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## BLOGS

Noncompetes

# Georgia District Court Enforces Noncompete Clause Against Former Franchisee and Employee

A federal court in Georgia granted a plaintiff franchisor's motion for a preliminary injunction enforcing a franchise agreement's restrictive covenants in *Cellairis Franchise, Inc. v. Duarte*, 2015 WL 6517487 (N.D. Ga. Oct. 21, 2015). The defendant, Duarte, was a former employee, independent contractor, and officer of the franchisor who had been involved in finding and negotiating mall leases for the franchisor to open franchised cell phone kiosks. He was also a part-owner of four franchises, although he claimed he was not involved in their day-to-day operations or management. Duarte resigned from his position with the franchisor and sold his interest in his franchises. He then became involved in at least two competing wireless businesses and allegedly used his contacts with representatives from local malls to negotiate sites for competitive wireless locations. Duarte's franchise agreements contained restrictive covenants, including noncompete and nondisclosure clauses during and after the term of the agreements.

Applying the post-2010 Georgia noncompete statute, the court found that the parties had a valid contract and that the restrictive covenants were reasonable in terms of its two year duration, ten mile territorial coverage, and scope of activity prohibited. Duarte admitted to engaging in at least some of the alleged competitive activity. Therefore, the court found that the franchisor had a substantial likelihood of success on the merits of its breach of contract action. On the issue of irreparable harm, the court found that release of confidential information about business tactics posed a risk of irreparable harm, particularly in a competitive industry with a relatively low cost of entry. Furthermore, disclosure of confidential information harmed the franchisor's brand and goodwill. The court determined that the balance of harms favored granting the preliminary injunction because allowing the franchisor to operate its business without improper disclosures of sensitive information or competition from a previous franchisee maintains the status quo. The court was unpersuaded by Duarte's argument that he needed to work in the wireless industry to have "gainful employment," noting that he could seek employment in other areas. Finally, the court found that the public interest favored the injunction because enforcing restrictive covenants complies with the state legislature's desire to protect legitimate business interests.

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