

SUPREME COURT OF TEXAS

Alex Sheshunoff Management Services, L.P. v. Kenneth Johnson and
Strunk & Associates, L.P.

209 S.W.3d 644 (Tex. 2006) · No. 03-1050 · Decided October 20, 2006

SUMMARY

The Supreme Court of Texas revisits its prior decision in *Light v. Centel Cellular Co.* and holds that an at-will employee’s covenant not to compete may become enforceable when the employer performs promises that were illusory when made, such as providing confidential information or specialized training. The Court concludes that the covenant need only be ancillary to or part of an otherwise enforceable agreement at the time the agreement is made, rather than that the agreement be immediately enforceable at that time. The Court reverses the court of appeals’ judgment and remands the case.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Don R. Willett; Justice Hecht; Justice Brister; Justice Green; Justice Johnson; Chief Justice Jefferson; Justice O'Neill; Justice Medina; Justice Wainwright
JURISDICTION	Texas
DECIDED	October 20, 2006
DOCKET	03-1050
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of a court of appeals judgment affirming summary judgment for the employee and his subsequent employer in an action to enforce a covenant not to compete.
STANDARD OF REVIEW	De novo review of summary judgment and the legal enforceability and reasonableness of a covenant not to compete.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the Supreme Court of Texas.
PARTIES	Alex Sheshunoff Management Services, L.P. v. Kenneth Johnson, Strunk & Associates, L.P.

TOPICS

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restrictive covenants

employment contracts

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QUESTIONS PRESENTED

1. Whether an at-will employee's covenant not to compete is enforceable under Texas Business and Commerce Code section 15.50(a) when the employer's promises to provide training and confidential information were executory and potentially illusory when the agreement was made but were later performed.
2. Whether the covenant's time, geographic, and activity limitations were reasonable and no greater than necessary to protect ASM's goodwill or other business interests.
3. Whether Johnson and Strunk were entitled to summary judgment and attorney fees.

HOLDINGS

1. A covenant not to compete is not unenforceable solely because the employer's promise was executory when made. If the employer later performs the promise, forming an enforceable unilateral contract, the covenant may satisfy section 15.50(a) if all other statutory requirements are met.
2. The covenant was ancillary to or part of the agreement because ASM's promises to provide confidential information and training gave rise to its interest in restraining competition, and Johnson's promise not to disclose confidential information was the return promise the covenant was designed to enforce.
3. The covenant was reasonable under section 15.50(a), and Johnson and Strunk were not entitled to summary judgment on that ground.
4. Johnson and Strunk were not entitled to summary judgment because the covenant was enforceable, and Strunk was not entitled to attorney fees. The case was remanded because ASM's damages claim remained pending.

KEY QUOTATIONS

“A covenant not to compete is not unenforceable under the Covenants Not to Compete Act solely because the employer’s promise is executory when made.” (at 654)

“If the agreement becomes enforceable after the agreement is made because the employer performs his promise under the agreement and a unilateral contract is formed, the covenant is enforceable if all other requirements under the Act are met.” (at 655)

“The statute’s core inquiry is whether the covenant “contains limitations as to time, geographical area, and scope of activity to be restrained that are reasonable and do not impose a greater restraint than is necessary to protect the goodwill or other business interest of the promisee.”” (at 655-56)

FACTUAL BACKGROUND

Johnson was an at-will employee of ASM who signed an employment agreement containing a one-year covenant not to compete in exchange for ASM's promises to provide specialized training and access to confidential information. After signing, Johnson received confidential information and third-party training, including information concerning ASM's planned bank overdraft protection product. Johnson later left ASM to work for Strunk, a competitor, and ASM sued to enforce the covenant. The covenant restricted Johnson's provision of consulting services to certain ASM clients and solicitation of prospective clients and employees.

PROCEDURAL HISTORY

ASM sued Johnson for breach of a covenant not to compete and sought injunctive relief and damages; Strunk intervened. The trial court granted Johnson and Strunk summary judgment, denied Strunk's request for attorney fees, and entered final judgment. The court of appeals affirmed, holding the covenant unenforceable under *Light* because the employer's promises to provide training and confidential information were illusory when made. The Supreme Court of Texas reversed the take-nothing judgment, affirmed the denial of attorney fees, and remanded for further proceedings because ASM's damages claim remained pending.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the trial court for further proceedings on ASM's remaining damages claim for breach of the covenant. Injunctive relief was no longer available because the one-year restriction had expired.

CASES CITED

- *Light v. Centel Cellular Co.*, 883 S.W.2d 642 (Tex. 1994)
- *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670 (Tex. 1990)
- *McIntyre v. Ramirez*, 109 S.W.3d 741 (Tex. 2003)
- *Helena Chemical Co. v. Wilkins*, 47 S.W.3d 486 (Tex. 2001)
- *Hill v. Mobil Auto Trim, Inc.*, 725 S.W.2d 168 (Tex. 1987)
- *Peat Marwick Main & Co. v. Haass*, 818 S.W.2d 381 (Tex. 1991)
- *Travel Masters, Inc. v. Star Tours, Inc.*, 827 S.W.2d 830 (Tex. 1991)
- *Martin v. Credit Protection Association, Inc.*, 793 S.W.2d 667 (Tex. 1990)
- *In re Gamble*, 71 S.W.3d 313 (Tex. 2002)

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