

SUPREME COURT OF GEORGIA

Palmer & Cay of Georgia, Inc. v. Lockton Companies, Inc., 280 Ga. 479

629 S.E.2d 800 (2006) · No. S05G1629 · Decided May 8, 2006

SUMMARY

The Supreme Court of Georgia held that an employee nonsolicitation covenant was not unenforceable merely because it lacked a time restriction on the period during which the employees had served the employer's customers. The court concluded that the covenant was limited to customers served by the employees and was enforceable for its two-year post-termination period, reversing and remanding for consideration of other overbreadth issues. Justice Hines dissented.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Carley
JURISDICTION	Georgia
DECIDED	May 8, 2006
DOCKET	S05G1629
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the Court of Appeals' affirmance of the trial court's declaratory judgment that the nonsolicitation covenant was unenforceable.
STANDARD OF REVIEW	De novo review of the trial court's interpretation of the restrictive covenant.
PRECEDENTIAL VALUE	Published
PARTIES	Palmer & Cay of Georgia, Inc. v. Lockton Companies, Inc., Douglas Hutcherson, John Varner, and Philip Holley

TOPICS

restrictive covenants

employment contracts

contracts

employment law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in holding that the nonsolicitation covenant was unenforceable because it lacked a time restriction on the period during which the employees had served the employer's customers.

HOLDINGS

1. Yes. The covenant is enforceable because the critical factor is whether the former employee ever served the customer, not the length of time since he or she may have done so. The employer has a protectible interest in customer relationships established or nurtured by the employee, and a two-year post-termination restriction on solicitation of those customers is reasonable.

KEY QUOTATIONS

“the employer has a protectible interest in the customer relationships its former employee established and/or nurtured while employed by the employer, and is entitled to protect itself from the risk that a former employee might appropriate customers by taking unfair advantage of the contacts developed while working for the employer.” (280 Ga. at 480)

“a court will enforce an agreement prohibiting an employee from pirating his former employer's customers served by the employee during the employment, at the employer's direct or indirect expense.” (280 Ga. at 480)

“the plain meaning of the term 'clients' is current, existing clients and . . . the term does not, without a modifier such as 'former' or 'future,' encompass all clients past, present, or future.” (280 Ga. at 483)

FACTUAL BACKGROUND

Employees of Palmer & Cay of Georgia, Inc. signed a covenant not to solicit, for two years after leaving employment, the insurance or employee benefit plan business of any customers they served during their employment. After voluntarily leaving and joining competitor Lockton, the employees and Lockton filed a declaratory judgment action to determine the enforceability of the covenant. The trial court found the covenant unenforceable, and the Court of Appeals affirmed, concluding that the covenant was unenforceable because it provided no time restriction on the employees' provision of services to the employer's customers.

PROCEDURAL HISTORY

Employees and Lockton filed a declaratory judgment action to determine enforceability of the nonsolicitation covenant. The trial court found the covenant unenforceable. The Court of Appeals affirmed, holding that the covenant was unenforceable because it provided no time restriction on the employees' provision of services to the employer's customers. The Supreme Court granted certiorari.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case is remanded for further consideration not inconsistent with this opinion.

CASES CITED

- Wiley v. Royal Cup, 258 Ga. 357, 370 S.E.2d 744 (1988)
- Marcoin, Inc. v. Waldron, 244 Ga. 169, 259 S.E.2d 433 (1979)
- W.R. Grace & Co. v. Mouyal, 262 Ga. 464, 422 S.E.2d 529 (1992)
- Gill v. Poe & Brown of Ga., 241 Ga.App. 580, 524 S.E.2d 328 (1999)
- C & L Indus. v. Kiviranta, 13 Neb.App. 604, 698 N.W.2d 240 (2005)
- Palmer & Cay of Ga. v. Lockton Cos., 273 Ga.App. 511, 615 S.E.2d 752 (2005)

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