Louisiana Court of Appeals Holds Non-Compete Was Triggered When Employment Agreement Expired, Not When Actual Employment Ended

jackson lewis.

Article By
Susan F. Desmond
Jackson Lewis P.C.
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The **Louisiana Court of Appeals, First Circuit**, recently affirmed a lower court's denial of a preliminary injunction to enforce a covenant not to compete in **Gulf Industries, Inc. v. Boylan** (La. App. 1 Cir. June 6, 2014). The case demonstrates continued careful scrutiny by Louisiana courts of **non-compete agreements**.

Gulf Industries provides highway safety, highway construction, and other related services. The plaintiff, Boylan, worked his way up within the company to the position of **Senior Vice President of Operations** and was responsible for maintaining good client relationships with state and local transportation officials, as well as private contractors and suppliers.

In 2009, Boylan signed a one year employment agreement that contained a non-compete provision that was to extend for two years beyond the date Boylan's last services rendered on behalf of Gulf. The term of the employment agreement was August 1, 2009 to July 31, 2010. Boylan continued to work for Gulf after July 31, 2010 and up until his resignation on August 31, 2012. His last date of employment was September 18, 2012. A week later, Boylan began competing with Gulf Industries through a new business he and others formed.

Gulf Industries filed suit asserting that Boylan was in violation of his agreement not to compete with the company for two years "beyond the date of Mr. Boylan's last services rendered on behalf of Gulf." Despite the language of the contract, the Court of Appeals affirmed the lower court's holding that the two-year period began at the conclusion of the employment period identified in the agreement (July 31, 2010) rather than Mr. Boylan's last date of employment (September 18, 2012).

In its holding, the court noted:

> [a]fter a common-sense reading of the employment agreement, we find that its employment period was not extended beyond the original termination date. While Mr. Boylan continued to work for Gulf after July 31, 2010, he no long worked under the terms of the employment agreement and was an at-will employee. When the employment period under the employment agreement terminated on July 31, 2010, Mr. Boylan then became subject to its non-compete clause for two years. The effective period of the non-compete clause ended on July 31, 2012.

The court rejected the employer's argument that the agreement had been extended when Boylan initialed an exhibit that listed the parishes where the non-compete clause would be effective on March 8, 2011. The court noted that Boylan testified at the preliminary injunction hearing that his initialing of the exhibit was because it had not been presented to him when he originally signed the agreement in 2009 but that he was not agreeing to extend the terms of the employment period with his initials.

The case highlights the dangers of incorporating a non-compete agreement with a formal employment contract with a defined term.

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