

Court upholds 12 month non-compete restriction

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The High Court held that a 12 month non-compete restriction entered into as part of a sale of goodwill against a financial adviser was enforceable. The court allowed this long post-termination restriction on the basis that the goodwill agreement in place between Mr Cooper and Merlin was nearer to a business sale agreement than an employment contract.

Before working for Merlin, Mr Cooper had developed an extensive client list. Merlin Financial Consultants Limited hired Mr Cooper as a financial adviser. Mr Cooper and Merlin entered into two agreements. The first, an employment contract, contained a post-termination restriction preventing Mr Cooper from competing for six months after the termination of his contract but only prevented Mr Cooper from contacting clients introduced by Merlin. The second, a goodwill agreement, allowed Merlin to purchase the goodwill of Mr Cooper's client base and receive future income from it. It contained a 12 month post-termination non-compete clause. However, there were drafting errors in the goodwill agreement as it did not define the clients that Mr Cooper was restricted from dealing with.

After working for Merlin for some years, Mr Cooper gave notice in order to set up a business with another former employee of Merlin. He was not placed on gardening leave. On the last day of his employment, Merlin wrote to Mr Cooper reminding him of his post-termination restrictions. Mr Cooper responded informing Merlin that he intended to continue to work for the clients he had brought to Merlin. Mr Cooper's solicitors subsequently wrote to Merlin challenging the validity of the post-termination restrictions.

Merlin brought a claim for breach of contract against Mr Cooper claiming damages for loss of business. The High Court held that the non-compete restrictive covenant was enforceable against Mr Cooper and that he pay damages to Merlin. It found that the fact that the goodwill agreement did not define the clients that Mr Cooper was restricted from dealing with did not affect the validity of the restrictive covenant. While the court can be reluctant to grant long post-termination restrictions on employees, it found that a 12 month post-termination restriction was reasonable in this case because the goodwill agreement was nearer to a business sale agreement than an employment contract and therefore the parties had

better equality of bargaining power.

Merlin claimed damages for two years after Mr Cooper left on the grounds that had he not breached his contract, they anticipated that they would have retained 100% of his clients in the first year and 70% in the second. However, the High Court did not agree with this quantification as even if Mr Cooper had complied with his non-compete clauses, some of the clients would have been likely to leave in any event because of their pre-existing connection with Mr Cooper.

Interestingly, the court did not accept Mr Cooper's arguments that Merlin could have mitigated its loss by placing him on gardening leave and applying for an injunction to prevent his contact with clients. The High Court held that Merlin had acted reasonably and that it had been entitled to make use of Mr Cooper's skills rather than place him on gardening leave and disrupt the service to its clients.

Merlin Financial Consultants Ltd v Cooper [2014] EWHC 1196 (QB)

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