

Pennsylvania Supreme Court Addresses Consideration for Noncompetes

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In Pennsylvania, noncompetition agreements must, among other things, be supported by adequate consideration to be enforceable. It is well established that an initial offer of employment constitutes adequate consideration. It is also well established that a noncompetition agreement presented to an employee after the start of employment must be supported by additional consideration, beyond the mere continuation of the employment relationship. But what about the regularly arising occurrence in which an agreement is orally agreed in connection with an initial offer, but isn't signed until after the first day of work? The Supreme Court of Pennsylvania took up this issue in [*Rullex Co. LLC v. Tel-Stream, Inc.*](#), and clarified that the intent of the parties, and not necessarily the date the employee signs, controls whether the agreement will have adequate consideration and can be enforced.

Background

In 2016, Rullex Co., LLC, a telecommunications contractor, engaged Yuri Karnei to install and maintain equipment on cellular towers. Rullex presented Karnei with an agreement containing a non-competition covenant on or before Karnei's first day of work with Rullex, but Karnei did not execute and return the agreement until approximately two months later. Later, after Karnei began working for a competitor contrary to the noncompete agreement, Rullex sued Karnei in the Court of Common Pleas of Philadelphia County for breach of contract and sought a preliminary injunction.

The trial court denied Rullex's motion for preliminary injunction, reasoning that because Karnei signed the agreement after his first day of work, Rullex had been required to provide Karnei with additional consideration to render the agreement enforceable under Pennsylvania law, which Rullex did not do. The employer appealed the trial court's decision to the Superior Court of Pennsylvania. A three-judge panel of the superior court affirmed the trial court's ruling and endorsed its reasoning that a noncompetition covenant executed after the first day of employment can be enforced only if it is accompanied by additional consideration beyond the mere continuation of employment.

The Pennsylvania Supreme Court's Decision

The Supreme Court of Pennsylvania allowed an appeal to assess the validity of the *per se* rule

applied by the Superior Court whereby any time a restrictive covenant is executed after the first day of employment, it must be accompanied by fresh consideration. The supreme court in the end rejected that proposition and held that parties can have a “meeting of the minds” even if the non-compete agreement is not signed until later, but the burden lies on the employer to prove the earlier meeting of the minds.

Writing for the court, Chief Justice Thomas G. Saylor noted a 1966 decision of the Supreme Court of Pennsylvania in which the court determined that a restrictive covenant had been supported by adequate consideration “where it was contemplated at the inception of the employment relationship” but not signed until several days after the employee began working for the employer. Chief Justice Saylor also recognized a 1975 decision in which the Supreme Court of Pennsylvania held that a non-compete agreement signed on the first day of employment lacked adequate consideration because the meeting of the minds had occurred weeks earlier when the applicant received the employer’s offer letter stating detailed terms of employment, but making no mention of a non-compete agreement.

Consistent with these past supreme court cases, the court determined the test for whether new consideration is required to render a noncompetition agreement enforceable turns on whether the parties agreed to the essential provisions of the covenant as part of the initial terms of employment, not on when the noncompete agreement was signed. The employer in this case, Rullex, lost, because the employer carries the burden of proof as to consideration, and Rullex failed to document or provide adequate evidence of a meeting of the minds with respect to the substantive terms of the restrictive covenant, on or before the first day of Karnei’s employment.

Key Takeaways

In *Rullex*, the Supreme Court of Pennsylvania addressed the realities of the business world where, as the court stated, “events often move faster than paper.”

Non-compete agreements entered into in connection with the initial hiring of an employee will continue to be found to have adequate consideration. To carry their burden of proof, employers may want to review their offer-of-hire practices to ensure that any written offers detailing the terms of the offered employment also contain express reference to any noncompete agreements that candidates will be expected to sign, perhaps even referring to and attaching the noncompete agreement.

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