

## BLOGS

Post-Termination Injunctions: Noncompetes

# Covenant Not to Compete in Settlement Agreement Enforced Against Former Franchisee

In *Lawn Doctor, Inc. v. Rizzo*, 2012 U.S. Dist. LEXIS 17139 (D.N.J. Dec. 11, 2012), the United States District Court for the District of New Jersey granted Lawn Doctor's motion for a declaratory judgment enforcing the parties' settlement agreement and finding that Lawn Doctor's covenant not to compete was valid and enforceable. Even though the covenant did not specifically prohibit irrigation services, a "competitive business" was defined to include "[a]ny business which operates, or grants franchises or licenses to others to operate, a business for the establishment, care and conditioning of lawns or other vegetation or any ancillary services, including, but not limited to, trees, shrubbery and other plant life." Because irrigation services were not just tangentially related to the care and conditioning of lawns, the court determined these services unambiguously fell within the plain and ordinary meaning of the covenant and comprised a competitive business.

In examining whether the terms were ambiguous, the court rejected the franchisee's argument that only giving the broadest possible meaning to every term of the restrictive covenant would capture irrigation services in its scope. Moreover, the fact that the former franchisee never provided irrigation services while operating the franchised business and the fact that hundreds of Lawn Doctor franchises in 38 states did not normally provide irrigation services did not give the court a reason to limit the terms of the restrictive covenant as written. The court also noted that covenants not to compete in the franchise context, unlike those in the employment area, must be freely enforced to protect the franchisor's good will and customer relationships, which are legitimate business interests entitled to protection regardless of whether the franchisor intended to stifle competition.

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