

SUPREME COURT OF OHIO

Lake Land Employment Group of Akron, LLC v. Columber

101 Ohio St. 3d 242 (Ohio 2004) · Decided March 10, 2004

SUMMARY

The Ohio Supreme Court held that continued at-will employment can constitute consideration for a noncompetition agreement entered into after employment has begun. The court concluded that the agreement was not void for lack of consideration because the employer continued the employment relationship rather than terminating it after requiring assent to the new restriction. The court remanded for determination of whether the agreement's geographic and temporal restrictions were reasonable and enforceable.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Moyer, C.J.; Lundberg Stratton, J.; O'Connor, J.; Handwork, J.; Resnick, J.; F.E. Sweeney, J.; Pfeifer, J.; O'Donnell, J. (represented by Peter M. Handwork, J., sitting for O'Donnell, J.)
JURISDICTION	Ohio
DECIDED	March 10, 2004
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Lake Land appealed from a court of appeals judgment affirming summary judgment for Columber in an action to enforce a post-employment noncompetition agreement. The court of appeals certified a conflict concerning whether subsequent employment alone supplies consideration for a noncompetition agreement entered into after an at-will employment relationship began.
STANDARD OF REVIEW	Summary judgment is reviewed based on whether the record presents a genuine dispute of material fact and whether the moving party is entitled to judgment as a matter of law; the legal sufficiency of consideration was reviewed de novo.
PRECEDENTIAL VALUE	Published, precedential decision of the Supreme Court of Ohio
PARTIES	Lake Land Employment Group of Akron, LLC v. Lee Columber

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QUESTIONS PRESENTED

1. Whether subsequent continued employment alone constitutes consideration for a noncompetition agreement entered into after an at-will employment relationship has begun.
2. Whether the noncompetition agreement was unenforceable for lack of consideration.
3. Whether the reasonableness of the agreement's temporal and geographic restrictions had to be determined on remand.

HOLDINGS

1. Forbearance by an at-will employer from discharging an at-will employee constitutes consideration supporting a noncompetition agreement when the employee assents to the agreement in exchange for continued employment on the new terms.
2. The noncompetition agreement was not void for lack of consideration because Columber continued in the at-will employment relationship for ten years after signing it; courts may not inquire into the adequacy of consideration, although they may assess the reasonableness of the restraint and other contract requirements.

KEY QUOTATIONS

“We therefore hold that consideration exists to support a noncompetition agreement when, in exchange for the assent of an at-will employee to a proffered noncompetition agreement, the employer continues an at-will employment relationship that could legally be terminated without cause.” (248)

“Accordingly, the noncompetition agreement is not void for lack of consideration, and summary judgment in Columber’s favor should not have been entered on that basis.” (249)

FACTUAL BACKGROUND

Columber worked for Lake Land from 1988 until 2001 and signed a noncompetition agreement in September 1991 after Lake Land presented it and instructed him to read and sign it. The agreement barred him for three years after termination from engaging in a competing business within fifty miles of Akron. Columber received no increase in salary, benefits, or other remuneration and no change in employment status in connection with signing, but he continued working for Lake Land for approximately ten additional years before forming a competing corporation after his discharge.

PROCEDURAL HISTORY

Lake Land sued Columber for breaching a three-year, fifty-mile noncompetition agreement and sought damages and injunctive relief. Columber moved for summary judgment, arguing lack of consideration and unreasonable

restrictions. The trial court granted summary judgment based on lack of consideration, and the court of appeals affirmed. The Supreme Court of Ohio reversed and remanded for determination of whether the restrictions were reasonable.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The lower court must determine whether the noncompetition agreement is reasonable under controlling Ohio precedent, including whether the restraint is no greater than necessary to protect the employer, whether it imposes undue hardship on the employee, and whether it injures the public.

CASES CITED

- *Lange v. Werk* (1853), 2 Ohio St. 519
- *Mitchel v. Reynolds* (1711), 1 P. Wms. 181, 24 Eng.Rep. 347
- *Raimonde v. Van Vlerah* (1975), 42 Ohio St.2d 21, 325 N.E.2d 544
- *KW Plastics v. United States Can Co.* (Feb. 2, 2001), M.D. Ala. Nos. Civ. A. 99-D-286-N and 99-D-878-N, 2001 WL 135722
- *Polk Bros., Inc. v. Forest City Ent., Inc.* (C.A.7, 1985), 776 F.2d 185, 189
- *Briggs v. Butler* (1942), 140 Ohio St. 499, 45 N.E.2d 757
- *Rogers v. Runfolo & Assoc., Inc.* (1991), 57 Ohio St.3d 5, 565 N.E.2d 540
- *Davies & Davies Agency, Inc. v. Davies* (Minn.1980), 298 N.W.2d 127, 130
- *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, ¶ 16
- *Judy v. Louderman* (1891), 48 Ohio St. 562, 29 N.E. 181
- *Irwin v. Lombard Univ.* (1897), 56 Ohio St. 9, 46 N.E. 63
- *Brads v. First Baptist Church* (1993), 89 Ohio App.3d 328, 624 N.E.2d 737
- *Nilavar v. Osborn* (1998), 127 Ohio App.3d 1, 711 N.E.2d 726
- *Mooney v. Green* (1982), 4 Ohio App.3d 175, 446 N.E.2d 1135
- *Floyd v. DuBois Soap Co.* (1942), 139 Ohio St. 520, 41 N.E.2d 393
- *Mers v. Dispatch Printing Co.* (1985), 19 Ohio St.3d 100, 483 N.E.2d 150