

Non-Compete & Trade Secrets Report

Developments in Protecting Business Against Unfair Competition

Florida Appellate Court Rules Former Customers Are Not a Legitimate Business Interests

By [Michael Kantor](#) on November 6, 2015

A recent case from Florida's Fifth District Court of Appeals underlines the importance for employers to provide a sufficient legitimate business interest to justify enforcement of a non-compete agreement. Where a former employee or contractor is interfering with client relationships, the employer must be careful to point out specific prospective or existing clients when enforcing a non-compete agreement.

In *Evans v. Generic Solution Engineering, LLC*, 2015 Fla. App. LEXIS 16175 (Fla. 5th DCA 2015) the appellate court reversed an order granting a temporary injunction against a former independent contractor who was subject to a non-competition agreement. The employer sought to prevent its former contractor from performing services for the employer's former clients. The court held that an employer's relationships with *former* clients are not legitimate business interests sufficient to enforce a restrictive covenant. While courts have previously acknowledged the distinction between *former* and *existing* client relationships, this appears to be the first decision in which an appellate court reversed a temporary injunction enforcing a non-compete based on the inadequacy of a business' relationship with former clients.

Background

Defendants Evans and Chinn were former independent contractors performing work for Generic Solution Engineering, LLC d/b/a Tech Guys Who Get Marketing ("Tech Guys"). Only Chinn was subject to a non-compete provision in his independent contractor agreement. Chinn and Evans left Tech Guys to form their own company, X-Tech, which provides similar services to similar customers, including former Tech Guys customers RRI and E-data.

Following the typical path of non-compete litigation, Tech Guys filed suit and moved for a temporary injunction restraining Chinn and Evans from performing work for former clients RRI and E-data. The trial court granted Tech Guys' motion as to Chinn and denied it as to Evans because Evans was not subject to a non-compete agreement.

Chinn appealed the order granting the temporary injunction against him and the appellate court reversed. The appellate court held that employers do not have a legitimate business interest in their relationships with former clients sufficient to support enforcement of a non-compete.

Relevant Law

Florida Statute § 542.335 allows for enforcement of restrictive covenants only where “the restraint [is] shown to be reasonably necessary to protect the ‘legitimate business interests’ justifying the restriction.” *Evans* at *2 (quoting *Henao v. Prof'l Shoe Repair, Inc.*, 929 So.2d 723, 726 (Fla. 5th DCA 2006)). The *Evans* case acknowledges that “the right to prohibit the direct solicitation of existing customers’ is a legitimate business interest” sufficient to support enforcement of a non-competition agreement. *Id.* (quoting *Hilb Rogal & Hobbs of Fla., Inc. v. Grimmel*, 48 So. 3d 957, 961 (Fla. 4th DCA 2010)).

The Court, however, also noted several prior cases distinguishing between an employer’s relationships with current or future clients as opposed to former clients. *Id.* (citing *Envtl. Servs., Inc. v. Carter*, 9 So.3d 1258, 1265 (Fla. 5th DCA 2009)(enforcing non-compete because of “substantial relationships with specific prospective or existing customers”); *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So.2d 812 (Fla.1994)(tortious interference not actionable where interference is based on relationship with past customers); *see also Shields v. Paving Stone Company, Inc.*, 796 So. 2d 1267 (Fla. 4th DCA 2001).

Lessons

The takeaway for employers is that they must be careful to point to adequate legitimate business interests when seeking to enforce non-compete agreements. Employers must identify specific prospective or existing clients being solicited by former employees. Relying on a former employee’s interference with a former client will be insufficient to enforce a non-compete agreement.