

Non-Compete & Trade Secrets Report

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Kentucky High Court Nixes Non-Compete Supported Only By Continued Employment

By Karen T. Dunlevey and Matthew R. Byrne on September 2, 2014



The Kentucky Supreme Court has held that continued employment alone is not valid consideration for non-compete agreements. In *Charles T. Creech, Inc. v. Brown*, 2014 Ky. LEXIS 233 (Ky. 2014), Donald E. Brown was employed by Charles T. Creech, Inc. for over 18 years before he was asked to sign a non-compete agreement in 2006. When the company’s owner presented the agreement to Brown, the owner stated that Brown needed to sign it in order to “get [the owner’s] daughter off our backs,” but no one told Brown that his continued employment was contingent on signing the agreement, and he received no other consideration for signing. The employer argued that Brown’s continued employment was valid

consideration for the non-compete agreement, and relied on two cases in which the Kentucky Supreme Court had held continued employment to be valid consideration. The Kentucky Supreme Court disagreed and distinguished both of those decisions, explaining that in both cases factors other than continued employment were present that constituted consideration.

The court’s decision did not affect the enforceability of non-compete or similar agreements that are entered into in connection with hiring, as an offer of at-will employment is still valid consideration under the court’s decision. The court also indicated that in the case of non-competes that are supported only by the purported consideration of continued employment, certain factors, including but not limited to specialized training, promotions, wage increases, and other post-agreement changes in the employment relationship, as well as “rehire” situations, may render the agreement enforceable. It remains to be seen if the reasoning of the court will also apply to non-solicitation, confidential information, arbitration, and other agreements entered into with employees after hiring.

Employers with Kentucky non-compete and similar agreements should review the enforceability of their agreements in light of the *Creech* decision.

