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Nevada Supreme Court Affirms That Non-Compete Agreements Must be Limited in Geographical Scope

Although rules against broad geographic restrictions in non-compete agreements may be outmoded or “hopelessly antiquated” in this digital age (see *Accelerated Care Plus Corp. v. Diversicare Mgmt. Servs. Co.*, No. 3:11-CV-00585-RCJ (D. Nev. Aug. 22, 2011)), the Nevada Supreme Court recently affirmed its rule that non-compete agreements are subject to “a high[] degree of scrutiny” and enforceable only if they are geographically “limited to areas where the employer has ‘established customer contacts and good will.’” See *Landon Shore v. Global Experience Specialists, Inc.*, 134 Nev. Adv. Op. 61 (Aug. 2, 2018).

In *Landon Shore v. Global Experience Specialists, Inc.*, an employee entered into a non-compete agreement that prohibited him from working with a competitor in a similar capacity anywhere in the United States for a period of 12 months after his employment ends. However, a few months after his employment ended, the employee took a similar position with a California-based competitor. The former employer sued and sought a preliminary injunction against the employee working for the competitor.

The trial court granted the preliminary injunction, but the Nevada Supreme Court reversed the decision. The trial court had found that the nationwide restriction in the non-compete agreement was reasonable because the former employer conducted business in 33 states, the District of Columbia, and Puerto Rico. The Nevada Supreme Court, however, held that the geographical restriction was unreasonable because it was not limited to the specific areas where the former employer had established customer contacts and goodwill. The fact that the former employer was labeled a “nationwide business” did not eliminate the requirement that the geographical scope must be limited to the areas where the employer has established customer contacts and goodwill.

Therefore, since the evidence did not support the nationwide restriction provided for in the non-compete agreement, meaning that the employer did not demonstrate a probability of success on the merits, the trial court erred in granting the preliminary injunction against the employee. The court stated that a preliminary injunction is appropriate only if the employer demonstrates a “probability ... that the noncompete agreement satisfie[s the] reasonability criteria, such that it would be enforceable.”

What Employers Should Know

As *Landon Shore* and other recent decisions indicate, Nevada courts are reluctant to enforce non-compete agreements. Any potentially unreasonable term may cause an employer to lose the protections intended by the non-compete agreement. Employers should evaluate all non-compete agreements and other restrictive covenants to ensure that they are reasonable, including agreements already in place and agreements intended for prospective employees. While Nevada's non-compete statute changed on June 3, 2017, and no longer states that a non-compete agreement must be "reasonable in its scope and duration" (as did the prior statute that was at issue in *Landon Shore*), the geographical limitation is still part of Nevada law. This is because the current statute states that non-compete agreements may "not impose any restraint that is greater than is required for the protection of the employer" and may "not impose any undue hardship on the employee." *Cf. Hansen v. Edwards*, 426 P.2d 792, 793 (Nev. 1967) (the "period of time during which the restraint is to last and the territory that is included are important factors to be considered" when determining whether a non-compete agreement "imposes ... any greater restraint than is reasonably necessary to protect the business").

Employers must also be careful when seeking a preliminary injunction. In light of *Landon Shore*, trial courts are potentially less likely to grant preliminary injunctions absent competent evidence supporting each restriction in the non-compete agreement. Expedited and skillful discovery, along with meticulous record keeping, may be necessary. Failing to obtain an injunction may cause irreparable harm.