SUPREME COURT OF OHIO

Acordia of Ohio, L.L.C. v. Fishel

133 Ohio St. 3d 345, 2012-Ohio-2297 (Ohio 2012) · No. 2011-0163 · Decided May 24, 2012

SUMMARY

The Supreme Court of Ohio held that noncompete agreements transferred to a surviving company by operation of law after a merger, but remained enforceable only according to their original terms. Because the agreements applied only to the specific original employers and contained no successor or assign language, the employees' noncompete periods expired when those employers ceased to exist through mergers. The court affirmed summary judgment for the employees.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Lanzinger, J.; O'Connor, C.J.; McGee Brown, J.; Pfeifer, J.; Lundberg Stratton, J.; O'Donnell, J.; Cupp, J.
JURISDICTION	Ohio
DECIDED	May 24, 2012
DOCKET	2011-0163
DISPOSITION	affirmed
PROCEDURAL POSTURE	The appellant sought review of a court of appeals judgment affirming summary judgment for employees in an action alleging violation of noncompete agreements and threatened trade-secret misappropriation.
STANDARD OF REVIEW	Summary judgment is reviewed under the applicable de novo standard; the opinion ultimately addressed the legal interpretation and enforceability of the noncompete agreements under Ohio merger statutes and their terms.
PRECEDENTIAL VALUE	published
PARTIES	Acordia of Ohio, L.L.C. v. Michael Fishel, Janice Freytag, Mark Taber, Sheila Diefenbach, Neace Lukens Insurance Agency, L.L.C., Neace and Associates Insurance Agency of Ohio, Inc., Joseph Lukens

TOPICS

noncompete agreements · restrictive covenants · contract interpretation · mergers and acquisitions · employment contracts

PRACTICE AREAS

employment law · contracts · corporate law

QUESTIONS PRESENTED

1. Whether noncompete agreements transfer by operation of law to the surviving company in a statutory merger.
2. Whether the surviving company may enforce the transferred noncompete agreements as though it had stepped into the shoes of the original contracting employer.
3. Whether the employees' two-year noncompete periods had expired when they left the surviving company.

HOLDINGS

1. Noncompete agreements transfer to the surviving company by operation of law under Ohio's merger statute.
2. Although the noncompete agreements transferred to the surviving company, the surviving company could enforce them only according to their original terms and could not enforce them as though the merger had changed the named employer to include the surviving company.
3. The employees' noncompete periods expired when the specifically named original employers ceased to exist through merger, and all periods had expired before the employees left the L.L.C.; therefore, Acordia had no legal right to enforce the agreements.

KEY QUOTATIONS

> *"When contracts pass to the surviving company following merger, the surviving company obtains the same bargain agreed to by the preceding company, nothing more."* (349)

> *"Because the agreements made no provision for the continuation of the agreement upon any acquisition of the original company by another company, the agreements are not enforceable by the L.L.C. according to the agreements' original terms past the two-year noncompete period agreed to by the employees and their original employers."* (350)

FACTUAL BACKGROUND

The employees signed two-year noncompete agreements with predecessor insurance companies that later underwent a series of mergers and acquisitions, ultimately leaving Acordia of Ohio, L.L.C. as the surviving company. The agreements restricted competition following termination with the specifically named company but did not mention successors or assigns. After the employees left the L.L.C. in 2005 for Neace Lukens, they recruited 19 customer accounts generating approximately $1 million in transferred revenue.

PROCEDURAL HISTORY

Acordia filed suit in 2005 for injunctive relief and damages after the employees left and recruited customer accounts for a competitor. The trial court denied a preliminary injunction and later granted the employees summary judgment. The First District Court of Appeals affirmed, and the Supreme Court of Ohio accepted Acordia's proposition of law concerning whether noncompete agreements transfer and remain enforceable following a statutory merger.

DISPOSITION

affirmed

CASES CITED

- Morris v. Investment Life Insurance Co., 27 Ohio St. 2d 26, 31, 272 N.E.2d 105 (1971)
- Acordia of Ohio, L.L.C. v. Fishel, 1st Dist. No. C-060292 (May 9, 2007)
- Acordia of Ohio, L.L.C. v. Fishel, 1st Dist. No. C-100071, 2010-Ohio-6235
- Acordia of Ohio, L.L.C. v. Fishel, 128 Ohio St. 3d 1458, 2011-Ohio-1829, 945 N.E.2d 522