Enforceability of Restrictive Covenants

The Court of Appeal in England & Wales recently delivered its judgment in the case of Rodgers v Sunrise Brokers LLP [2014] EWCA Civ 1373. This case provides useful guidance for employers on the enforceability of restrictive covenants.

Mr Rodgers had entered into a contract of employment with Sunrise Brokers LLP (“Sunrise”) which stipulated that he could only terminate it by giving 12 month’s notice. Under the contract, upon termination Mr Rodgers was also subject to restrictive covenants preventing him working for any of Sunrise’s competitors for a period of six months.

Mr Rodgers left Sunrise on 27 March 2014 without giving 12 months notice. Before doing so, he had signed a contract of employment with a competitor which was due to begin in January 2015. Sunrise chose not to accept Mr Rodgers’ resignation, as it was in breach of the terms that had been agreed. The company instead took the view that he remained employed, but refused to pay him on the basis that he was refusing to come to work.

Subsequently Sunrise agreed to accept a notice period of six months from the date of the Mr Rodgers’ first written notice of resignation which expired on 16 October 2014. Mr Rodgers did not disclose that he had already signed the employment contract with EOX.

Sunrise made an application to the High Court for a declaration that Mr Rodgers remained in his employment and for an order restraining him from working elsewhere. The High Court issued an injunction holding Mr Rodgers to the terms of his contract of employment until 16 October 2014. The High Court however, only enforced Mr Rodger’s restrictive covenants until 26 January 2015, less than the six month period set out in his contract of employment. This was based on an assessment of what would have happened if Mr Rodgers had given notice in line with his contract and the likelihood he would have been placed on garden leave thus reducing the period the restrictive covenants would apply.

The Court of Appeal, in rejecting Mr Rodger’s appeal, agreed with the High Court’s reasoning and confirmed that the High Court was entitled to enforce the restrictive covenants for less than the six months provided for in Mr Rodger’s employment contract.

The Court usefully reiterates that even when a restrictive covenant is valid on the basis that it was reasonable when entered into, whether it is enforceable will also depend on whether subsequent events have made it unreasonable to enforce it. When applying for injunctive relief, employers should remain mindful of the court’s discretion to grant such relief and consider both whether the restriction was reasonable at the date it was entered into and whether it is still reasonable for the Court to enforce it at the time injunctive relief is sought.

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