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## BLOGS

Post-Termination Injunctions: Noncompetes

# Court Enforces Covenant Against Third-Party Nonsignatories and Against Conduct Through a Related Business

The United States District Court for the District of New Jersey recently enforced a franchisor's noncompete agreement in two consolidated cases. In the first case, *Jackson Hewitt Inc. v. H.E.A.T. Enterprises, LLC*, 2011 U.S. Dist. LEXIS 144759 (D.N.J. Dec. 15, 2011), the court had previously issued an injunction against the corporate defendant and its owner. Jackson Hewitt then asked the court to apply the injunction against two individuals, Elter and Fournier, who were associated with the business but were not signatories to the franchise agreement. Jackson Hewitt alleged that Elter was the current owner of the corporate defendant. First, the court decided that if Elter was the owner of the corporate defendant, she could be bound by the injunction because an injunction may be enforced against successors-in-interest when there is a substantial continuity of identity between the organizations. Second, the court found that regardless of whether Elter was the new owner, she and Fournier were active in the operation of the corporate defendant, which allowed the court to enforce the injunction against them. Since Elter and Fournier handled customer service issues and marketing for the corporate defendant, and owned corporations that received deposits from the corporate defendant, they were in active concert with it and their competitive behavior could be enjoined.

The second case, *Jackson Hewitt Inc. v. G.A.L.T. Investments, LLC*, 2011 U.S. Dist. LEXIS 148546 (D.N.J. Dec. 21, 2011), also considered the reach of the noncompete agreement. In the *G.A.L.T.* case, the franchisee defendants sold their hard assets to, and entered into a lease arrangement with, a new entity owned by a former employee, which operated a competing business at the same location as the former franchise. The parties disputed whether a preliminary injunction could apply to prevent Fournier from having an ownership interest in a business that provided services to the new entity. The court held that Jackson Hewitt was likely to succeed on its claim that Fournier was violating the noncompete due to his business relationship with the new entity. The court found it persuasive that the new entity was not sold to the former employee until after the lawsuit began and that Fournier's business was processing tax returns for the new entity. The mere fact that Fournier's business was located outside the restricted territory did not change the court's analysis because it was providing competitive services within the territory through its relationship with the new entity.