California Non-Competes: Are They Legal After All?

Insights
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In an eye opening decision, the United States District Court for the Northern District of California recently granted a temporary restraining order partially enforcing a non-compete agreement. In Richmond Technologies v. Aumtech Business Solutions (copy available below), the Plaintiff provides software for financial services firms. The Plaintiff entered into a "Teaming Agreement" with the Defendant, pursuant to which the Defendant developed software for the Plaintiff. In the agreement, the Defendant promised not to (1) use or disclose the Plaintiff's confidential information; (2) initiate contact with or solicit the Plaintiff's clients; and (3) compete with the Plaintiff by using its technology. Requesting a temporary restraining order, the Plaintiff alleged a breach of each of these three provisions.

The District Court began its legal analysis by observing that the "California Supreme Court 'generally condemns noncompetition agreements.'" The Court explained that this condemnation is rooted in California Business and Professions Code § 16600. Despite California's antipathy toward restrictive covenants, the Court also noted that "[a]n equally lengthy line of cases" have protected parties against the misuse of trade secrets to unfairly compete. The Court noted that these cases fall

into two camps. Namely, some cases observe a "trade secret exception" to § 16600 and enforce restrictive covenants that are necessary to protect trade secrets, while others cases simply view the use of trade secrets as an independent wrong. The Court then proceeded to follow the former group of cases, and found that the various covenants at issue in this case were likely enforceable to varying extents.

For example, in analyzing the non-compete provision, the Court stated "if the clause is construed to bar only the use of confidential source code, software, or techniques developed for [the Plaintiff], it is likely enforceable as necessary to protect [the Plaintiff's] trade secrets." "Similarly, the clause prohibiting use of confidential information is likely enforceable to the extent that the claimed confidential information is protectable as a trade secret." Against this logical underpinning, the Court determined that the key was to ensure that any injunction "imposed by the Court would be narrowly tailored to prohibit only the misuse of trade secrets and would permit Defendants to compete, in a lawful manner, with Plaintiff." The way in which the Court struck this balance was eye opening. Namely, the Court enjoined the Defendants from, among other things:

- Initiating contact with the Plaintiff's clients regarding competitive software unless none of the Defendants had knowledge of or contact with those clients during the term of their employment with the Plaintiff.
- Using the Plaintiff's information about its clients' technical and business requirements, or other confidential client information, to solicit or obtain agreements with those clients. "However, Defendants may enter into agreements with [the Plaintiff's] customers if the customer initiates the contact and none of [the Plaintiff's] confidential information will be used in negotiating, executing, or performing the agreement."

Don't look twice, but it seems like the Northern District of California just enforced a non-compete agreement.

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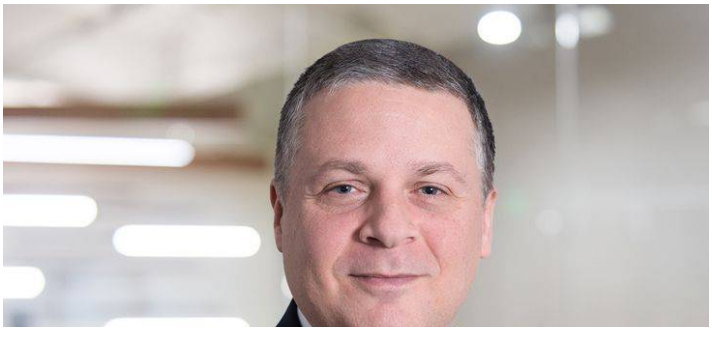

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