

Case Commentary

The 11th Circuit ruled that the plaintiff's attorney, William Kaspers, had a conflict of interest because he was affiliated with a law firm that represented Dixie HomeCrafters who, in turn, had a relationship with Gutter Guard.

Case Questions

1. Do you agree with the court's decision?
2. Does it matter that F&P initiated the lawsuit against Dixie HomeCrafters after Kaspers left the firm?
3. Was the conversation that Kaspers had with Thompson ethical?



Case 1.6

DCS Sanitation Management v. Eloy Castillo

435 F.3d 892; 2006 U.S. App. LEXIS 1758 (8th Cir.)

The issue is whether the geographic restriction is too broad.

RILEY, CIRCUIT JUDGE.

DCS Sanitation Management, Inc. (DCS) sued three of its former employees, Eloy Castillo, Efren George Castillo, and Adolfo Martinez (collectively, former employees), alleging the former employees breached noncompete agreements. DCS appeals the district court's denial of DCS's motion for a preliminary injunction and grant of summary judgment in favor of the former employees. We affirm. . . .

As a condition of employment with DCS, each of the former employees signed identical employment agreements (Agreements) with DCS. The Agreements contained the following non-compete provision:

NONCOMPETITION AFTER TERMINATION: For a period of one (1) year following the date of termination of employment for any reason, I will not directly or indirectly engage in, or in any manner be concerned with or employed by any person, firm, or corporation in competition with [DCS] or engaged in providing contract cleaning services within a radius of one-hundred (100) miles of any customer of [DCS] or with any customer or client of [DCS] or any entity or enterprise having business dealings with [DCS] which is then providing its own cleaning services in-house or which requests my assistance or knowledge of contract cleaning services to provide its own cleaning services in-house. In the event of violation of this covenant, [DCS], in addition to any other rights and remedies available at law or otherwise, is entitled to an injunction to be issued by a court of competent jurisdiction enjoining and restraining employee from committing any violation of this provision and employee hereby consents to the issuance of the injunction.

The Agreements also contained a choice-of-law provision: "APPLICABLE LAW: This Agreement shall be subject to and interpreted in accordance with the laws of Ohio."

In June 2003, after DCS cleaned the processing side of the Tyson plant for eighteen years, the Tyson plant solicited bids from competing cleaning companies. As a result of the bidding

process, on September 18, 2003, the Tyson plant selected Packers Sanitation Services, Inc. (Packers) for the cleaning contract. Packers hired all of DCS's employees, including the former employees, and on November 8, 2003, Packers started cleaning the Tyson plant.

On May 14, 2004, DCS sued the former employees, alleging (1) breach of the noncompete agreements, (2) a "substantial probability" the former employees would disclose DCS's trade secrets and confidential information, and (3) breach of contract. DCS sought (1) to enjoin the former employees in accordance with the noncompete agreements, (2) to enjoin the former employees from disclosing DCS's trade secrets and confidential information, and (3) money damages. . . .

DCS appeals the district court's ruling, urging this court to reverse the district court's entry of summary judgment and denial of a preliminary injunction, and to remand with instructions to enjoin the former employees under Ohio law.

Having concluded Nebraska law applies, we now turn to whether the noncompete agreements are valid under Nebraska law. Pursuant to Nebraska law, a noncompete agreement is valid if it is (1) "not injurious to the public," (2) "not greater than is reasonably necessary to protect the employer in some legitimate interest," and (3) "not unduly harsh and oppressive on the employee." "An employer has a legitimate business interest in protection against a former employee's competition by improper and unfair means, but is not entitled to protection against ordinary competition from a former employee." A noncompete agreement "may be valid only if it restricts the former employee from working for or soliciting the former employer's clients or accounts with whom the former employee actually did business and has personal contact."

We conclude the district court properly held the noncompete agreements were overbroad and unenforceable. The district court recognized the noncompete agreements prohibit the former employees from, directly or indirectly, being concerned in any manner with any company in competition with DCS, and from providing contract cleaning services within one hundred miles of any entity or enterprise "having business dealings" with DCS, including attorneys, accountants, delivery services and the like. The breadth of the noncompete agreements effectively put the former employees out of the cleaning business within an extensive region. We hold the district court did not err in concluding Nebraska courts would not enforce such overly broad noncompete agreements.

Therefore, we affirm the well reasoned judgment of the district court.

Case Commentary

The 8th Circuit concluded that the noncompete agreements would effectively prohibit the former DCS workers who rely on cleaning plants and buildings for their livelihood from working within a reasonable distance from their residence.

Case Questions

1. Was the hiring of DCS employees by Packers ethical?
2. Should companies who employ personnel to clean buildings be allowed to require them to sign noncompete agreements?
3. Is the resolution of this case ethical?