Illinois Court Confers Another Win for Employees in Non-solicitation and Trade Secrets Case

Insights
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In a recent decision, the Northern District of Illinois continued its trend of invalidating employment agreements, this time in regard to a non-solicitation provision it determined to be overbroad. In *Call One, Inc. v. Anzine*, No. 18 C 124 (N.D. Ill. June 7, 2018), Call One brought suit against Lori Beth Anzine, a former sales representative, asserting a claim for misappropriation of trade secrets. Anzine filed a counterclaim seeking a declaratory judgment that the non-solicitation covenant she signed was unenforceable.

Anzine was employed by Call One from 2003 through 2012. As a condition of her employment, Anzine was required to sign a non-solicitation agreement that prohibited her from soliciting any entity for the purposes of selling telecommunication services or products to any customer of Call One that was a customer during her employment, or a prospective customer at the time of her termination. Anzine argued these provisions were overbroad because they prohibited solicitation of past and prospective Call One customers, as well as current customers with whom Anzine never had any interaction.

The court agreed with Anzine and rejected Call One's argument that such covenants were necessary to protect its legitimate business interests. The court noted that the restriction would prevent Anzine from soliciting former Call One customers who ended their relationship with Call One well over ten years ago. Additionally, the provision would prevent Anzine from soliciting former, current, and prospective Call One customers with whom she had no personal contact and did not have any personal knowledge. Fortunately for Call One, the court did not completely invalidate the non-solicit and opted to reform it. It modified the non-solicit and limited it to prohibiting solicitation of (1) customers or prospective customers of Call One as of Azine's termination date, or (2) customers or prospective customers of Call One for which Azine had responsibility while employed by Call One.

The court also held Anzine did not misappropriate trade secrets by taking Call One's "customer report." Even though the court acknowledged that the customer report contained information that would not be available to the general public (such as the total monthly recurring charges for each client), the court nonetheless held that the report was not entitled to trade secrets protection because Call One did not take reasonable measures to keep the report secret. The customer report was never identified as a confidential document by Call One despite Call One's policies and procedures requiring all confidential information and trade secrets be marked as such. Accordingly,

Anzine had no "duty" to protect the confidentiality of information that was not "actually identified as being confidential."

Call One is another example of a continued trend by Illinois courts to closely scrutinize employment agreements. It is also consistent with Illinois' history of rejecting non-solicitation agreements that prevent employees from contacting individuals with whom the employee never had contact during employment. Finally, it shows employers the importance of taking reasonable measures to protect their trade secrets, including the importance of following internal policies and procedures for keeping trade secret information confidential, such as identifying it and marking it as confidential. To protect against close scrutiny by courts, there should be no doubt the purported trade secret was intended to remain just that: a secret.