

Court Upholds Assignment of Non-Compete Agreement Rights

August 31, 2012

In *DePuy Orthopaedics, Inc. v. Waxman, et al.*, ___ So.3d, 2012 WL 3138681 (Fla. 1st DCA August 3, 2012), the First District Court of Appeal reversed the trial court's denial of a motion for preliminary injunction and upheld the assignment of a non-compete agreement in light of Fla. Stat. §542.335. The Court held that an employment agreement, which contained a non-compete covenant, was properly assigned to the employer's successor. This was true even in the absence of an express formal assignment of the restrictive covenant terms, because the employment agreement contained a provision providing for an unqualified right to assign the employer's rights and obligations. The suit arose within the context of a manufacturer of orthopedic products, *DePuy*, being assigned all the intangible assets of its former distributor, Joint Venture. Joint Venture had entered into employment agreements with its employees restricting them from competing with Joint Venture in various geographic areas for two years after termination. Joint Venture thereafter entered into an agreement with *DePuy* assigning all its intangible assets. After Joint Venture's assignment to *DePuy*, three former employees of Joint Venture began work for a new employer and contacted accounts in their former work territories. Joint Venture assigned to *DePuy* the right to enforce its covenants not to compete. *DePuy* filed suit and moved for a temporary injunction against the three former employees. The order appealed denied *DePuy* an injunction, on the grounds that *DePuy* lacked standing to enforce Joint Venture's non-compete agreement. The First District Court of Appeal disagreed with the trial court's denial of temporary injunction. The employment agreements provided that Joint Venture could assign all of its rights and obligations to its assignees, even though the *employees' rights and obligations* under the employment agreements were expressly personal and non-assignable. The Court noted that the employment agreements stated that Joint Venture's rights and obligations under the agreement "shall inure to the benefit of and be binding upon [Joint Venture's] assigns and successors." The agreement assigning *DePuy* all the Joint Venture's intangible assets also stated that *DePuy* retained the right to enforce all non-compete covenants in favor of Joint Venture. The trial court erred by basing its reasoning, in part, upon case law applicable to Fla. Stat. §542.33, the predecessor statute to Fla. Stat. §542.335. The predecessor statute required the employees' consent to assign a non-compete covenant, while §542.335 allows the assignment of non-compete covenants when the restrictive covenant "expressly authorized enforcement by a party's assignee or successor." The employment agreements at issue provided

that Joint Venture could assign all of its rights and obligations to assignees, and, as such, the assignment was proper. The First District held that general assignment clauses satisfy the statutory requirements of §542.335 because settled law establishes that unqualified assignments transfer all rights in the thing assigned and courts are not empowered to construe reasonable non-compete agreements narrowly, against the restraint, or against the drafter. The opinion also found that the trial court erred by implicitly finding that *DePuy* had not met the prerequisites for entry of a temporary injunction. In so holding, the First District Court of Appeal noted that it found persuasive the Fifth District Court of Appeal's decision in *Patel v. Boers*, 68 So.3d 280 (Fla. 5th DCA 2011), which similarly reversed a trial court's refusal to enforce an assignment of a restrictive covenant within a contract that contained a general assignment clause.

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