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California Appeals Court Affirms Permanent Injunction Against Use of Noncompete in California Contracts

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Corporate

In a recent case, *Robinson v. U-Haul Company of California*[1], the California Court of Appeal for the First Appellate District affirmed a trial court's award of attorney's fees and issuance of a permanent injunction against a company from using a noncompete in its California dealer contracts.

Background

In 2006, the plaintiff, Leigh Robinson (owner of a self-storage business that had previously been renting U-Haul trucks), terminated a dealer contract for truck rentals with U-Haul Co. of California, and began renting trucks from a U-Haul competitor. The dealer contract contained a noncompete purporting to prevent Robinson from competing with U-Haul by representing U-Haul's competitors for up to two years following termination.

Following termination of the contract, U-Haul sent a letter to Robinson emphasizing U-Haul's policy of "aggressively protect[ing] its legitimate business interests by seeking to enforce the non-competition provisions" of the dealer contract. U-Haul filed a complaint in December 2006 in Solano County Superior Court seeking, among other things, to enforce the noncompete. Robinson filed a cross-complaint seeking, among other things, a declaratory judgment that the noncompete was void under California law.

Following the denial by the trial court of U-Haul's motion for a preliminary injunction to enforce the noncompete, U-Haul dismissed its complaint; however Robinson continued to pursue his cross-complaint for some time. Robinson also filed a separate action alleging malicious prosecution and violation of California's unfair competition law, and seeking a permanent injunction against U-Haul from including the noncompete in future California dealer contracts, to require U-Haul to notify their current dealers that the covenant was void and unenforceable, and to order U-Haul to dismiss any action in any court in California through which U-Haul sought to enforce the covenant.

In 2014, the trial court entered final judgment in favor of Robinson on both the malicious prosecution and unfair competition law claims, granted the permanent injunction and, in 2015, awarded Robinson attorneys' fees of more than $800,000.

[1] 2016 WL 6081757, A141396 (Cal. Ct. App. Oct. 18, 2016).

Permanent Injunction of Noncompetition Covenant

California Business and Professions Code §16600 prohibits noncompetition covenants and renders such provisions void, subject to narrow statutory exceptions (e.g., in the sale of goodwill of a business). Attempted enforcement of a noncompete not subject to such statutory exceptions can give rise to an unfair competition law claim under California Business and Professions Code §17200.

In *Robinson*, the defendant argued that there was no evidence supporting a continuing violation of §17200 as to support an injunction, given that the defendant had dismissed its suit and, following such dismissal, stopped enforcement of the noncompete with its California dealers. The California Court of Appeal rejected this argument, and upheld the trial court's grant of a permanent injunction.

First, the Court of Appeal determined that the voluntary discontinuation of alleged illegal practices, even in good faith, does not remove a court's power to determine the validity of such practices. Next, the Court of Appeal noted that U-Haul's lawsuit was not isolated, and that U-Haul had filed other lawsuits against other dealers prior to 2006, which was evidence of an ingrained corporate practice. Furthermore, the Court of Appeal supported the trial court's finding that the insertion of the words "void where prohibited" into the language of U-Haul's dealer contracts beginning in 2010 was insufficient to remedy the illegality of the provision, and that U-Haul had not properly notified its current dealers that it did not intend to enforce the noncompete in California.

U-Haul argued that Robinson's unfair competition claim was moot and that there was no precedent case that found a noncompete to present an issue of broad public interest. The Court of Appeal, disagreed, and upheld the trial court's finding of broad public interest, using the analogous holding in *Marin County Bd. of Realtors, Inc. v. Palsson*[2], where the California Supreme Court found that a noncompete in the bylaws of a real estate brokers association "pose[d] serious anticompetitive dangers both to licensed real estate salesman and to consumers." As a result, the Court of Appeal in *Robinson* found that the effect of the defendant's practices on the roughly 1,000 dealers in California, competitors of U-Haul and rental market consumers was sufficient to create a broad public interest. For the protection of this group, an injunction was warranted.

Lastly, the California Court of Appeal affirmed the award of attorneys' fees under California Code of Civil Procedure § 1021.5, which provides for reimbursement of attorneys' fees for plaintiffs acting as a private attorney general, and further granted costs on appeal to the plaintiff.

Conclusion

This case serves as a reminder to avoid including overly broad restrictive noncompete covenants in contracts in California, even if the covenant has a general carveout for prohibited jurisdictions and regardless of whether a company intends to enforce such covenant. Unless there is a clear statutory or common law exception which would make a noncompete enforceable, companies should avoid including noncompete covenants in California agreements to avoid potential liability.

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[2] 549 P.2d 833 (Cal. 1976).

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