Federal Court Interprets Florida and Pennsylvania Law To Endorse Protection Of Salon Services Company’s Customer Relationships And Specialized Information

Tuesday, December 26, 2017

In states that permit the enforcement of non-compete and other restrictive covenant agreements against former employees, companies must still demonstrate that the restrictions are designed to protect a legitimate business interest, and not to simply avoid ordinary competition. In Osborne Assocs. v. Cangemi, Case No. 3:17-cv-1135-j-34MCR (M.D.Fla. Nov. 14, 2017), the federal court for the Middle District of Florida held that under both Florida and Pennsylvania law, a salon and spa treatment company that serviced residents of senior living facilities had protectable interests in its customer relationships as well as the confidential business information it developed in furtherance of those relationships. A key factor in the decision was that the company’s customers were not the residents of the facilities, but the facilities themselves.

Background

For approximately twenty-five years, Osborne Associates, Inc. d/b/a Generations Salon Services (“Generations”) has provided professional salon and spa services to residents of senior living facilities. However, while the residents were the ultimate service recipients, Generations did not transact business with them directly, but instead with the senior living facilities where they resided. In this niche market, business relationships between salons and senior living facilities are typically continuing in nature and subject to exclusivity contracts that impede the facilities’ use of competing businesses.

In March 2016, Generations hired Sheryl Cangemi as its Director of Business Development (based in Florida), and Julie Calianno as the Regional Operations Manager for its Pennsylvania territory. Cangemi and Calianno both signed restrictive covenant agreements that prohibited them from “working in a competitive activity for a period of one year following the termination of employment; soliciting any client, customer, officer, staff, or employee of Generations Salon for [a competing purpose]; and using or disclosing Generations Salon’s confidential and proprietary information.” Given that Calianno was employed in Pennsylvania rather than Florida, her agreement called for enforcement under Pennsylvania law.

Less than one year after their hire dates, Cangemi and Calianno resigned from Generations and joined forces to operate a competing business. Generations filed suit and sought a preliminary injunction against Cangemi and Calianno, claiming they violated their agreements by competing with the company, soliciting the senior living facilities that it counted as customers, and using Generations’ confidential customer information to convert business to their new company.

In opposition, Cangemi and Calianno argued that their restrictive covenant agreements were not supported by any protectable interests. The court disagreed, holding that under both Florida and Pennsylvania law, Generations had protectable interests in its customer relationships, as well as customer lists and other specialized confidential information it developed in furtherance of the relationships.
Protection of Customer Relationships

Importantly, had Generations transacted business directly with the residents, rather than their senior living facilities, it would have been much more difficult to establish protectable customer relationships. As the court explained, customer relationships cannot be fleeting, and are more likely to be protected where: (a) active, ongoing business is being conducted; (b) the business is contracted to be the exclusive service provider for the customer; (c) the customer cannot be easily identified by competing businesses; and/or (d) there is an expectation of continued business. Those elements are not typically found where services are provided to members of the general public.

In Generations’ case, however, it entered into exclusive contracts with senior living facilities to provide services for all residents of those facilities. Further, Generations’ business relationships with the senior living facilities were active and ongoing. As such, the court held that Generations successfully established a protectable interest in its customer relationships, which, under Florida and Pennsylvania law, supported the enforcement of non-compete and non-solicitation covenants.

Protection of Confidential Customer Information

The court also held that the restrictive covenant agreements were necessary to protect Generations’ confidential business information. Under both Florida and Pennsylvania law, business information is not protectable if it is commonly known and accessible to other businesses in the industry. On the other hand, “business information which is not otherwise readily available to the public, or has been acquired or compiled through the industry of a party, can be deemed a protected legitimate business interest.”

Here, Generations provided Cangemi and Calianno with access to not just the names of its senior living facility customers but also high-level customer contact information, customer-specific pricing and sales information, and marketing strategies – information the court found to have been uniquely developed and not readily available to the public. Generations also took reasonable steps to protect the confidentiality of such information through non-disclosure agreements and restrictions on employee access. As such, the court concluded that Generations had a protectable interest in its customer lists and related confidential business information.

Lessons Learned

As the court’s decision demonstrates, Florida and Pennsylvania are largely consistent in holding that customer relationships, and confidential business information developed in furtherance of those relationships, are protectable interests that can support the use of restrictive covenant agreements. Moreover, this is true even in industries that traditionally serve the general public, provided a company’s business model is designed to promote substantial and lasting customer relationships.

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