# Employee could not be released from a non-compete clause in shareholders agreement by settlement agreement on termination of employment

[et_pb_section bb_built="1" background_color="#ffffff" fullwidth="on" custom_padding_last_edited="on|desktop" _builder_version="3.0.99" custom_padding_tablet="50px|0|50px|0" transparent_background="off" padding_mobile="off" custom_padding="|||" next_background_color="#000000" global_module="136"][et_pb_fullwidth_header global_parent="136" title="Employment Law News" _builder_version="3.0.99" background_image="http://davidk423.sg-host.com/wp-content/uploads/2017/09/bdbf_final-stages-1-4-1.jpg" background_layout="dark" title_font="||||||||" subhead_font="||||||||" background_color="rgba(255, 255, 255, 0)" button_one_text_size__hover_enabled="off" button_one_text_size__hover="null" button_two_text_size__hover_enabled="off" button_two_text_size__hover="null" button_one_text_color__hover_enabled="off" button_one_text_color__hover="null" button_two_text_color__hover_enabled="off" button_two_text_color__hover="null" button_one_border_width__hover_enabled="off" button_one_border_width__hover="null" button_two_border_width__hover_enabled="off" button_two_border_width__hover="null"

button_one_border_color__hover_enabled=”off” button_one_border_color__hover=”null” button_two_border_color__hover_enabled=”off” button_two_border_color__hover=”null” button_one_border_radius__hover_enabled=”off” button_one_border_radius__hover=”null” button_two_border_radius__hover_enabled=”off” button_two_border_radius__hover=”null” button_one_letter_spacing__hover_enabled=”off” button_one_letter_spacing__hover=”null” button_two_letter_spacing__hover_enabled=”off” button_two_letter_spacing__hover=”null” button_one_bg_color__hover_enabled=”off” button_one_bg_color__hover=”null” button_two_bg_color__hover_enabled=”off” button_two_bg_color__hover=”null” /][/et_pb_section][et_pb_section bb_built=”1″ admin_label=”section” prev_background_color=”#000000″][et_pb_row admin_label=”row” background_position=”top_left” background_repeat=”repeat” background_size=”initial”][et_pb_column type=”3_4″][et_pb_text use_border_color=”off” border_color=”#ffffff” border_style=”solid” _builder_version=”3.17.6″]

# Employee could not be released from a non-compete clause in shareholders’ agreement by settlement agreement on termination of employment

The Commercial Court held that a settlement agreement between an employer and employee had not discharged the employee from a non-compete clause in a shareholders’ agreement to which he was a party.

The Claimant, Mr Herbert, was a senior employee and member of the executive management team for Ideal Standard International BVBA, the main operating company in the Ideal Standard Group. His employment contract contained confidentiality obligations, but no restrictive covenants. Mr Herbert entered into a shareholders' agreement with the five group companies that owned the Group's operating companies, and was allocated a substantial number of shares.

A non-compete clause in the shareholders' agreement stated that for 18 months after termination of employment, Mr Herbert must not "carry on or be engaged in or concerned or interested in any business within the Group's jurisdictions where it would be in competition with the business activities of the Group or any Group company". The agreement provided that a waiver of any term or breach of the agreement had to be in writing and signed by or on behalf of the party granting it.

Mr Herbert was subsequently dismissed and entered into a settlement agreement with his employer, which stated that the parties would have no further obligation to each other, save for what was provided in the settlement agreement itself. A clause provided for a waiver from Mr Herbert of his rights and stated that the employer "ensures that the waiver also applies to other companies and entities of the Group". Mr Herbert thereafter started working for a competitor, but two companies within the Group sought an injunction.

The injunction was granted to restrain breach of the non-compete clause. The court found that the settlement agreement had been signed by the employer, which was the main operating company within the group, but did not constitute a valid waiver of rights under the shareholders' agreement by any of the other parties to it, even though a statement in the settlement agreement made clear it was intended to settle outstanding differences with the employer and/or any other company in the group. The settlement agreement had been expressly signed by an executive "for and on behalf of" the

employing company, not any other company in the group.

Mr Herbert was a senior executive and his shareholding was substantial. He was also integral to the business's relationships with clients, privy to confidential information and had years of working with other employees. Hence, it was held that a serious issue was to be tried as to whether the covenant was reasonable in scope.

***Ideal Standard International SA and another v Herbert [2018] EWHC 3326***

[/et_pb_text][/et_pb_column][et_pb_column type="1_4"][et_pb_sidebar orientation="right" area="sidebar-1" background_layout="light" remove_border="off" show_border="on" /][/et_pb_column][/et_pb_row][/et_pb_section]