Dentons Newsletter

Another restriction on withdrawal from non-compete clauses imposed by the Supreme Court

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The Supreme Court of the Czech Republic recently issued a judgment under file no. 21 Cdo 4779/2018, in which it dealt with a situation where the employer withdrew from the non-compete clause agreed with its employee due to the fact that "it would not be proportionate or practical to enforce the agreed prohibition of competition against the employee due to the value of information and knowledge of work and technological procedures obtained by the employee in the course of employment with the employer". The said ground for withdrawal from the non-compete clause had been expressly agreed between the employer and the employee.

Nevertheless, the Supreme Court, unlike the court of first instance and the court of appeal, concluded that the withdrawal of the employer for the reason formulated above was not valid.

The Supreme Court acknowledged that after the conclusion of a non-compete clause, circumstances may arise in which an employee does not obtain information worthy of protection, and when the meaning and purpose of the non-compete clause are not fulfilled, and also acknowledged that these circumstances can be agreed as a reason for withdrawal from the non-compete clause. However, in the Supreme Court's view, an arrangement that leaves it to the employer's discretion whether an employee has obtained such information from the employer is invalid because it has the same effect as if the employer was able to withdraw from the non-compete clause without proving a reason or for any reason.

The Supreme Court thus confirmed and further shifted its conclusions from previous years, namely that:

(i) an employer may withdraw from a non-compete clause agreed with an employee only for a reason stipulated by law or for a reason agreed between the employer and the employee in advance;
(ii) the employer's right to withdraw from a non-compete clause without stating a reason or for any reason cannot be agreed;
(iii) the specific ground for resignation agreed with the employee must not constitute "abuse of a right to the detriment of the employee".

As a result of the current judgment of the Supreme Court employers must even stop relying on being able to withdraw from non-compete clauses agreed with employees based on their subjective assessment that the employee in question did not obtain information worthy of protection through a non-compete clause in the course of the employment.

The recent direction of the Supreme Court's case law on the issue of withdrawal from non-compete clauses thus essentially prevents employers from arranging a simple and efficient reason for withdrawal from a non-compete clause, which will not be difficult to prove in court in the event of a dispute (or, even better, will prevent such disputes). It de facto means that once an employer concludes a non-compete clause with an employee, in the vast majority of cases it will not be possible to withdraw from it unilaterally later.

Thus, before entering into non-compete clauses, employers should carefully consider whether they are indeed dealing with an employee with respect to whom they will wish to maintain the obligations arising from the non-compete clause upon employment termination. In our practice, we very often encounter situations where employers, when terminating employment, are unpleasantly surprised by the fact that a non-compete clause has been concluded with the employee and they are not interested in protecting company information in this form.

We believe that the direction chosen by the Supreme Court is extremely impractical and disproportionately protects employees at the expense of the employer to the extent that it completely ignores the possible absence of the employer's need to protect the information acquired by the employee. Who but the employer, whose information is protected by a non-compete clause, should evaluate their value and the need to protect it or lack thereof?

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