

COURT OF APPEALS OF GEORGIA

Khosrow Daneshgari v. Patriot Towing Services, LLC

A21A0887 · No. A21A0887 · Decided November 8, 2021

SUMMARY

The Georgia Court of Appeals held that a trial court may not extend an injunction enforcing a noncompete agreement beyond the agreement's contractual expiration date. Relying on Georgia Supreme Court precedent, the court concluded that such an extension would impermissibly rewrite the parties' contract, and it reversed that portion of the contempt orders while leaving other rulings unaddressed.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Dillard, Presiding Judge; Mercier, Judge; Pinson, Judge
JURISDICTION	Georgia
DECIDED	November 8, 2021
DOCKET	A21A0887
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants appealed orders finding Daneshgari in contempt, striking his answer, entering default judgment, awarding attorney fees, and indefinitely extending an injunction enforcing a noncompete provision after the contractual noncompete period had expired. The appeal challenged only the extension of the injunction beyond the agreement's expiration date.
STANDARD OF REVIEW	Whether to grant equitable relief such as an interlocutory injunction is generally reviewed for abuse of discretion. The reasonableness of a restrictive covenant and the construction of a contract are questions of law reviewed de novo.
PRECEDENTIAL VALUE	Published opinion of the Court of Appeals of Georgia; binding on lower Georgia courts subject to Georgia Supreme Court precedent.
PARTIES	Khosrow Daneshgari, Leslie Zotti v. Patriot Towing Services, LLC

TOPICS

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QUESTIONS PRESENTED

1. Whether a trial court may extend an injunction enforcing a noncompete agreement beyond the agreement's express expiration date.
2. Whether the trial court's contempt power permits it to continue enforcing a noncompete restriction after the contractual period has expired.

HOLDINGS

1. A court may not indefinitely extend an injunction enforcing a noncompete agreement beyond the agreement's express expiration date because doing so rewrites the parties' contract.
2. The trial court's contempt power did not authorize an indefinite injunction extending the noncompete obligation beyond its contractual expiration.

KEY QUOTATIONS

“Such an extension would in effect rewrite the one-year feature of the agreement.” (6)

“Courts do not make contracts for the parties.” (6)

“The courts should hesitate to rewrite private contracts,” (7)

“Judicially providing a tolling provision would effect such a rewrite.” (7)

“It is the duty of courts to construe and enforce contracts as made, and not to make them for the parties” (9)

FACTUAL BACKGROUND

On June 23, 2016, Patriot Towing Services purchased most of the assets of D&D Autow's, Inc., a towing business owned and operated by Daneshgari and Zotti, and the parties executed a noncompetition, nondisclosure, and nonsolicitation agreement. The agreement imposed four-year noncompete and nonsolicitation restrictions that the parties understood would expire on June 22, 2020. The defendants began operating a competing towing business, and despite a June 26, 2018 preliminary injunction, continued violating the restrictions. After a second contempt proceeding, the trial court extended the injunction indefinitely even though the contractual restriction had expired.

PROCEDURAL HISTORY

Patriot Towing Services sued Daneshgari and Zotti for breach of a noncompete agreement and sought damages and injunctive relief. The trial court entered a preliminary injunction, later found Daneshgari in willful civil contempt, and ultimately entered September 3, 2020 orders extending the injunction against both defendants

until further order of the court. The Court of Appeals reversed the aspect of the orders that extended the injunction beyond June 22, 2020, the contractual expiration date.

DISPOSITION

reversed

CASES CITED

- Grogan v. City of Dawsonville, 305 Ga. 79, 89 (4) n.7 (823 SE2d 763) (2019)
- Rollins v. Legg, 179 Ga. 85, 85 (2) (175 SE 382) (1934)
- Jones v. Bd. of Regents of Univ. Sys. of Ga., 262 Ga. App. 75, 79 (3) (585 SE2d 138) (2003)
- Grossi Consulting, LLC v. Sterling Currency Grp., LLC, 290 Ga. 386, 388 (1) (722 SE2d 44) (2012)
- Benton v. Patel, 257 Ga. 669, 672 (362 SE2d 217) (1987)
- Murphree v. Yancey Bros. Co., 311 Ga. App. 744, 746-47 (716 SE2d 824) (2011)
- Essex Grp., Inc. v. Southwire Co., 269 Ga. 553, 557 (2) (501 SE2d 501) (1998)
- McKinley v. Coliseum Health Grp., LLC, 308 Ga. App. 768, 770 (1) (708 SE2d 682) (2011)
- Bearoff v. Craton, 350 Ga. App. 826, 833 (1) (830 SE2d 362) (2019)
- Elec. Data Sys. Corp. v. Heinemann, 268 Ga. 755, 757 (4) (493 SE2d 132) (1997)
- Coffee Sys. of Atlanta v. Fox, 227 Ga. 602, 602 (182 SE2d 109) (1971)
- Hogan Mgmt. Servs., P.C. v. Martino, 242 Ga. App. 791, 793 (1) (530 SE2d 508) (2000)
- Benton v. Gailey, 334 Ga. App. 548, 550 (1) (779 SE2d 749) (2015)
- Whorton v. State, 321 Ga. App. 335, 339 (1) (741 SE2d 653) (2013)