

Non-Competes in Virginia Civil Settlement Agreements



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James Irving
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It is fundamental in Virginia that non-competition agreements arising from arm's length business transactions are afforded greater judicial deference than those between an employer and an employee, which are presumed to be the result of unequal bargaining position.

In a case of first impression, Judge Norman K. Moon of the United States District Court for the Western District of Virginia, sitting in Charlottesville, has denied a defendants' motion to dismiss a claim based upon the breach of a covenant not to compete contained within a post-employment settlement agreement.

Mark D. Carucci, a New Jersey resident, had been employed as regional manager by McClain & Co., Inc. ("McClain"), a Virginia corporation engaged in multi-state traffic maintenance services. In March 2010, Carucci was terminated for allegedly misappropriating approximately \$285,793 in McClain funds. Thereafter, McClain's civil claim against Carucci was settled by way of an agreement, pursuant to which McClain released its claims against Carucci in return for a payment of \$250,000; return of McClain's equipment, records and confidential information; and Carucci's entry into restrictive covenants governing competition and solicitation of McClain's business by Carucci for a limited period of time. McClain alleges that thereafter, and within the restricted period, Carucci and his grandfather established MPT Rentals, Inc., a business in direct competition with McClain.

In particular, McClain alleged that within six days of signing the Agreement, Carucci and MPT began to offer "competing services" (as defined in the agreement), within the restricted area. According to McClain, MPT advertised that they were the "one stop shop for traffic equipment and safety needs." McClain sued for (among other things) breach of the agreement. Carucci responded by asking the court to dismiss the claim because the non-competition provision was overbroad and unenforceable under the applicable Virginia case law. According to Judge Moon, the Virginia Supreme Court has not announced a standard governing the enforceability of covenants against competition appearing in civil settlement agreements.

Carucci's principal argument was that the non-compete should be measured against the "rigorous standard developed to review non-compete agreements incident to employment contracts." McClain argued that the provision should be reviewed according to the less restrictive test applicable to agreements such as a sale of a business; agreements between partners in a professional firm; or other transactions where the parties have relatively equal bargaining power.

Non-Competes in Virginia Civil Settlement Agreements (Cont.)

Judge Moon declined to adopt Carucci's strict standard of analysis. While stating that "a requirement of reasonableness is adequate to afford fair protection to the interests of both parties to the contract and the public." He noted that the settlement was the result of arm's length negotiation between parties fully represented by counsel; the agreement was specifically deemed to have been drafted "jointly by the parties"; and public policy favors the enforcement of negotiated resolutions of private disputes.

Judge Moon's ruling left it to the trial court to determine if Carucci had acted as alleged, and if he had, what damages should be awarded. He also made it clear that Carucci would have a lot of explaining to do to the jury.