

Missouri Federal Court Reminds Employers that Non-Compete Agreements are Not Automatically Assignable

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The United States District Court for the Western District of **Missouri** has declined to enforce two employment agreements containing non-competition covenants because the employees who signed them had not contemporaneously assented to their assignment when their employer sold its assets to another company. ***Symphony Diagnostic Services No. 1, Inc. d/b/a MobileXUSA v. Greenbaum***, No. 13-4196 (W.D. Mo. March 16, 2015). This case involved application of Missouri law pertaining to the assignability of non-competition agreements.

The first defendant began working as a part-time x-ray technician in 2007 for Ozark Mobile Imaging. Contemporaneous with the start of her employment, she executed a covenant not to compete against Ozark. Later she became a District Manager and began working full time. The second defendant executed a similar non-compete agreement when she began working as a mobile x-ray tech for Ozark in October 2010. Both agreements were silent on the issue of assignment.

In 2012, Ozark was sold in an asset purchase to MobileX USA. Prior to the effective date of the sale, the employees were offered employment with the new company though on significantly less favorable terms. Each was offered employment on a “PRN” or “as needed” basis which eliminated their eligibility for benefits. The first employee was no longer to be a District Manager. The employees refused the job offers which resulted in their termination.

After their employment ended the employees began to compete in apparent violation of their post-employment restrictive covenants. MobileX USA filed suit seeking to enforce the agreements. The former employees filed summary judgment arguing that because they did not consent to the assignment of their non-competition agreements contemporaneously with the asset sale, their agreements were not enforceable under Missouri law. Judge Gaitan agreed. In so holding, he relied on the Missouri Court of Appeals’ decision in *Roeder v. Ferrell-Duncan Clinic, Inc.*, 155 S.W.3d 76 (Mo. App. 2004). In *Roeder*, the Court of Appeals held that employment contracts, including non-compete and confidentiality agreements, are not assignable absent consent.

Significantly, the court distinguished these facts from cases in which the employment agreement expressly permits assignment by the employer. The court strongly implied that had the contracts at issue contained such a provision, the outcome would have been different.

This decision highlights the need for Missouri employers to ensure their employment agreements contain clauses permitting assignment. Absent such language, employers run the risk that their contractual protections will be unenforceable in the event of a sale, acquisition, or other change in control.

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