EPSTEIN
BECKER
GREEN

Trade Secrets & Employee Mobility

News, Updates, and Commentary on Trade Secret and Employee Mobility Developments

# "Janitor Problem" Sinks Illinois Non-Compete

By Peter A. Steinmeyer on April 23, 2018

POSTED IN NON-COMPETE AGREEMENTS

We non-compete lawyers often rely on an old rule of thumb when analyzing the enforceability of a non-compete: if the restriction is so broad that it would even prohibit an employee from working as a janitor for a competitor, then it is very unlikely to be enforced by a judge. And so when a federal judge expressly endorses such a rule of thumb, the urge to blog about it is simply irresistible.

In ***Medix Staffing Solutions Inc. v. Daniel Dumrauf***, Judge Ellis of the Northern District of Illinois addressed the enforceability of a restrictive covenant which prohibited employment in *any capacity* at another company in the industry. The defendant argued that this restriction was so broad that it "would bar him from even working as a janitor at another company." While Judge Ellis described that example as "a bit far-fetched," she nonetheless found "no language in the Covenant that makes it an inaccurate statement of [the Covenant's] prohibitions." Accordingly, she held that the restriction was unenforceable on its face and that "[t]here is no factual scenario under which it would be reasonable." Accordingly, she held that "[t]his is an 'extreme case' where dismissal at the motion to dismiss stage is permissible and appropriate."

And while noting that courts have the power to modify overbroad restrictive covenants, Judge Ellis refused to do so here, holding that Medix must instead "live with [its] decision" not "to draft an appropriate restrictive covenant."

So, employers, the morale of the story is this: if your non-compete really would block an employee from working as a janitor for a competitor, it is time to update your non-compete, paying due heed, of course, to issues of adequacy of consideration for any such modification and other case law and statutory developments.

---

## Trade Secrets & Employee Mobility

EPSTEIN
BECKER
GREEN