

**BLOGS**

Post-Termination Injunctions: Noncompetes

Louisiana Federal Court Applies Virginia State Law to Extend Post-Termination Covenants Beyond Period of Non-Compliance

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A federal court in Louisiana granted a preliminary injunction against a former franchisee for breaching post-termination covenants, and the court extended the covenants for 20 months following the date of the injunction. *JTH Tax, LLC v. Johnson*, 2021 WL 2379541 (E.D. La. June 10, 2021). JTH Tax is the franchisor of Liberty Tax Services, a nationwide income tax preparation service center. In 2013 and 2014, defendant Angel Johnson, entered into a five-year franchise agreement to operate two Liberty Tax locations in Louisiana. As part of the arrangement, Johnson agreed to post-termination covenants that prevented her from competing or soliciting JTH customers within 25 miles of the territory for two years after termination or expiration of the agreement and required her to return all proprietary materials. On April 17, 2019, JTH terminated the franchise agreement with Johnson. Johnson, however, continued to operate out of one franchised location, and continued to use JTH's proprietary customer lists to solicit customers. JTH filed its complaint on April 13, 2021, asking for injunctive relief and damages. Applying Virginia law, the court found in favor of JTH, extending the post-termination covenants for 20 months after the injunction date.

Both parties agreed that Johnson breached the franchise agreement by continuing to operate the tax service while soliciting JTH's customers. Johnson argued, however, that the post-termination covenants ended on April 17, 2021, negating the need for an injunction. The court disagreed, finding that despite nearly two years passing between the termination of the franchise agreement and the filing of the complaint, Virginia law allowed equitable extension of covenants from the date of an injunctive order, and noting that JTH's claim otherwise met the factors needed for a preliminary injunction. Thus, the court reasoned that declining to extend the covenants would directly reward Johnson for her breach of contract and encourage prolonged litigation. However, the court reduced the extension from two years to 20 months because JTH waited four months to file suit after it became aware of Johnson's breach.

Related People

Maisa Frank

Partner

Washington, D.C.

202.295.2209

maisa.frank@lathrooggpm.com**Richard C. Landon**

Partner

Minneapolis

612.632.3429

richard.landon@lathrooggpm.com

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