
“Strict Blue Pencil Doctrine” Remains Alive and Well

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On March 18, the Supreme Court of North Carolina reaffirmed the long-standing application of the “strict blue pencil doctrine” to non-competition agreements in *Beverage Systems of the Carolinas, LLC v. Associated Beverage Repair, LLC*. Under the “strict blue pencil doctrine”, when faced with an overly broad non-competition agreement the court has two options: either strike the unreasonable portion of the agreement if it can be separated from the rest of the agreement, or void the agreement entirely if it cannot.

In *Beverage Systems of the Carolinas, LLC*, the trial court and the Court of Appeals found the geographic boundaries of the parties’ non-competition agreement unreasonable. The agreement contained a unique provision that purported to give a trial judge the option of rewriting the agreement to make the boundaries reasonable. The Supreme Court held that parties cannot add additional provisions to a non-competition agreement to avoid the rigid application of the “strict blue pencil doctrine.” In considering the application of this provision, the Supreme Court stated “parties cannot contract to give a court power that it does not have.” The Supreme Court went on to explain that to give effect to this type of provision would “put the court in the role of scrivener, making judges postulate new terms that the court hopes the parties would have agreed to be reasonable at the time the covenant was executed . . . we see nothing but mischief in allowing such a procedure.”

The takeaway: the “strict blue pencil doctrine” still stands. The Courts will not likely enforce attempts to vest authority in them to re-write a contract.

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