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### **Massachusetts Superior Court Awards Treble Damages Against Company For Pursuing Non-Competition Litigation Against Former Employee and a Competitor**

Navigating the ever-changing legal landscape governing the enforceability of restrictive covenants, such as non-competition and non-solicitation agreements, is an essential part of doing business for many employers. Businesses increasingly require their employees to sign such agreements in order to protect their intellectual property and goodwill and, when necessary, seek to enforce the agreements in courts. On the other hand, many of those same businesses find themselves sitting on the other side of the courtroom and challenging the validity of a competitor's non-competition agreement after having hired away the competitor's star employee. A recent decision of the Massachusetts Superior Court, *Brooks Automation, Inc. v. BlueShift Technologies, Inc.*, only heightens the stakes in these types of cases. Not only did the Court refuse to enforce the plaintiff company's non-competition agreement with a former employee, but the plaintiff was hit with a six-figure damages award and required to pay the defendant's attorneys' fees as a penalty for bringing the litigation.

Brooks Automation, Inc. ("Brooks") filed a lawsuit against its former employee, Peter van der Meulen ("van der Meulen") and BlueShift Technologies, Inc. ("BlueShift"), a company founded by van der Meulen. Brooks alleged that van der Meulen had breached the non-competition provision in his separation agreement, which barred him from competing with Brooks for one year following his termination, and a non-disclosure agreement, which barred him from divulging Brooks' trade secrets and confidential information. Brooks also alleged that van der Meulen and BlueShift had unlawfully interfered with Brooks's prospective contractual relations with potential customer Applied Materials, Inc. ("Applied") through improper means. Apparently, Applied had walked away from a deal with Brooks and began negotiating with BlueShift instead.

BlueShift filed a counterclaim alleging that Brooks had violated Chapter 93A of the Massachusetts General Laws, which prohibits unfair methods of competition, and unlawfully interfered with BlueShift's relationship with Applied. The counterclaim was grounded in BlueShift's assertion that Brooks had no reasonable basis to believe that its suit would succeed and that it was acting primarily with a purpose other than that of adjudicating its claims -- namely, to prevent BlueShift from entering into a contract with Applied. Indeed, Applied canceled its purchase order with BlueShift upon the filing of the lawsuit.

Trial commenced less than two months after the filing of the Complaint. The jury found against Brooks on all of its claims, and in favor of BlueShift on its counterclaim, finding that Brooks had intentionally interfered with BlueShift's contractual relationship with Applied through improper means and that Brooks' interference had caused BlueShift actual damages of \$209,300 (the amount of the purchase order with Applied). Following trial, the Court ruled that Brooks had filed a frivolous lawsuit and therefore willfully violated Chapter 93A. As such, the Court trebled the damage award to \$627,900 and ordered Brooks to pay BlueShift's reasonable attorneys' fees.

The *Brooks* decision provides important lessons for businesses seeking to enforce a restrictive covenant, such as a non-competition agreement:

- **Be sure to have a well-drafted agreement.** Although Brooks had argued that van der Meulen had violated the non-competition provision contained in his separation agreement, the Court found that van der Meulen's conduct was not prohibited by the agreement. *Brooks* is a strong reminder that a restrictive covenant should clearly and unambiguously state each and every restriction which it seeks to impose upon an employee.
- **Conduct a reasonable investigation into violations of a restrictive covenant before filing suit.** Here, the Court scolded Brooks because it "never articulated with precision which trade secrets or confidential information had been stolen and never appeared to have carefully considered whether its so-called trade secrets or confidential information were already in the public domain through patent disclosures." Essentially, the Court found that Brooks sued first and then sought to investigate the validity of its claims.
- **Do not use litigation to interfere with legitimate competition.** In awarding treble damages, the Court explained that it was doing so "to make clear to any corporation that contemplates crushing a vulnerable competitor by conjuring a frivolous lawsuit that it will pay dearly for its misuse of the judicial process." While litigants have the right to petition the courts to resolve their grievances, they do not have the right to use a baseless lawsuit to prevent a competitor from engaging in lawful competition.

Employers need to think carefully before bringing litigation to enforce a non-competition agreement. *Brooks* shows that a former employee and his or her new employer have a judicially-sanctioned ability to fight back against misuse of the judicial process. Even where the employer has a legitimate basis for bringing suit, defendants may bring counterclaims for unfair competition as a matter of course in order to raise the stakes of the litigation.

**This Bulletin was prepared by David Kurtz of Foley Hoag LLP's Labor & Employment Law Department. If you would like additional information on this topic, please contact Mr. Kurtz (dkurtz@foleyhoag.com or 617-832-1225), or contact your attorney at Foley Hoag LLP. For "Alerts and Updates" on other topics, please visit our website at <http://www.foleyhoag.com/>.**

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