Franklin County Legal Journal

Volume 19, Issue 8, Pages 34-38

Parnell Supply Co. v. Noll

RICHARD E. REEDER, trading and doing business as

PARNELL SUPPLY COMPANY, Plaintiff, v. JOHN I. NOLL, Defendant

Court of Common Pleas of the 39th Judicial District of Pennsylvania,

Franklin County Branch

Civil Action No. 2001 - 524

Non-Compete Agreement

1. Non-compete agreements are enforceable only if they relate to a contract for employment, are supported by adequate consideration, are reasonably necessary to protect the employer's legitimate business interests and are reasonable both in time and geographic scope.

2. A non-compete agreement is ancillary to employment and may be supported by the consideration of beginning employment if it is signed contemporaneously with the start of work. If signed after the commencement of employment, a non-compete agreement must therefore be supported by new consideration.

3. The beginning of employment may be adequate consideration for a non-compete agreement discussed at the job interview but left unsigned until eleven days later after the employee began work.

Appearances:

Thomas B. Steiger Jr., Esq.

Donald L. Kornfield, Esq.

OPINION

Walker, P.J., April 26, 2001

Procedural History

Plaintiff Richard E. Reeder initiated the instant action in equity by complaint filed February 19, 2001. A hearing was held on April 9, 2001, the parties have since submitted post-hearing briefs and the matter is now ripe for disposition.

Statement of Issues

The essential issue to be determined is whether the non-compete agreement, signed eleven days after defendant began employment, was ancillary to the employment relationship and supported by consideration.

Findings of Fact

1. Parnell Supply Company, operating out of Ft. Loudon, Pennsylvania, sells cutting tools, abrasives, welding supplies and related products to manufacturers in Pennsylvania, Maryland, Virginia and West

Virginia.

2. Defendant John I. Noll was interviewed by Plaintiff Richard E. Reeder on December 22, 1992, in order to fill a position as sales representative for Parnell Supply Company.

3. During the interview, plaintiff explained that defendant would be required to execute a non-compete agreement.

4. Defendant was hired by Parnell Supply Company and did not begin work until January 18, 1993, because of a prior non-compete agreement with Petty & Morrow.

5. Defendant received his first paycheck from Parnell Supply Company on January 28, 1993.

6. Defendant signed a non-compete agreement on January 29, 1993, which essentially mandated that he not work for a competitor for one year after his employment with plaintiff was terminated.

7. Defendant resigned from Parnell Supply Company on January 2, 2001, to become President of Cutting Tool Specialists, Inc., in Mercersburg, Pennsylvania, where he directly competes for business with plaintiff.

Discussion of Law

Instantly, plaintiff seeks enforcement of the non-compete agreement, while defendant maintains that the agreement is invalid because it was executed eleven days after he had begun employment. The non-compete agreement contains the following:

> THIS agreement made this 22nd day of January, 1993, BETWEEN Richard E. Reeder trading and doing business as Parnell Supply Company, P.O. Box 113, Ft. Loudon, Franklin County, Pennsylvania, hereinafter referred to as Company, AND John I. Noll of Fort Loudon, Franklin County, Pennsylvania, hereinafter referred to as Employee.
>
> WITNESSETH THAT WHEREAS, the Company is engaged in the sale of cutting tools and abrasives in the Commonwealth of Pennsylvania and adjoining states;
>
> AND WHEREAS, John I. Noll is employed by the Company as a sales representative for the sale and servicing of cutting tools, abrasives, and other products as the management of the Company made [sic] from time to time assign and designate to the Employee;
>
> NOW THEREFORE, this agreement witnesseth that in consideration of his employment with the Company Employee agrees that he will not, during the term of his employment nor within one year after its termination, for any cause whatsoever, whether with or without his fault, engage or become interested, directly or indirectly, in the business of the sale and distribution of cutting tools, abrasives, and other products, either as principal, partner, agent, employee, or as a director or officer of any Corporation or association, or in any other manner or capacity whatsoever in any area or territory in any state in which Parnell Supply Company may be so engaged.
>
> IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

Non-compete agreements are only enforceable if they (1) relate to a contract for employment, (2) are supported by adequate consideration, (3) are reasonably necessary to protect the employer's legitimate business interests and (4) are reasonable in both time and geographical restrictions. All-Pak v. Johnston, 694 A.2d 347 (Pa.Super. 1997)[1]. Our courts have held that "as long as the restrictive covenant is an auxiliary part of the taking of employment and not a later attempt to impose additional restrictions on an unsuspecting employee, a contract of employment containing such a covenant is supported by valid consideration and is therefore enforceable." Modern Laundry & Dry Cleaning v. Farrer, 370 Pa.Super. 288, 536 A.2d 409 (1988). Though beginning employment is clearly adequate consideration for a non-compete agreement, the two events must occur contemporaneously. Capital Bakers v. Townsend, 426 Pa. 188, 231 A.2d 292 (1967). Therefore, if the non-compete agreement is executed at a time subsequent to the commencement of employment, then there must be new consideration such as promotion to a new position within the company. Jacobsen & Co. v. International Environmental Corp., 427 Pa. 439, 235 A.2d 612 (1967).

