

NON-COMPETE AGREEMENTS IN NORTH CAROLINA

by Richard A. Prosser

Non-compete agreements are a common source of inquiry among our business clients. In North Carolina, the most recent guidance on the subject is *Hejl v. Hood, Hargett & Assoc., Inc.* In this 2009 opinion of the NC Court of Appeals, the court considered a non-compete agreement entered by an account executive at an insurance company and addressed the parameters of enforceability.

Hejl, the employee, was presented a non-compete agreement fourteen years after beginning his employment. Because he was an existing employee, he was provided \$500.00 as consideration for signing the agreement. When he was terminated two years later, he filed a declaratory action to determine its validity.

The trial court found the agreement unenforceable and void as a matter of law for lack of adequate consideration. Because the agreement was entered after an existing employment relationship was established, separate and new consideration was necessary to create a binding obligation. In the eyes of the trial court, \$500.00 was an inadequate exchange.

On appeal, enforceability was challenged on three grounds: (1) adequacy of consideration, (2) length of time, and (3) geographic scope. The court overruled the trial court's holding that \$500.00 was inadequate consideration, finding it inappropriate to evaluate the adequacy of the consideration absent a showing of fraud. The court then considered the three-year duration of the agreement and deemed it acceptable in light of precedent upholding a five-year period.

Lastly, the court considered the geographic scope of the agreement. Unlike the other two factors, the court sided with the employee, holding that the geographic restriction exceeded what was necessary to protect the legitimate interests of the employer. The restricted territory extended over two states and to areas where the employee had no existing connections or personal knowledge of the employer's customers. As a consequence, the court ruled the agreement invalid and unenforceable.

The important take away from this holding is to understand that although certain elements of non-compete agreements are uniformly interpreted, others are context specific. As such, each agreement should be tailored to the specific employer-employee relationship. If this is not done, and the restrictions exceed what is necessary to protect the employer's legitimate business interests, the entire agreement will be invalidated.