SJC Refuses to Enforce Massachusetts Non-Compete on California Employee

Written by Michael L. Rosen, Christopher Feudo, Samuel C. Bauer

September 14, 2018

On September 7, 2018, the Massachusetts Supreme Judicial Court refused to enforce a non-competition and non-solicitation agreement between a Massachusetts company and its California-based former employee who joined the employer's competitor in California. The SJC reached this decision, in *Oxford Global Resources v. Hernandez*, even though the agreement was expressly governed by Massachusetts law and designated Massachusetts as the forum for all disputes concerning the agreement. The case highlights the difficulties multi-state employers face in attempting to prevent post-employment competition by former employees in California.

The *Oxford* decision arose from a dispute between a multi-national company headquartered in Massachusetts and its former employee, who had been hired by the company and performed all of his job duties for the company in California. During his employment, the employee signed an employment agreement containing non-compete, non-solicitation, and non-disclosure restrictions. Although non-competes are unenforceable in California, and California courts are skeptical about the enforcement of customer non-solicitation provisions, the agreement contained a choice of law provision providing that Massachusetts law governed the agreement and a forum selection provision designating Massachusetts as the forum for disputes regarding the agreement. After the employee's employment with the company ended, he joined a competitor in California and allegedly solicited his former employer's clients using its confidential information. Pursuant to the agreement, the company sued the former employee in Massachusetts Superior Court to enforce the agreement. The Superior Court, however, dismissed the action in its entirety based on forum non conveniens, a legal doctrine that allows a court to refuse to take jurisdiction over a dispute where it determines that there is a more appropriate forum. It found that California was the more appropriate forum for the parties' dispute.

On appeal, the SJC upheld the Superior Court's dismissal of the company's suit. As a preliminary matter, the Court refused to enforce the agreement's choice of law provision. According to the SJC, a choice of law provision will be enforced in Massachusetts if it is not contrary to public policy. The Court held that the agreement's choice of law provision could not be enforced, because applying Massachusetts law to the agreement would contravene California's strong public policy favoring open competition and employee mobility. The Court went on to hold that the agreement's forum selection clause did not preclude the defendant from moving to dismiss a case in Massachusetts based on forum non conveniens. Moreover, after considering the private and public concerns at issue, including the fact that California law would apply and "everything" related to the dispute was in California, the Court held that the Superior Court's dismissal of the company's lawsuit on forum non conveniens grounds was not an abuse of discretion.

The SJC's decision demonstrates the likely inability of Massachusetts-based multi-state employers to enforce post-employment non-competes against California-based employees. While not new law, *Oxford* confirms that California's strong public policy in favor of open competition and employee mobility will invariably override a Massachusetts choice of law provision in the eyes of a Massachusetts court. Further, *Oxford*'s acceptance of the forum non conveniens defense gives California employees a useful tool to defeat non-compete breach claims in Massachusetts courts. Accordingly, Massachusetts employers with employees who live or work in California should understand that it is highly unlikely that they will be able to enforce non-compete provisions against these employees and take steps to ensure that they have well-drafted non-disclosure agreements in place to protect themselves in the face of a former employee's post-employment competition.

The SJC's decision continues to keep non-competition agreements in the news in Massachusetts. As discussed in our previous alerts (found here), Massachusetts recently passed a non-compete law that places new requirements for and restrictions on non-competition agreements entered into on or after October 1, 2018. The *Oxford* decision has no impact on the new law, so employers should continue to prepare for the approaching effective date of the new law.

RELATED PRACTICES

- Labor & Employment
- Non-Competition Agreements, Trade Secrets & Unfair Competition