

California Business and Professions Code: High Price Of Trying To Enforce The Unenforceable

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Readers will know that *California* marches to its own drummer when it comes to the enforceability of covenants not to compete. California Business & Professions Code Section 16600 declares these covenants void unless they fall within a statutory exception. Nonetheless, some companies continue to insist on including non-compete clauses in their agreements. Sometimes, they even try to enforce these clauses with lamentable results. Such was the case of ***Robinson v. U-Haul Co. of Cal.***, Cal. Superior Ct. Case Nos. A141396, A145828 (Oct. 18, 2016).

The case started nearly a decade ago when U-Haul sued one of its independent dealers for breach of contract. After U-Haul failed to convince the court to issue a preliminary complaint, it dismissed its complaint. Not inclined to let bygones be bygones, the dealer filed an action for malicious prosecution and violation of California's unfair competition statute, Business & Professions Code § 17200. The unfair competition claim was based on U-Haul's inclusion of a covenant not to compete in its dealer agreements. The dealer prevailed and received:

- More than \$195,000 in compensatory damages for malicious prosecution;
- A permanent injunction prohibiting U-Haul from initiating or threatening to initiate judicial action to enforce the non-compete covenant in California; and
- More than \$800,000 in attorney's fees on the unfair competition claim.

The trial judge's observations concerning U-Haul's decision to include non-compete clauses in its dealer agreements is particularly noteworthy:

First off, the clause is void and unenforceable as a matter of law. [Section] 16600 was - the law predated these events herein by many, many years. Their only reason to put a void contract clause in a contract is to mislead people. U-Haul knew when it put that it its contract that [Section] 16600 of the [Business & Professions] [C]ode was in existence. That statute was clear. [¶] Why would you possibly put something in a contract where the law say it's void? You do that so you can cause somebody to think that that clause is, in fact, valid when it isn't. So it is void and unenforceable as matter of law.

U-Haul did not challenge this ruling on appeal. Instead, U-Haul argued that the trial court committed reversible error in issuing a permanent injunction because U-Haul had voluntarily relinquished enforcement of its non-compete covenants in California. The Court of Appeal found that there is no "hard-and-fast" rule that a party's discontinuance of illegal behavior makes injunctive relief unavailable. Further, the trial court's conclusion regarding U-Haul's knowledge concerning the enforceability of its the covenant evidenced an "ingrained, long-term, knowingly illegal corporate practice" that supported the trial court's finding of likely repetition. U-Haul's subsequent insertion of "void where prohibited" into dealer agreements also found wanting.

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