

Star Direct and Non-Competes: Interpreting Restrictive Covenants

Wisconsin's lower courts continue to work out the implications of the Wisconsin Supreme Court's 2009 decision in *Star Direct v. Dal Pra* (previously discussed here). Among other things, *Star Direct* clarified that although restrictive covenants should be viewed with disfavor, courts should not read them unreasonably. Rather, courts must interpret the covenant just as they would interpret any other contract.

In *Key Railroad v. Guido et al.*, the plaintiff sought to enforce its restrictive covenant that prohibited the defendants from soliciting or accepting any competing business from a "client" of their former employer with whom the defendants had contact during their employment. The defendants argued that the covenants were unenforceable because they did not define the term "client."

The court of appeals rejected defendants' argument and concluded that the covenants were enforceable. Noting that under *Star Direct* restrictive covenants should not "be construed farther than the contract language absolutely requires," the court found that the agreement was not overly broad. According to the court, *Star Direct* did not limit the kinds of entities that could be considered clients, "it merely addressed the facts present in that case." Nevertheless, the definition of client in *Star Direct* was "just as broad" as that in the defendants' covenants. Further, the fact that the plaintiff's owner could not concretely define "client" in his deposition was irrelevant to whether the contract was enforceable.

The defendants also argued that there was no evidence that they had actually breached the agreements by soliciting competing work from clients of the plaintiff. The court of appeals rejected this claim as well and found that a jury could infer that the defendants had provided competitive services in violation of the covenants because they had done *some* work with the plaintiff's clients. The fact that the defendants denied the work was actually competitive was not sufficient to justify dismissal of the case. Notably, the court found that it was irrelevant that one such client claimed that he had independently decided to cease work with the plaintiff for performance reasons. The restrictive covenant prohibited the defendants from *providing* competing services to "clients" even if they did not affirmatively solicit the business.

The decision in *Key Railroad* re-affirms the value of a well-drafted restrictive

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Nov 12, 2012

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covenant. Reinhart's Labor & Employment attorneys are experienced in this area and can assist with drafting such covenants and litigating questions of enforceability and breach."

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