RESOURCES

Is Your Noncompetition Agreement a Shield or a Sword?

Business owners often use noncompetition agreements to protect their business interests. The goal is to prevent former employees from using skills and knowledge obtained during their employment to benefit a competitor. But are noncompete agreements truly enforceable? The answer may depend on how carefully the terms are structured.

In North Carolina, an enforceable noncompetition agreement must be based on valuable consideration and written into the employment contract. It also must be:

- Reasonable as to time and territory
- Designed to protect a legitimate business interest of the employer

These last two elements weigh the employee's interest in earning a living against a business owner's interest in protecting the business. The balance between the two must be right if the agreement is to stand up in court. The trick is to craft an effective shield for your business (enforceable) and not a sword that will harm your employees (unenforceable).

A recent North Carolina Court of Appeals' decision, *Copypro, Inc. v. Musgrove*, illustrates the importance of balance and how far our courts will go to protect an employee's interest over that of an employer when the two are weighed. The ruling held that a noncompetition agreement was unenforceable because it was overly broad in restraining an employee's future employment options.

Here are the facts of the case: Copypro sold office equipment to customers in 41 counties throughout eastern North Carolina. Musgrove, an employee, signed a noncompete agreement restraining him from being connected in any manner with any business of the type and character of Copypro's business for three years following the end of his employment. The agreement was limited geographically to the 41 counties where Copypro did business.

Musgrove worked for Copypro primarily in two counties. After he resigned, he began working in a different county for one of Copypro's direct competitors, but still in Copypro's territory. Musgrove's new employer forbade him from contacting Copypro customers in the two counties where he previously worked.

The court held that Copypro's noncompetition agreement was unenforceable because it was written too broadly and prevented Musgrove from working for a competitor in *any* capacity, even as a janitor. Though Musgrove performed the same services for his new employer as he did for Copypro, the court found the agreement to be overreaching and therefore invalid.

Since the case was decided solely on the scope of work activity, the court did not address whether the geographic limitations in the agreement were reasonable. However, the ruling did note that Musgrove raised serious questions about the validity of territorial restraints that prohibited him from working in counties outside those where he actually worked for Copypro.

When a former employee breaches a noncompetition agreement, it is the employer who must ask the court for redress. All too often, this is the moment when it is discovered the agreement fails to offer the desired protections. Given the court's analysis and holding in *Copypro,* you would be well advised to review your

noncompetition covenants today – before you need them – to ensure they are a shield that provides protection and not a sword that does harm.

Carruthers & Roth, P.A.
(336) 379-8651
235 North Edgeworth Street
P.O. Box 540 (27402)
Greensboro, NC 27401