

A yellow triangle pointing downwards, located to the left of the 'BLOGS' header.

## BLOGS

Post-Termination Injunctions: Noncompetes

# Clause Barring Former Franchisee From Employment in Any Capacity in Competing Business Voided in Georgia as “Overly Broad”

In *Fantastic Sams Salons Corp. v. Maxie Enterprises, Inc. and Paul Rubin*, 2012 U.S. Dist. Lexis 8106 (M.D. Ga. Jan. 24, 2012), a former Fantastic Sams franchisee continued to operate a hair salon at its Fantastic Sams location after termination of the franchise agreement. In response to Fantastic Sams’ suit to enforce its noncompete agreement, the franchisee argued that the noncompete should be declared invalid under Georgia law. The clause at issue prohibited the former franchisee from “directly or indirectly participating as an owner, partner, member, director, officer, employee . . . or serv[ing] in any other capacity” in any business similar to Fantastic Sams (a) within a five mile radius of the franchised salon for a period of two years and (b) within a two-and-a-halfmile radius of any other Fantastic Sams location for a period of two years or the remaining term of the Franchise Agreement, whichever was greater. The franchise agreement in this case was not set to expire until 2019, nine years after the termination date.

Fantastic Sams conceded that the nine-year term of its clause was unenforceable under Georgia law, but asked that the court sever that provision from the other noncompete clause in the franchise agreement. The court found, however, that the other provision was also invalid, stating that “even though the time (two years) and territory (five mile radius) restrictions are likely reasonable . . . the scope restriction is not.” The court held that restricting the former franchisee from serving in “any other capacity” in any business similar to Fantastic Sams was overbroad and noted that Fantastic Sams failed to provide any evidence that the scope was appropriate in this case. Because Georgia’s “blue pencil” law was not passed until 2010, the court could not modify the noncompete agreement as written in the 2008 franchise agreement.