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Washington Forum Selection Clause Enforced by California Court in Non-Compete Action

By Dylan B. Carp on June 3, 2013

A California federal court recently dismissed a lawsuit seeking a declaration that a non-compete agreement is unenforceable under California law, upholding the parties' Washington forum selection clause. *Meras Engineering, Inc. v. CH20, Inc.*, No. C-11-0389 EMC (N.D. Cal. Jan. 14, 2013). CH20 is a Washington corporation with its principal place of business in Washington. Meras Engineering, a competitor of CH20, is a California corporation with its principal place of business in California. Rich Bernier and Jay Sughroue are citizens of California who used to work for CH20 almost exclusively in California. Their employment agreements with CH20 each contained a non-compete clause, a Washington choice of law clause, and a forum selection clause designating Washington as the exclusive forum for lawsuits over their agreements.

Bernier and Sughroue resigned from CH20, became employed by Meras, and along with Meras brought this lawsuit, seeking a declaration that the CH20 non-compete agreements are unenforceable under California's well known public policy that non-compete agreements are not enforceable (with limited exceptions not applicable here) as established by Cal. Business & Professions Code section 16600. Shortly thereafter, CH20 filed an action in Washington federal court to enforce its non-compete agreements and moved to dismiss the California action, contending the California court should enforce the parties' forum selection clause. In the interim, the Washington court held that it was appropriate in that case to enforce the parties' choice of law provision – i.e. that the non-compete provision would be governed by Washington law, which generally permits enforcement of reasonable non-competes, rather than by California law.

The California court granted CH20′s motion, dismissing the California action. Applying federal decisional law regarding the enforceability of forum selection clauses, the court held the issue was whether enforcement of the forum selection clause would contravene a strong California public policy. Meras argued that enforcing the parties' forum selection clause would violate California public policy against the enforcement of non-compete agreements, because the Washington court had already held that it was appropriate to apply Washington law under the parties's choice of law provision. The court disagreed, holding that argument incorrectly conflated the choice of *forum* issue with the choice of *law* issue. The court noted that Washington and California apply the

Restatement of Conflict Laws section 187. Accordingly, the same choice of law test applies, whether the forum is Washington or California.

Meras Engineering exemplifies three trends among the Washington and California courts. First, we have been seeing increasing non-compete litigation between Seattle-based employers and Silicon Valley-based employers and their employees. Second, California federal courts have repeatedly rebuffed efforts to adjudicate the enforceability of non-competes between Washington-based employers and Californi-based employees in California, especially where the parties agreed to a Washington forum selection clause. Third, Washington federal courts have increasingly enforced Washington choice of law clauses in non-competes, giving an opening to non-California employers to chip away at California's public policy prohibiting such restraints on employee mobility.

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