then filed suit seeking to enforce the agreement against Felsenthal and alleging tortious interference with contract against Fortune.

Namely, Mazzetta alleged that Felsenthal's employment with Fortune violated his post-employment obligations, in part because his new position would require him to solicit Mazzetta's customers, suppliers and vendors — information confidential to Mazzetta.

Felsenthal's employment agreement contained an 18-month noncompete clause, purporting to prohibit him from working for any "competing organization" doing business anywhere in the "restricted territory" — defined as all of North America.

The agreement also included an 18-month nonsolicitation provision purporting to prohibit Felsenthal from soliciting any supplier or customer with whom he had contact while employed by Mazzetta.

The court's analysis of the enforceability of the two provisions was unforgiving. Relying on the totality of the circumstances test set forth in *Reliable Fire*, the court held that both the activity and geographic restrictions in Felsenthal's agreement were unreasonable.

First, the noncompete provision would prevent Felsenthal from working in the seafood industry in any capacity in any part of North America, not merely in a sales role or position similar to the one he held at Mazzetta.

Second, the nonsolicitation provision would prevent Felsenthal from engaging with any potential customer that he had come into contact with at Mazzetta, not only those customers with which Mazzetta actually conducted business.

"The restrictive covenants here," the court held, "are much broader than necessary to protect any legitimate business interest that it may have in maintaining its customer base."

Mazzetta's attempts to preserve its agreement and impose restrictions against Felsenthal — by his contractual acknowledgement and by advocating for contract reformation — were rejected. Felsenthal's agreement contained a provision by which he acknowledged that the scope of the restrictive covenants was "necessary to protect [Mazzetta's] legitimate business interest." But this attestation did not save Mazzetta's claims:

"It has long been established that the reasonableness of a post-employment restrictive covenant is a matter of law to be decided by the court. Because such agreements in employment contracts could attempt to uphold provisions that are patently unenforceable in an

attempt to circumvent Illinois case law, we will examine the restrictive covenants at issue to determine their reasonableness," the court explained (internal citations omitted).

Similarly, the court refused to take Mazzetta up on its suggestion at oral argument that the provisions could be interpreted more narrowly:

"Counsel requested that we read the [contract] terms not as they appear in the four corners of the document, but rather under its more tailored understanding. We will not. It is not the job of this court to rewrite the contract for Mazzetta, and we will not do so on its behalf," the court wrote.

Concluding its opinion, the court refused to consider the dueling affidavits submitted before the trial court and left little doubt that Mazzetta's claims were unsalvageable by further pleading.

"While it is true that only in 'extreme cases will a court find such an agreement invalid on its face,' the covenants here fit the definition of extreme," the court found (internal citation omitted).

The *Mazzetta* opinion, while in line with past Illinois case law, serves as an important reminder that overly broad post-employment restrictive covenants will not be enforced and will not be saved by reformation or blue penciling.

Even though Felsenthal did accept a position with a competitor in a similar customer-facing role, the invalidity of his employment agreement leaves his former employer without recourse.