



# Terminating an Injunction Regarding Confidential Information

Insights

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Although the Georgia appellate courts have not issued many decisions on the new restrictive covenant statute that went into effect on May 11, 2011, they do continue to issue decisions in the area of protecting confidential information. One such decision is *Mays v. Southern Resources Consultants*, which came out of the Georgia Supreme Court in early June.

That case comes out of a growing field for restrictive covenant disputes: the home health care provider context. Provision of health care services in home settings is a growing industry. Because of the importance of an individual provider developing a relationship with the patient to whom the provider is providing services, this is a natural setting in which the individual provider's employer will want to use a non-compete restriction to prevent the individual provider from exploiting that relationship on behalf of a competitor. On the other hand, the individual provider will often argue that the relationship he/she developed with the patient is important for the patient's well-being and therefore that there is a public interest against enforcing a non-compete in this particular situation.

*Mays* involves exactly this sort of situation. The facts at issue are described in detail by the Georgia Supreme Court with so many abbreviations that a member of the military would be impressed by the opening paragraph of the decision:

*Southern Resources Consultants, Inc. ("SRC") is a Residential Service Provider ("RSP"), contracting with the Georgia Department of Behavioral Health and Developmental Disabilities ("DBHDD") and the Georgia Department of Community Health ("DCH") to, inter alia, operate group homes and provide care and oversight for Medicaid-funded individuals with developmental disabilities. Linda Mays ("Mays") contracted with SRC to be a Host Home Provider ("HHP") for one such woman, S.F., from approximately 2006 until May 31, 2014. S.F. became dissatisfied with SRC, and requested that her case manager, who was the Guardianship Case Manager for the Division of Aging Services of Georgia's Department of Human Services ("DHS"), which was S.F.'s legal guardian, change S.F.'s RSP. At the time of the request, DBHDD policy prohibited a HHP from terminating its contract with a RSP, such as SRC, and then continuing to serve the individual who had been in the care of the HHP. Consequently, at S.F.'s behest and believing it to be in S.F.'s best interests, the case manager requested a waiver of such policy from DBHDD so that S.F. could remain in Mays's host home despite the termination of Mays's relationship with SRC. DBHDD granted the waiver.*

*Effective June 15, 2014, SRC was terminated as S.F.'s RSP, and S.F. instead began to receive services from a new RSP Southern International Living ("SIL"). Mays then contracted with SIL so that S.F.*

from a new RCI, Southern International Living (SIL). Mays then contracted with SIL so that S.F. could remain in her home and care. On June 23, 2014, SRC filed suit against Mays for breach of purported confidentiality<sup>3</sup> and non-compete<sup>4</sup> provisions in the “Work for Hire Agreement/ Contract/ Subcontract Agreement” (“Contract”) entered into by SRC and Mays on or about August 1, 2008, and for violation of the Georgia Trade Secrets Act of 1990 (“GTSA”), and subsequent unjust enrichment.

In short, Mays was providing services to S.F., first under the auspices of Southern Resources and then under Southern International Living. When she moved to the latter, SRC brought a lawsuit against her for violation of various restrictive covenants. The trial court entered an injunction against her to prevent further breaches of the agreement, including issuing a requirement that Mays needed to stop providing services to S.F.

The interesting legal conclusion of the opinion is that the trial court should not have enjoined Mays from possessing or disseminating Southern Resources' trade secrets or confidential information. The reasoning is that the parties agreed that Mays had returned all such information, so there was no basis upon which to continue to enjoin Mays. The upshot is that plaintiffs in Georgia are not entitled to injunctive relief regarding trade secrets or confidential information once such information has been returned by the defendant, i.e. a “just in case” injunction.

It is unclear from the decision whether Southern Resources argued that information in Mays' head was also protectable. If it would have done so, then it could have argued for an injunction that carried on after the return of tangible materials. That said, Mays signed her agreement in 2008, three years before the effective date of the new restrictive covenant statute, and the non-disclosure provision at issue did not contain a time limitation, so it should not have been enforceable at all. It is not apparent from the decision as to whether this argument was raised.

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