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Did You Know?

More Case Law Against Non-Compete Agreements



Tamara B. Pow, Esq.

In 2008, the California Supreme Court ruled on *Edwards v. Arthur Andersen LLP*, making it clear that employee post-employment non-compete agreements were unenforceable in California except in certain limited circumstances. A new California Court of Appeals case, *Fillpoint, LLC v. Maas* (August 24, 2012) only further enforces California's policy of open competition. In the *Fillpoint* case, a major shareholder and key employee signed a three-year non-compete agreement related to the sale of his stock as well as a one-year post-employment non-compete agreement. The shareholder/employee worked for the acquired company until the three-year non-compete ran out, then terminated his employment and went to work for the competition.

What does this mean for the employer?

The Court paid particular attention to whether the stock purchase and employment agreement should be read together as one document, since in connection with the sale of the business the agreement could be enforceable. The court found that the two

agreements should be considered integrated, noting, in particular, the integration clause in the documents stated if there were conflicts between the two documents, the stock purchase agreement would control. The court then ruled the non-compete and non-solicitation covenants unenforceable, as they were overly broad.

What does this new case teach us?

Non-competes are still extremely limited in California. When including non-compete provisions, you should establish that they are connected with the purchase and sale of a business and not attempt to make them any broader than necessary.

Where does this leave us?

Now is the time to revisit your employment agreements and independent contractor agreements. Cut out any unenforceable non-compete provisions to avoid risking the validity of the entire document. And, if you think you really need an employee non-solicitation covenant, make sure it is as narrow as possible and that your agreement has a severability clause to preserve the rest of the document in the event a court finds a restrictive covenant to be void and unenforceable. If you have any questions regarding employment agreements, please contact me at (408) 441-7500.



Success Story

Years ago, the founders of a start-up venture hired SLG to incorporate the entity. SLG recommended the founders enter into a buy-sell agreement to, among other things, set forth what would happen in the event one of them left the company. More recently, a founder decided to leave the company and the departure threatened to throw the company into turmoil. While the founders had forgotten about the agreement they had signed years prior, SLG instantly retrieved a copy which provided for the orderly transition following the founder's departure. A messy situation was averted and the client was relieved.

Smart Holiday Shopping Tips



It's that time of year again! Time to start your holiday shopping. Whether you celebrate Christmas, Hanukkah or any other holiday, most of us need to buy at least a few gifts this holiday season. In order to make your shopping go a little smoother, consider these shopping

- tips.
- Develop a budget. Take a look at your finances and determine what your overall spending limit is. Then decide how much you can spend on each individual person or gift. When preparing your budget, don't forget to include the cost of wrapping paper and gift bags. Also be sure to include gifts for teachers, babysitters or dog walkers.
 - Purchase a few generic gifts to keep on hand. These gifts are handy if someone unexpectedly gives you a gift and you want to reciprocate.
 - Create a gift checklist. Create a list of what you want to buy people before you go out shopping. This helps you to stay within your budget and also helps make sure you don't forget anything.
 - Go online to research products and prices. If you are searching for higher priced items, do some online research before you hit the mall to find the best product at the best price.
 - Shop during off-peak times. If you can't do all of your shopping online, try and do your shopping in the morning or late at night when fewer people are out shopping.
 - Save your receipts and when possible, get gift receipts. This will make it much easier if a person needs to return a gift.
 - SHOP EARLY! Start your holiday shopping now to avoid the stress and headache of last minute shopping.

Tax Corner

Local Sales Tax Rate Increases Effective

October 1, 2012

Sales and use tax rates increase in the following cities on October 1st:

Hercules	8.75%
Pittsburg	8.75%
San Pablo	8.75%
Ridgecrest	8.0%
Greenfield	8.25%
Soledad	8.25%
Santa Maria	8.0%
Sonoma City	8.5%

Source: Spidell's California Taxletter, Vol 34.10, October 1, 2012.



California's "Amazon" Bill Now In Effect

California's "Amazon" Bill which requires online and remote retailers to collect use tax from California customers went into effect on September 15, 2012.

