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Posted at 10:58 AM on December 14, 2012 by Zachary C. Jackson

Wisconsin Court Determines Noncompete Clause Does Not Render Arbitration Clause in Employment Agreement Unenforceable

This week, a Wisconsin Court of Appeals issued its decision in *Jeffrey L. Engedal v. Menard, Inc.* (Appeal No. 2012AP305). Engedal started working at Menards as a part-time sales associate when he was 18. Over the next 25 years, he worked his way up the corporate ladder. After about 6 years, he became a store manager and 15 years later he became Menards' hardware merchandise manager, which gave him managerial authority over the hardware departments in all of Menards' 250 stores. During the later 19 years of his employment, Engedal signed an employment agreement each year with Menards. His 2010 agreement contained an arbitration provision which required him to arbitrate any employment-related claims as well as a non-compete clause which prohibited him from: a) working for any of Menards' direct competitors in the same or similar position for which he was employed by Menards; or b) working with any of Menards' direct or indirect competitors within a 100 mile radius of the Menards location where he was last employed. After 25 years of employment with the company, Menards terminated Engedal's employment in August 2010.

Engedal sued, claiming that Menards wrongfully discharged him and failed to pay him a bonus and requesting a declaratory judgment that the arbitration and noncompete provisions in his 2010 agreement were unenforceable. Menards moved to stay the proceedings and compel arbitration. The circuit court held an evidentiary hearing on Menards' motion, determined that the arbitration provision in Engedal's 2010 agreement was unconscionable because it included a noncompete provision which would put him out of a job for two years if he refused to sign it, and refused to compel arbitration. Menards appealed.

The Wisconsin Court of Appeals reversed. The appellate court first reviewed and approved the circuit court's findings concerning Engedal's background and responsibilities at Menards: that he was now 43 years old; that he had completed high school and 2 years of college; that he was of "above average intelligence;" that he was employed as a store manager for 15 years; that, during that time, he was responsible for all the operations of his store and supervised 125 employees; that he was subsequently promoted to a high-level management position at Menards' corporate headquarters in which he directly supervised at least 60 employees and exercised authority over the hardware departments in 250 stores; and that he was responsible for maintaining business relationships with 600-700 hardware vendors. Based on those findings, the appellate court concluded that Engedal was an intelligent adult with significant business experience. Next, the appellate court reviewed and approved the circuit court's findings that, even though there was no evidence that Menards actually explained the terms of the 2010 agreement to Engedal, he had the opportunity to ask questions about it, had time to review it, signed each page indicating he had done so, and was the primary contact to explain the terms and conditions of employment agreements to his staff at Menards. Finally, the appellate court reviewed the circuit court's decision that the 2010 agreement was nevertheless unconscionable because it included a noncompete clause that would have put him out of a job for 2 years if he refused to sign it.

The appellate court determined that the circuit court's conclusion conflicted with its own findings that: a) Menards would have offered Engedal a different position within the company if he had refused to sign the 2010 agreement, b)Engedal's managerial, supervisory, and organizational skills were transferrable outside the "home improvement mega store" industry; and c) Engedal was subsequently able to obtain a job as a general manager for a company in another industry. As a result, the appellate court determined that the circuit court erred in concluding that the arbitration provision was unconscionable and in refusing to stay the proceedings and compel arbitration.

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