

CLIENT MEMORANDUM

Less is More: Texas Court Grapples with Enforceability of Non-Compete Restrictions Under Delaware Law

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AUTHORS

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In a series of recent decisions that provide new guidance on the permissible scope and enforceability of restrictive covenants, the United States District Court for the Southern District of Texas, applying Delaware law, found that a non-compete agreement that lacked any geographic limitation was unenforceable on its face and limited its scope to only those geographic areas for which the employee had been directly responsible while employed by the party seeking to enforce the non-compete or about which he had acquired competitively sensitive confidential information during his employment. The case, *Cameron International Corp. v. Abbiss*, Civ. Act. No. H-16-2117 (U.S.D.C., S.D. Tex.), involved the attempt by Cameron International Corporation (“Cameron”) to enforce a non-compete and other restrictive covenants against its former employee, Steven Abbiss.

The Facts

Mr. Abbiss worked for Cameron for 16 years. From 2010 to 2014, Mr. Abbiss was Regional Manager for Asia, stationed in Singapore. Beginning January 1, 2014, Mr. Abbiss was District Manager in Oman and had responsibility for Yemen as well. Mr. Abbiss resigned from his position with Cameron on May 1, 2016. In June 2016, he began working for FMC Technologies Singapore PTE, Ltd. (“FMC”), a direct competitor of Cameron, as its General Manager for the Middle East. Thereafter, Cameron sought to enjoin Mr. Abbiss from, among other things, rendering any services to FMC in the Middle East. In support of its motion for a preliminary injunction, Cameron pointed to a non-compete agreement that Mr. Abbiss

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had signed, which, for a period of one year after his termination, prevented him from the “rendering of services for any person or organization, or engaging directly or indirectly in any business, which is or becomes competitive with [Cameron] or any Subsidiary.” The agreement lacked any geographical limit to the non-compete restriction and, by its terms, was governed by Delaware law. Cameron also sought to enjoin Mr. Abbiss from disclosing any of its confidential information and soliciting any of Cameron’s employees or customers in the Middle East. The court held a series of hearings in order to determine the proper scope and enforceability of the non-compete.

The Decisions

Ultimately, the court issued two rulings. First, on September 27, 2016, the court ruled that Mr. Abbiss’ non-compete agreement was unenforceable on its face because it lacked any geographical limitation. *Cameron Int’l Corp. v. Abbiss*, No. H-16-2117, 2016 WL 5394312 (S.D. Tex. Sept. 27, 2016). The court found that while a global non-compete is enforceable under Delaware law, in order for Cameron to enforce the non-compete on a global scale it would have to demonstrate that Mr. Abbiss had acquired a global advantage over Cameron based on his employment in Oman and Yemen, which it had failed to do. The court rejected as insufficient Cameron’s argument that because FMC competed against Cameron throughout the Middle East, Mr. Abbiss should at least be enjoined from assisting FMC to compete against Cameron throughout the region. However, the court also held that blue pencilling was a remedy available to Cameron under Delaware law, pursuant to which Cameron could seek to enforce a judicially modified version of the non-compete covenant, but only “to a reasonable extent.” Following this decision, Cameron sought to enjoin Mr. Abbiss from working for FMC in Oman, Yemen, Saudi Arabia, Bahrain, U.A.E., Kuwait, Qatar, Iraq, and Iran.

On October 25, 2016, after a further hearing on Cameron’s preliminary injunction motion, the court denied the motion and held, among other things, that because Mr. Abbiss only had been responsible for Cameron’s operations in Oman and Yemen, the geographic scope of his non-compete would be limited to Oman and Yemen, which he and FMC had already agreed would not be part of his responsibilities during the restrictive covenant term. *Cameron Int’l Corp. v. Abbiss*, No. H-16-2117, 2016 WL 6216667 (S.D. Tex. Oct. 25, 2016). The court reached this decision by focusing on the employer’s reasonable interests in protecting confidential information from being shared and goodwill from being impacted by competition. Ultimately the court concluded that, (i) Mr. Abbiss had not had access to competitively sensitive information affecting the Middle East as a whole, and (ii) goodwill was at risk only if the employee competed in the geographic areas for which he had previously been responsible, and thus the restrictive covenant should be limited to the geographic areas in which he had actually worked.

Key Takeaways

The *Cameron* decision is noteworthy in two respects. First, in limiting enforcement of Mr. Abbiss’ non-compete to only those geographic regions for which he had been directly responsible, the Texas court construed Delaware law more narrowly than many Delaware courts have done. Although the court acknowledged that even global non-competes were enforceable under Delaware law, it found that in the absence of any evidence that Mr. Abbiss had access to competitively

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sensitive information impacting Cameron’s operations throughout the region, the threat that FMC would use Mr. Abbiss to compete against Cameron throughout the Middle East was insufficient to support a preliminary injunction preventing Mr. Abbiss from working in the region.

Second, the court, in assessing the enforceability of the non-compete, expressly considered the equities of the employee’s circumstances – namely, that preventing Mr. Abbiss from working anywhere in the Middle East would be a hardship for his family and especially his children, who would be forced to stop attending the school to which they had become accustomed. Typically, courts consider the equities only in the context of weighing a request for a preliminary injunction, and not in deciding, as a matter of contractual interpretation, whether or not a non-compete is enforceable in the first instance. It remains to be seen whether other courts will follow the lead of the court in *Cameron*.

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