For many years Amazon was able to get away with not charging tax to California customers because they did not have a physical presence in this state. Amazon has still found a loophole because Amazon will not be charging use tax on items offered by third-party sellers that use Amazon.com to sell their goods. It's estimated that goods sold by third parties make up about 40% of the products sold on Amazon. Even though Amazon may not be charging sales tax on these items, if a California seller sells a taxable item on Amazon.com and ships it to a California buyer, the seller is still responsible for paying use tax on that item. **What does this mean for the majority of us?** Many Amazon purchases will no longer be tax free. The company will now be charging tax on many purchases delivered to California addresses. Source: Spidell's California Taxletter, Vol34.10, October 1, 2012.



The Latest News At



It's a boy!!

Structure Law Group, LLP has a new member to welcome to our family. Maichi Hoang gave birth to her first child, son Bryan Minh Nguyen in August. Maichi is currently on maternity leave. Congratulations to Maichi and her family!



Entities Beware!

There has been a recent surge in solicitation letters being sent by private companies to California businesses encouraging them to comply with their filing obligations by submitting fees and documents to third parties rather than filing directly with the Secretary of State. These solicitation letters ask for fees of at least \$150 to be submitted to these private companies. These letters are made to look like letters from the Secretary of State with official-looking seals, deadlines and citation of specific Corporations Code sections.

Corporations and LLCs are required to file a Statement of Information with the Secretary of State on an annual or biennial basis. However, the filing fee to file a Statement of Information is \$25 for corporations and \$20 for LLCs and, in many cases, entities can file these Statements on their own without paying anything other than the state-mandated filing fee. If you receive "official" looking letters from what appear to be government agencies, please feel free to contact our office for a second opinion or clarification.

SLG Blog

Be sure to check out some recent posts on our blog! www.sanjosebusinesslawyersblog.com

- Higher Taxes II 2013: The Wood and Lumber Tax
- Tax Update: IRS Ruling Affects Gratuities
- Property Taxes: Sellers Providing Financing Should Beware of Reassessment on Repossession

Employment Corner

Maximum 401(k) Contribution Increases for 2013

The maximum 401(k) contribution will increase in 2013 from \$17,000 to \$17,500. Individuals who are over 50 can contribute an additional \$5,500 as a catch-up contribution for a total contribution of \$23,000.

Employers are required to give employees a new summary of health benefits.

Under the Affordable Care Act, employers are now required to give a summary of benefits and coverage, also known as an SBC, to all employees. This must include the summary of benefits and a glossary that defines basic health benefit terms. This goes into effect for any company with an open enrollment period beginning September 23, 2012. Insurers must provide the SBCs but companies must ensure that employees receive the SBCs with their enrollment materials. *Source: The HR Specialist, Vol. 10, No. 9, September 2012.*



Reminders and Other Items of Note

Going Out Of Business

If you are going out of business and no longer have employees, you must file a DE-9 with the Employment Development Department.

Avoid California Franchise Taxes for 2013!

If you want to dissolve an entity to avoid paying California franchise taxes for 2013, now is the time to consider winding up before year-end.

Formation of New Entities

If you are planning on forming a new entity before the end of the year, please note that if the entity is formed during the last two weeks of the year and does not do any business until January 1, 2013, it will not incur California franchise taxes for 2012.





STRUCTURE
LAW GROUP, LLP

1754 Technology Drive
Suite 135
San Jose, California 95110
Phone: 408-441-7500
Fax: 408-441-7501
E-mail: slgadmin@structurelaw.com
www.structurelaw.com

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Dates To Remember

November 6 Election Day
November 11 Veterans Day - courts and government offices closed
November 22 Thanksgiving—courts and government offices closed
December 24 Christmas Eve
December 25 Christmas Day—courts and government offices closed
December 31 New Year's Eve



Mark R. Figueiredo, Esq.



Tamara B. Pow, Esq.

Did You Know?

- Turkeys are the only breed of poultry native to the Western Hemisphere.
- Male turkeys are called toms, females are hens and babies are poults.
- Coconuts kill more people every year than sharks.
- The first presidential pardon ceremonially given to a turkey was in 1947.
- The average American consumes more than 15 pounds of turkey per year.
- Dr. Seuss pronounced his name "soyce."



Robert V. Hawn, Esq.



Jack W. Easterbrook, Esq.

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Check out our blog!

www.sanjosebusinesslawyersblog.com