

SUPREME COURT OF VIRGINIA

Assurance Data, Inc. v. Malyevac

Assurance Data · No. Record No. 121989 · Decided September 12, 2013

SUMMARY

The Supreme Court of Virginia held that a demurrer cannot be used to decide on the merits whether non-compete and non-solicitation provisions in an employment agreement are enforceable. Enforceability of restraints on competition requires consideration of the agreement and factual circumstances, including the restraint's function, geographic scope, and duration. The court reversed the dismissal of Assurance Data's complaint and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Chief Justice Cynthia D. Kinser; All the Justices
JURISDICTION	Virginia
DECIDED	September 12, 2013
DOCKET	Record No. 121989
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Assurance Data appealed from a final order of the Circuit Court of Fairfax County sustaining Malyevac's demurrer and dismissing the complaint with prejudice and without leave to amend.
STANDARD OF REVIEW	The judgment on a demurrer is reviewed de novo because whether to grant a demurrer involves issues of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Assurance Data, Inc. v. John Malyevac

TOPICS

noncompete agreements

restrictive covenants

employment contracts

motions to dismiss

civil procedure

PRACTICE AREAS

employment law

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QUESTIONS PRESENTED

1. Whether a demurrer may be used to decide on the merits that contractual non-compete and non-solicitation restraints are unenforceable.
2. Whether the circuit court erred by sustaining the demurrer and dismissing the entire complaint with prejudice on the ground that the restraints were unenforceable as a matter of law.

HOLDINGS

1. A demurrer cannot be used to decide on the merits whether contractual non-compete and non-solicitation restraints are enforceable.
2. The circuit court erred by sustaining the demurrer and dismissing the entire complaint because the restraints were unenforceable as a matter of law.

KEY QUOTATIONS

“The premise running through Simmons, Modern Environments, Home Paramount, and our other decisions is that restraints on competition are neither enforceable nor unenforceable in a factual vacuum.” (at 8)

“Because “[a] demurrer does not permit the trial court to evaluate and decide the merits of the claim set forth in a . . . complaint,” Concerned Taxpayers, 249 Va. at 327, 455 S.E.2d at 716, the circuit court erred when it sustained Malyevac's demurrer on the ground that “the provision is unenforceable” as a matter of law and dismissed the entire complaint for that reason.” (at 10)

FACTUAL BACKGROUND

Assurance Data, Inc. and John Malyevac entered into an agreement under which Malyevac sold ADI's computer products and services. The agreement contained non-compete, non-solicitation, non-disclosure, confidential-information return, and property-return provisions. After Malyevac resigned, ADI alleged that he competed with ADI, engaged in prohibited solicitation and other activities, and failed to return confidential information.

PROCEDURAL HISTORY

Assurance Data sued former employee John Malyevac for allegedly violating non-compete, non-solicitation, non-disclosure, confidentiality-return, and related employment-agreement provisions. The circuit court sustained a demurrer, held the restraints unenforceable as a matter of law, and dismissed the entire complaint with prejudice. The Supreme Court of Virginia reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings; the opinion did not provide more specific instructions.

CASES CITED

- CaterCorp, Inc. v. Catering Concepts, Inc., 246 Va. 22, 24, 431 S.E.2d 277, 279 (1993)

- Renner v. Stafford, 245 Va. 351, 352, 429 S.E.2d 218, 219 (1993)
- Breeding v. Hensley, 258 Va. 207, 214, 519 S.E.2d 369, 372 (1999)
- Dunn, McCormack & MacPherson v. Connolly, 281 Va. 553, 557, 708 S.E.2d 867, 869 (2011)
- Fun v. Virginia Military Inst., 245 Va. 249, 252, 427 S.E.2d 181, 183 (1993)
- Concerned Taxpayers v. County of Brunswick, 249 Va. 320, 323, 327-28, 455 S.E.2d 712, 713, 716 (1995)
- Abi-Najm v. Concord Condo., LLC, 280 Va. 350, 357, 699 S.E.2d 483, 487 (2010)
- Modern Environments, Inc. v. Stinnet, 263 Va. 491, 493, 495-96, 561 S.E.2d 694, 695-96 (2002)
- Home Paramount Pest Control Cos. v. Shaffer, 282 Va. 412, 415-16, 718 S.E.2d 762, 763-64 (2011)
- Omniplex World Servs. Corp. v. US Investigations Servs., Inc., 270 Va. 246, 249, 618 S.E.2d 340, 342 (2005)
- Simmons v. Miller, 261 Va. 561, 581, 544 S.E.2d 666, 678 (2001)
- Preferred Sys. Solutions, Inc. v. GP Consulting, LLC, 284 Va. 382, 393, 732 S.E.2d 676, 681 (2012)