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Federal Court in Minnesota Rejects Automatic Tolling of Non-Compete

By V. John Ella on October 10, 2013

We have previously written about tolling provisions on this blog. In a decision from the U.S. District Court for the District of Minnesota, Judge Patrick J. Schiltz held that, under Minnesota law, non-compete terms do not automatically reset upon violation. The decision in *U.S. Water v. Watertech of America*, No. 13-CV-1258 (PJS/JSM), concerned a motion for a preliminary injunction to enforce an 18 month non-compete signed by a former employee of U.S. Water, Sveinn Storm. At the time of the decision there were only four weeks left until the 18 month term expired on October 30, 2013. At the hearing on the motion, U.S. Water argued that the covenant not to compete should not expire on October 30, 2013 because the agreement contained a provision that tolled the non-compete during any violation and, in the alternative, that a contractual non-compete term automatically resets upon violation. In rejecting both arguments, the court noted as follows:

> First, contrary to U.S. Water's assertion, the agreement signed by Storm does not include a tolling provision. Second, U.S. Water has not cited (and the Court has not found) any judicial decision holding that, under Minnesota law, a violation of a covenant not to compete automatically resets the term of that covenant. Given that "[i]n Minnesota, employment noncompete agreements are looked upon with disfavor, cautiously considered and carefully scrutinized," (citation omitted), the Court doubts very much that any Minnesota court would give an employer a "fresh set of downs" every time a former employee violates a covenant not to compete.

The Court held the parties to their agreement that Storm would refrain from contacting any of U.S. Water's customers before October 30, 2013, but denied the motion for a preliminary injunction. Unfortunately, it is not revealed in the Court's decision what, if any, language the plaintiff was relying upon in its assertion that the

agreement contained a tolling provision. This case is a glass half-full and half-empty for plaintiffs relying on tolling agreements. On the one hand, it throws cold water on the argument that common law allows for automatic tolling, although other Minnesota courts have at least entertained the idea of equitable tolling. On the other hand, it does not directly say that a carefully written contractual tolling provision would not be enforceable.

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