

SUPREME COURT OF COLORADO

Lucht's Concrete Pumping, Inc. v. Horner

255 P.3d 1058 (Colo. 2011) · No. 09SC627 · Decided May 31, 2011

SUMMARY

The Colorado Supreme Court held that an employer's forbearance from terminating an existing at-will employee constitutes adequate consideration for a noncompetition agreement. The court reversed the court of appeals and remanded for assessment of the agreement's reasonableness and further proceedings.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Eid
JURISDICTION	Colorado
DECIDED	May 31, 2011
DOCKET	09SC627
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Lucht's appealed after the trial court granted summary judgment against its breach-of-contract and intentional-interference claims on the ground that the noncompetition agreement lacked consideration. The Colorado Court of Appeals affirmed that continued employment of an existing at-will employee could not, by itself, furnish consideration for a later-signed noncompetition agreement. The Colorado Supreme Court granted certiorari.
STANDARD OF REVIEW	The supreme court reviewed the legal question concerning adequacy of consideration for a noncompetition agreement de novo.
PRECEDENTIAL VALUE	Published Colorado Supreme Court en banc opinion; precedential
PARTIES	Lucht's Concrete Pumping, Inc. v. Tracy Horner, Everist Materials, LLC, d/b/a Peak Concrete Pumping

TOPICS

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QUESTIONS PRESENTED

1. Whether an employer's continued employment of an existing at-will employee, through forbearance from terminating the employee, constitutes adequate consideration for a subsequently executed noncompetition agreement.
2. Whether the noncompetition agreement must be assessed for reasonableness after the court determines that it is supported by consideration.

HOLDINGS

1. An employer's forbearance from terminating an existing at-will employee constitutes adequate consideration to support a noncompetition agreement.
2. After determining that the noncompetition agreement is supported by consideration, the court must assess whether the covenant is reasonable under the facts of the case.

KEY QUOTATIONS

"We hold that an employer that forbears from terminating an existing at-will employee forbears from exercising a legal right, and that therefore such forbearance constitutes adequate consideration for a noncompetition agreement." (255 P.3d at 1060)

"Importantly, we note that all noncompetition agreements must be assessed for reasonableness." (255 P.3d at 1063)

FACTUAL BACKGROUND

Lucht's hired Horner as an at-will mountain division manager in 2001 and relied on him to establish and maintain customer and industry relationships in the mountain region. In April 2003, while already employed, Horner signed a noncompetition agreement restricting solicitation of Lucht's employees and customers and disclosure of confidential information; he received no pay increase, promotion, or additional benefits. Horner resigned in March 2004 and soon began working for competitor Everist, after which Lucht's sued for breach of contract and related claims.

PROCEDURAL HISTORY

Lucht's sued Horner and Everist for claims arising from Horner's departure and subsequent employment with Everist. The trial court granted summary judgment on the breach-of-contract and intentional-interference claims and, after a bench trial, ruled for Horner and Everist on the remaining claims. The court of appeals affirmed in relevant part. The supreme court reversed the court of appeals and remanded for consideration of the covenant's reasonableness and further proceedings.

DISPOSITION

REMAND INSTRUCTIONS

Remand for consideration of whether the noncompetition agreement was reasonable and for further proceedings consistent with the opinion.

CASES CITED

- Lucht's Concrete Pumping, Inc. v. Horner, 224 P.3d 355 (Colo. App. 2009)
- Continental Air Lines, Inc. v. Keenan, 731 P.2d 708 (Colo. 1987)
- Freudenthal v. Espey, 45 Colo. 488, 102 P. 280 (1909)
- W. Fed. Sav. & Loan Ass'n of Denver v. Nat'l Homes Corp., 167 Colo. 93, 445 P.2d 892 (1968)
- Troutman v. Webster, 82 Colo. 93, 257 P. 262 (1927)
- Int'l Paper Co. v. Cohen, 126 P.3d 222 (Colo. App. 2005)
- Jones v. Jones, 1 Colo. App. 28, 27 P. 85 (1891)
- Garcia v. Aetna Fin. Co., 752 F.2d 488 (10th Cir. 1984)
- Coors Brewing Co. v. Floyd, 978 P.2d 663 (Colo. 1999)
- Kuta v. Joint Dist. No. 50(J), 799 P.2d 379 (Colo. 1990)
- Zeff, Farrington & Assocs., Inc. v. Farrington, 168 Colo. 48, 449 P.2d 813 (1969)
- Ackerman v. Kimball Int'l, Inc., 652 N.E.2d 507 (Ind. 1995)
- Sherman v. Pfefferkorn, 241 Mass. 468, 135 N.E. 568 (1922)
- Brignull v. Albert, 666 A.2d 82 (Me. 1995)
- Camco, Inc. v. Baker, 113 Nev. 512, 936 P.2d 829 (1997)
- Lake Land Emp't Grp. of Akron, LLC v. Columer, 101 Ohio St. 3d 242, 804 N.E.2d 27 (2004)
- Summits 7, Inc. v. Kelly, 178 Vt. 396, 886 A.2d 365 (2005)
- Research & Trading Corp. v. Powell, 468 A.2d 1301 (Del. Ch. 1983)
- Nat'l Recruiters, Inc. v. Cashman, 323 N.W.2d 736 (Minn. 1982)
- Access Organics, Inc. v. Hernandez, 341 Mont. 73, 175 P.3d 899 (2008)
- Labriola v. Pollard Grp., Inc., 152 Wash. 2d 828, 100 P.3d 791 (2004)
- Precision Walls, Inc. v. Servie, 152 N.C. App. 630, 568 S.E.2d 267 (2002)
- Copeco, Inc. v. Caley, 91 Ohio App. 3d 474, 632 N.E.2d 1299 (1992)
- Curtis 1000, Inc. v. Suess, 24 F.3d 941 (7th Cir. 1994)
- Simko, Inc. v. Graymar Co., 55 Md. App. 561, 464 A.2d 1104 (1983)
- W.T. Rawleigh Co. v. Dickneite, 99 Colo. 276, 61 P.2d 1028 (1936)