

NON-COMPETITION AGREEMENT

ALERT – AUTOMILE HOLDINGS, LLC v. McGOVERN

By: Attorney Michael Lambert and Attorney Deniz Harrison

Non-competition agreements are a much discussed topic in Massachusetts today, particularly with the recent enactment of the Massachusetts Noncompetition Agreement Act (“MNAA”). One area specifically excluded from the MNAA, however, are employee non-solicitation covenants. The SJC recently addressed the scope of such covenants in the context of the repurchase of a minority’s interest in a closely held corporation its January 14, 2020 decision in Automile Holdings, LLC v. McGovern.

About the Case...

In Automile the Defendant, Matthew McGovern, was an executive and minority owner of Prime Motor Group (“Prime”). In 2015, McGovern and the other owners of Prime (Rosenberg and Abrams) had multiple disagreements, leading to McGovern’s termination. After McGovern’s termination, Rosenberg and Abrams sought to repurchase McGovern’s interest in Prime in October 2016. As part of the repurchase, McGovern entered into a restrictive covenant containing an “anti-raiding” provision stating that McGovern would not directly or indirectly hire or solicit any of Prime’s employees or consultants for 18 months. After his departure, McGovern started McGovern Motors consisting of six dealerships. Subsequently McGovern hired at least 15 former Prime employees despite the restrictive covenant’s anti-raiding provision. To avoid litigation over McGovern’s breach, the parties entered into a second, more comprehensive restrictive covenant that extended the anti-raiding provision to August 2018. Again, McGovern breached the anti-raiding provision by hiring at least 3 more former Prime employees.

Prime brought an action against McGovern in Superior Court seeking reversal of McGovern’s hires and monetary damages. The Superior Court found the anti-raiding provisions legally enforceable, declined to reverse the hires, and extended the anti-raiding period by another year. McGovern appealed this decision, arguing that anti-raiding provisions do not serve a legitimate business interest (one of three elements necessary to enforce a restrictive covenant) and that the court abused its authority by extending the anti-raiding period.

The SJC transferred the appeal from the appellate court to the SJC to address both issues. The SJC found that the anti-raiding provision was supported by a legitimate business interest of preventing raiding of employees. Significantly, the Court noted that the necessary element of a legitimate business is more liberally applied here because the interest arose out of the Parties’ agreement for the repurchase of McGovern’s interest in Prime rather than in connection with their employer-employee relationship. This is because, unlike employer-employee relationships, parties to buyer-seller transactions are more likely to have equal

bargaining power. Accordingly, the Automile restrictive covenant was not rendered unenforceable simply because it protected an interest not recognized in traditional employment settings. The SJC further found that the lower court's expansion of the anti-raiding provision's term constituted an abuse of discretion because the court made no finding that damages are inadequate. In addition, the SJC found that the Court's decision provides useful guidance in assessing the validity of restrictive covenants in both employer-employee and buyer-seller contexts.

What Does This Mean?

Employers in particular must be careful to ensure that any employee non-solicitation covenants serve recognized legitimate business purposes such as anti-raiding interests, trade secrets, confidential information, and good will. Conversely, Buyers in a buyer-seller transaction do not need to fit within these defined business interests, though the covenant must still be connected to protecting the seller's business interest. In addition, Buyers who are also Employers would be wise to have separate agreements relating to termination and purchase of the business.

Please contact attorney Michael Lambert or attorney Deniz Harrison if you have questions about how this law applies to your workplace.

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