

## Understand the Law and Your Contract Before You Act – (Contract Interpretation)

When a radio station owner hired a prominent radio personality to work for the station back in 1995, the two entered into an employment agreement containing a non-compete provision, whereby the employee was prohibited from competing against the employer for a stated period of time post-employment. When the station was sold to another company/owner/employer, that new owner terminated the radio personality's employment. When the terminated employee sought a competing job elsewhere, the new owner sought to enforce the terms of the non-compete agreement. In response, the employee filed suit, claiming that the new owner had wrongfully interfered with his right to work at a different radio station within the community.

When the case came before the trial court, the judge focused not only on the actual language of the non-compete clause, but also on a succession/assignment paragraph of the agreement that read as follows:

“The provisions of this agreement shall be binding upon and inure to the benefit of the parties hereto, [employee's] heirs and personal representatives, and the successors and assigns of [employer]. The foregoing notwithstanding, however, upon the sale of all or substantially all the assets, business and goodwill of [employer], or upon the merger or consolidation of [employer] with another corporation, the Agreement shall bind and inure to the benefit of [employee]. No party, however, may assign its rights or obligations under this Agreement.”

Believing that this clause was ambiguous and that the non-competition clause justified the employer's interference, the trial judge granted the employer's motion for summary judgment. The employee appealed; the appellate court reversed.

In reaching its conclusion, the court of appeals first looked carefully at the law governing non-competition agreements in Florida, and noted that, while enforceable so long as they are reasonable in both time and scope, “such contracts will not be construed to extend beyond their proper import or further than the language of the contract absolutely requires.” As to enforcement by a successor, while the current version of the statute governing non-compete agreements permits enforcement by one's successors or assigns where the contract “expressly authorizes,” the version of the statute that was in place at the time this particular agreement was executed provided for enforcement only by the original employer. Since that old version of the statute governed this agreement, any potential enforcement by a successor company was invalid as a matter of law. Even had the clause been read under the new statute, however, it would still be unenforceable, since it was “difficult to imagine how the third sentence [of the succession/assignment paragraph] would have any meaning at all unless it were to categorically eliminate the

non-competition clause if the station was sold.” The end result: the employer could not rely on the non-compete agreement in defense of its conduct and the employee’s lawsuit could continue to move forward. Clearly, it’s important to understand the law (and your contract) before you act.

In the end, it’s important to understand the law and your contract before you act.

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