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BLOGS

Post-Termination Injunctions: Noncompetes

Court Enforces Noncompete Provision Against Successor

The United States District Court for the Western District of Missouri recently enforced a post-termination noncompete covenant against a former Alabama tax preparation franchisee and a business operated by the franchisee's spouse based on a theory of successor liability. *H&R Block Tax Services, LLC v. Clayton*, 2016 WL 1247205 (W.D. Mo. Mar. 24, 2016). Gray Plant Mooty represented the franchisor in this case. Following the termination of his franchise agreement for failure to pay royalties, the franchisee's husband opened a tax return preparation business in close proximity to the formerly franchised offices and used records from those offices to solicit clients. The new business also used the same trade name and telephone number as the formerly franchised business. H&R Block filed suit in Missouri under the forum selection clause of the franchise agreement and sought to enjoin both the former franchisee and his husband's business from violating the noncompete provision of the agreement.

In granting H&R Block's motion for a preliminary injunction, the court first held that the forum selection clause contained in the franchise agreement subjected both the former franchisee and the new business operated by his husband to personal jurisdiction in Missouri. The court reasoned that the new business was bound by all of the terms, covenants, and obligations incumbent upon the franchisee because the business was a successor-in-interest to, and a continuation of, the franchisee's business. The court further held that H&R Block was likely to succeed on the merits of its claim that the former franchisee and the new business had breached the noncompete provision and that the provision was reasonable and enforceable under Missouri law, which governed the contract. Concluding that H&R Block would suffer irreparable harm to its goodwill and its ability to establish a new tax return preparation office in the area where the former franchisee had operated, the court enjoined the franchisee, his husband's competing business, and anyone acting in concert with them from violating the noncompete covenant contained in the franchise agreement.

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