Can You Inadvertently Cancel a Non-Competition Agreement?

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Full text of the court's opinion

Non-competition agreements can be integral to the successful operation of a business. When an employee leaves the business, non-competition agreements can prevent the employee from using the information he learned on the job to benefit a competitor. However, is it possible the termination of employment may, in the end, terminate the non-competition agreement?

The Sixth District Court of Appeals recently addressed this issue in the case Try Hours, Inc. v. Douville, 2013-Ohio-53 (Lucas County). While the court ultimately found that termination of the non-competition agreement did not occur in this instance, it did open the door for situations where it might occur.

In Try Hours, Douville was the director of operations for Try Hours, an expedited freight carrier. As a condition of his employment, Douville signed a non-competition agreement – providing that, subsequent to the termination of his employment, he would not work for another expedited freight company anywhere in the United States for a period of one year. After a year and a half on the job, Try Hours fired Douville and, as part of that, entered into a separation agreement with him, which provided that Douville would receive two weeks' pay and health insurance benefits for an additional two months. Douville and Try Hours signed the separation agreement and it included the following provision:

> The parties agree that this Agreement constitutes the entire Agreement between the parties as to the subject matter of this Agreement and no prior or subsequent oral Agreements, representations or understandings shall be binding upon the parties and such shall be null and void and shall have no effect.

The non-competition agreement was not specifically mentioned in the separation agreement.

Approximately one month later, Douville began working as a compliance officer for a direct competitor of Try Hours. Try Hours sued Douville and obtained a preliminary injunction preventing him from working for the competitor. Douville appealed.

Douville's argument was that the integration clause of the separation agreement (quoted above) nullified the non-competition agreement, leaving Douville free to work for whomever he pleased. Both the trial court and the appellate court disagreed.

The appellate court hung its hat on two key issues. The first was that the integration clause specifically limited itself to the subject matter of the separation agreement. The second was that its reference to "prior or subsequent" agreements solely referenced oral agreements. It did not reference written agreements. The non-competition agreement was a written agreement and, as the court reasoned, not intended to be covered by the integration clause.

This very narrow interpretation of the integration clause was extremely beneficial for Try Hours. It also serves as a lesson for businesses to exercise caution when entering into termination agreements with employees. Had the integration clause simply stated that "this Agreement constitutes the entire Agreement between the parties and no prior or subsequent agreements, representations or understandings shall be binding upon the parties and such shall be null and void and shall have no effect," Try Hours would, most probably, not have been able to enforce its non-competition agreement with Douville. Both courts clearly saw this issue turning on the interpretation of but a couple of words, and those words made all the difference.