Instantly, the sole issue is one of fact. Had the agreement been executed on defendant's very first day of employment, there could be no question that the agreement was ancillary to employment and that the employment itself was sufficient consideration. However, as it was not executed until eleven days after defendant was on the job, it must be resolved whether the agreement was an already-discussed detail

that the parties inadvertently delayed or whether defendant was taken aback completely and essentially coerced into signing the agreement to keep his job. If the latter is true and the agreement was not discussed during the December 22, 1992, interview, then there clearly would have been no consideration when it was subsequently executed on January 29, 1993. While plaintiff maintains that the agreement was discussed at the interview, defendant conversely testified at the hearing that he knew nothing about the agreement until after he had begun work and further stated that he would not have taken the job at Parnell Supply if conditioned upon the agreement.

After careful deliberation, and as evidenced by factual finding #3 above, the court finds that the agreement was discussed at the December 22, 1992, employment interview, and that there was thus adequate consideration for the auxiliary employment agreement. First and foremost in the court's reasoning is the fact that defendant signed the agreement. He argues that if he had known about the necessity of the non-compete agreement at the interview, he would not have taken the job with plaintiff because he had prior experience with non-compete agreements that seriously damaged his financial status. But should it not then follow that he later should have refused to sign the agreement and terminated his employment when plaintiff allegedly broached the subject out of nowhere? After all, he had only been working there eleven days and had received only one paycheck at the time. As defendant's testimony indicates that he was so passionately opposed to non-compete agreements given his experience, the subsequent execution of the agreement instantly is illogical and it is therefore difficult for the court to understand why he did not simply cut his losses and find work elsewhere instead of signing the agreement and continuing to work for plaintiff for almost eight more years.

At the hearing, plaintiff introduced as Plaintiff's Exhibit #1 a list of eleven areas related to employment, dated 12/22/92 at the top of the page. Plaintiff testified that the list was prepared for the employment interview with defendant, and that it contained each area that he wanted to discuss during the interview. Listed as subject number two is "Non-Competitive Agreement." The court finds no reason to reject the authenticity of the document, and defendant has not offered one either. At the hearing, defendant simply stated that plaintiff had many papers with him at the interview and that he did not recall specifically seeing Plaintiff's Exhibit #1 in plaintiff's hands. While the mere existence of Plaintiff's Exhibit #1 does not conclusively demonstrate that the subject of non-compete agreements was discussed during the interview, it is nonetheless persuasive.

Further, the eleven-day lapse between defendant's start date and the agreement execution date is not troublesome. Defendant maintains that the eleven-day period works to invalidate the agreement and substantiate his claim that the agreement was not discussed during the initial interview, but the court does not find that the period of time was so excessive as to evince that the subject was not discussed at a prior time. Had the non-compete agreement been signed any time after three months, for example, the court would less likely find that the agreement had been discussed during the interview and would require new consideration. For in that situation, there would be no reasonable excuse for such a lapse of time and the inference would have to be that no discussion ever took place regarding the non-compete agreement as part of the overall employment package. Here, however, the relatively brief period of time bolsters the other evidence discussed above and suggests that the agreement's execution was simply delayed or postponed without bad faith. Indeed, the probable reason for the administrative delay in executing the agreement was the running of defendant's then-pending non-compete agreement with Petty and Morrow. Defendant was interviewed on December 22, 1992, but could not start with Parnell Supply until his prior non-compete agreement expired on January 17, 1993. Hence, all of the paperwork relating to defendant's employment with Parnell Supply could probably not be completed until after that date, and eleven days is not per se unreasonable.

Before conclusion, the court will briefly address the claims made by defendant that plaintiff's hands were unclean, as his modus operandi was to hire employees without discussing non-compete agreements and then later "force" them to sign a non-compete agreement in a classic "bait-and-switch." At the hearing, the court ruled that evidence relating to other employees' non-compete agreements signed in the distant past was irrelevant to the instant matter. The court explained that if defendant later discovered an appellate case holding otherwise, a brief hearing would be held to introduce the testimony of other Parnell Supply employees. To date, defendant has presented the court no such cases, thus the ruling stands.

Conclusion of Law

Though the instant non-compete agreement was not executed until after defendant's employment had already begun, it was nonetheless ancillary to the commencement of defendant's employment and the consideration of employment was likewise sufficient because the parties had discussed the agreement during the employment interview and also because it was executed within a relatively brief period of time after the employment relationship officially commenced.

OPINION

April 26, 2001, the court having concluded that the non-compete agreement is legally enforceable, defendant is enjoined from working in any capacity for Cutting Tool Specialists, Inc., or any other direct competitor of Parnell Supply Company until January 2, 2002.

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[1] Defendant only challenges the first two elements.