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PUBLICATIONS & ALERTS

KNOW WHAT YOU ARE PROTECTING WHEN YOU DEVELOP A NON-COMPETE

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Francisco J. Benzoni and Susan H.Hargrove

A recent North Carolina Court of Appeals case, *Phelps Staffing, LLC v. C.T. Phelps, Inc. and Charles T. Phelps*, COA12-886, 2013 WL 1575409 (N.C. Ct. App. Apr. 16, 2013), highlights the needs for employers who either have noncompetition agreements in place or are considering putting such agreements in place to consider carefully at the front end what legitimate business interests are protected and which employees should be required to sign noncompetition agreements. At the back end, employers must quickly and effectively marshal evidence demonstrating this legitimate business purpose.

In [Phelps Staffing](#), both Phelps Staffing, LLC (“Phelps Staffing”) and C.T. Phelps, Inc. (“CTP”) were North Carolina corporations engaged in the business of providing temporary labor to clients. The facts are straightforward and CTP was successful in acquiring several of Phelps Staffing clients. CTP then recruited some of Phelps Staffing’s employees to meet the labor needs of its new clients. These employees had signed noncompetition agreements, which effectively prohibited Phelps Staffing’s employees from leaving Phelps Staffing’s employment to work directly for its clients or to work indirectly for such clients through another temporary staffing business. Following the CTP’s recruitment of its employees, Phelps Staffing filed suit against CTP alleging tortious interference with contract, among other things. The trial court granted summary judgment in favor of CTP. Phelps Staffing appealed.

On appeal, the Court of Appeals affirmed, holding the noncompetition agreement that formed the basis for the tortious interference claim was unenforceable as a matter of public policy. The Court clarified that North Carolina case law “disfavors noncompetition agreements which hamper an individual’s right to earn a living unless the restriction protects a sufficient countervailing interest of the employer.” [Phelps Staffing](#), COA12-886, 2013 WL 1575409. In determining whether a noncompetition offends public policy, North Carolina courts “consider the right of the employer to protect, by reasonable contract with its employees, the unique assets of its business, a knowledge of which is acquired during the employment and by reason of it.” When such legitimate business interests are absent, “the effect of the contract is merely to stifle normal competition, [which] is offensive to public policy.”

Here, Phelps Staffing failed to marshal evidence that its noncompetition agreements were protecting a legitimate business interest. Phelps Staffing admitted that (1) the primary purpose of the agreements was to prevent competition from other temporary labor providers and (2) the employees who left did not have access to trade secrets or proprietary information; they were described as “general laborers.” Concluding that the agreements were nothing more than an attempt to stifle normal competition, the Court held that they were unenforceable as against public policy.

For a noncompetition agreement to pass the public policy test, employers must be prepared to demonstrate that they protect a legitimate business interest, which includes protecting the unique assets of the corporation that the employees subject to the agreement learned of by reason of their employment.

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