

**BLOGS**

Post-Termination Injunctions: Noncompetes

Tennessee Federal Court Preliminarily Enjoins Non-signatory from Violating Franchise Agreement's Noncompete

A federal court in Tennessee recently enjoined from violating a post-termination noncompete a former franchisee, as well as his son and his son's competing business — neither of which were party to the franchise agreements. *AmeriSpec, LLC v. Sutko Real Estate Servs., Inc.*, 2020 WL 3913584 (W.D. Tenn. July 10, 2020). Lathrop GPM represented AmeriSpec in this case. In May 2020, Sutko Real Estate Services, Inc. (SRESI) and its principal Thomas Sutko agreed with franchisor AmeriSpec to the termination of the franchise agreements for SRESI's property inspection franchises. As part of the mutual termination, SRESI and Sutko expressly agreed to comply with the franchise agreements' posttermination noncompete. Two days after SRESI's termination, Sutko's son announced that he had created a new property inspection company called SRE Home Inspections, Inc. AmeriSpec moved to preliminarily enjoin SRESI, Sutko, his son, and his son's new competing business from violating the franchise agreements' noncompete. In the interim, the court granted AmeriSpec's motion for a temporary restraining order, restraining the defendants from unlawfully competing against AmeriSpec.

In granting AmeriSpec preliminary injunctive relief, the court found that, under the Federal Rules of Civil Procedure, both Sutko's son and his competing business could be bound by, and preliminarily enjoined from violating, the franchise agreements' noncompete, even though they had not signed the franchise agreement. Because the Sutkos and the new competing business were "in active concert or participation," with SRESI and Thomas Sutko, under Rule 65(d)(2) the son and his business could be enjoined. The court found that Sutko's son had previously handled the day-to-day activities of SRESI's business as its vice president. Evidence suggested that his new competing business was a mere continuation of SRESI, including evidence that it retained SRESI's staff, used a similar name and logo, and sent communications to customers and other contacts of SRESI stating that the franchise relationship had ended "in name only." Furthermore, the evidence demonstrated that Sutko had orchestrated the creation of the competing business with his son, including actively facilitating the business's registration of a name similar to SRESI and other logistics of the new business. Evidence also showed that the defendants had tried to access AmeriSpec's proprietary information after agreeing to the franchise agreements' termination.

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