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## BLOGS

### Preliminary Injunctions

# Continued Performance of Expired Franchise Agreement Justifies Enforcement of Noncompete Provision Against New Competing Business

The U.S. District Court for the Western District of Tennessee granted a motion for a preliminary injunction in favor of franchisor Amerispec, enforcing a one-year post-termination covenant against competition and rejecting the ex-franchisee's argument that the covenant expired prior to the date on which he ceased operating his franchise. *Amerispec, L.L.C. v. Omni Enters., Inc.*, 2018 WL 2248459 (W.D. Tenn. May 16, 2018). Gray Plant Mooty represented the franchisor in this case. When the parties' franchise agreement expired in March of 2017, the franchisee failed to execute a new agreement but never communicated to Amerispec that he did not intend to renew. Rather, he continued operating the franchise using Amerispec's trademarks, business systems, and a telephone number he had assigned to Amerispec, and also continued to pay franchise fees. Nearly a year later, he opened a new competing business, advertising that "Your Local Amerispec is now American Property Inspections." He then failed to respond to Amerispec's cease-and-desist letter demanding that he stop operating the new business in accordance with the franchise agreement's noncompete provision, and Amerispec filed suit.

The former franchisee argued that the franchise agreement had expired in March of 2017, that the one-year post-term noncompete began to run at that time, and that as a result the covenant was no longer enforceable. Rejecting that argument, the court held that by virtue of the franchisee's continued operation of the franchise, the parties had created an implied contract with the same terms and conditions as the franchise agreement, including the noncompete provision. The court then had little trouble finding that the covenant was enforceable and that Amerispec would be irreparably harmed absent injunctive relief. Finally, the court found that the one-year noncompete covenant began to run at the end of the cure period provided in Amerispec's cease-and-desist letter, because at that point the implied franchise agreement between the parties was terminated as a result of the franchisee's failure to cure.

## Related People

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