Hitting Below the "Sunbelt" After Thirty Years

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Neil Ehlers began working for Sunbelt Rentals, Inc., in 2003 as a sales rep at its Bloomington, IL Branch. He signed an employment agreement with Sunbelt, which included a covenant not to compete. By signing this, Ehlers agreed that: for a period of one year following his termination of employment and within fifty miles of any Sunbelt location where he had worked, Ehlers would not solicit any Sunbelt customer, compete with Sunbelt in the same or similar business, or work for or own a competing business.

In 2008, Ehlers changed locations and began to work out of Sunbelt's Champaign, IL location. One year later, in 2009, he tendered his resignation and began work for a direct competitor of Sunbelt's, by the name of Midwest Aerials and Equipment. Sunbelt then sued both Ehlers and Midwest and the trial court granted a preliminary injunction against both Ehlers and his new employer. Sunbelt then appealed. On appeal, Ehlers and Midwest argued that Sunbelt had not shown that it had a "legitimate business interest" adequate to support a preliminary injunction.

The Appellate Court for the fourth district of Illinois did remark that for over thirty years it was very common for many Illinois courts to apply the "legitimate business interest" test when determining the validity of restrictive covenants. Interestingly enough, this method although employed for over three decades, has no formal definition. That said, conventional appellate judicial wisdom has stated that a "legitimate business interest exists where (1) because of the nature of the business, the customers' relationships with the employer are near permanent and the employee would not have had contact with the customers absent the employee's employment; and (2) the employee gained confidential information through his employment that he attempted to use for his own benefit."

However, the Appellate Court in Sunbelt specifically rejected the legitimate business interest test noting that the Illinois Supreme Court has neither embraced nor rejected it. Instead, the Court went back to the two pronged standard of "time" and "territory" measures. In Sunbelt, the court held that the limitation of one year and fifty miles (from any Sunbelt location where Ehlers had worked) were in fact reasonable upon Ehlers and affirmed the trial court's decision.

Illinois employers should be mindful that this is the holding of only one of the five appellate court districts in Illinois. On the other hand, this court took it upon itself to disturb a thirty year old "sleeping dog" in the form of the legitimate business interest test. Should this animal become unleashed in other districts or with the IL Supremes, it won't be the same old song. It will become easier for Illinois employers to enforce non-compete agreements. Stay tuned….

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