2012 IL App (4th) 120056-U

Filed 4/9/12

NO. 4-12-0056

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

AMERICAN PEST CONTROL, INC., an Illinois Corporation, Plaintiff-Appellee, v. JEREMY E. RAKERS, Individually and d/b/a TWIN CITY PEST CONTROL, Defendant-Appellant.	))))))))	Appeal from Circuit Court of McLean County No. 11CH447 Honorable Paul G. Lawrence, Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's grant of a preliminary injunction enforcing the parties' covenant not to compete as defendant's resignation, which constituted "the termination for any cause whatsoever of his employment" with plaintiff, unambiguously triggered the covenant's restrictions.

¶ 2 Defendant, Jeremy E. Rakers, was a contracted employee of plaintiff, American Pest Control, Inc., from November 2005 until he resigned in September 2011. When Rakers began doing business as Twin Cities Pest Control following his resignation, American Pest Control sued him to enforce a covenant not to compete contained in his employment contract. In December 2011, the trial court entered a preliminary injunction in favor of American Pest Control. Rakers appeals, arguing the noncompetition clause is ambiguous and unenforceable in these circumstances. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In November 2005, American Pest Control hired Rakers as a service representative assigned to the Bloomington area. In his employment contract, Rakers agreed "that on the termination for any cause whatsoever of his employment" with American Pest Control, Rakers would not compete directly or indirectly with American Pest Control for a two-year period within a 25-mile radius of Bloomington. He acknowledged American Pest Control's proprietary interest in its valuable business contacts and goodwill as well as its right to seek an injunction to enforce the covenant not to compete. Specifically, these relevant provisions stated:

> "Said PARTIES covenant and agree that the COMPANY has made over a period of years in this territory numerous contacts, either culminating in accounts or prospective accounts of said business, and that such accounts and GOOD WILL in said territory belong exclusively to the COMPANY, and said REPRESENTATIVE agrees to recognize the property rights of the COMPANY and will not now or any time hereafter claim any ownership of said COMPANY accounts or prospective accounts.
>
> REPRESENTATIVE agrees that on the termination for any cause whatsoever of his employment with the COMPANY, he will not directly or indirectly engage in the same or similar or competitive line of business carried on by the COMPANY, *** nor will he in any way, directly or indirectly, attempt to hire the COMPANY'S employees or take away any of the COMPANY'S

> business or customers or destroy, injure or damage the good will of the COMPANY with its customers all for a period of two years within a 25 mile radius of his base point of operation, namely Bloomington, Illinois.
>
> REPRESENTATIVE agrees that irreparable injury will result to the COMPANY'S business and property in the event of a breach of the agreement herein made by the REPRESENTATIVE and that said employment is based upon the assurance herein made, and it is agreed that in such event the COMPANY shall be entitled, in addition to any other remedies and damages available, to an injunction to restrain the violation thereof by the REPRESENTATIVE ***." (Emphasis omitted.)

In April 2007, when the contract was amended to reflect Rakers's pay raise, the amended contract again included the covenant not to compete and related provisions quoted above.

¶ 5 In September 2011, Rakers resigned from American Pest Control. He subsequently began doing business as Twin Cities Pest Control. In December 2011, American Pest Control sued Rakers, alleging he breached the noncompetition clause by operating a pest-control business within the restricted area and soliciting business from American Pest Control's customers. American Pest Control sought an injunction barring Rakers from doing business in violation of the covenant not to compete. It also moved for a temporary restraining order and a preliminary injunction. Rakers responded to American Pest Control's motions. On December 23, 2011, following a hearing that was not reported, the trial court granted American Pest

Control's motion for preliminary injunction.

¶ 6 On January 3, 2012, Rakers filed a motion to reconsider and dissolve, arguing the covenant not to compete was not triggered by Rakers's resignation. On January 13, 2012, following another unreported hearing, the trial court denied Rakers's motion, finding "that the language of the restrictive covenant that requires termination 'for any cause whatsoever' also applies in a resignation, as Defendant did here."

¶ 7 Later that day, Rakers filed his notice of appeal, effecting this interlocutory appeal as of right from the entry of preliminary injunction, pursuant to Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010).

¶ 8 II. ANALYSIS

¶ 9 On appeal, Rakers argues the trial court erred by granting a preliminary injunction because Rakers's resignation did not constitute the "termination for any cause whatsoever of his employment." American Pest Control responds that resignation is an accepted form of termination. We agree with American Pest Control.

¶ 10 The sole issue on appeal is whether the covenant not to compete was actuated by Rakers's resignation—*i.e.*, whether the resignation was a "termination for any cause whatsoever of his employment." "As a general rule, the construction, interpretation, or legal effect of a contract is a matter to be determined by the court as a question of law." *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 129, 835 N.E.2d 801, 821 (2005). This appeal concerns the construction and legal effect of the covenant not to compete, which we review *de novo*. See *id.*

¶ 11 A court's principal goal in interpreting a contract is to give effect to the parties'

intent at the time they entered the contract. *Shields Pork Plus, Inc. v. Swiss Valley Ag Service*, 329 Ill. App. 3d 305, 310, 767 N.E.2d 945, 949 (2002). "Thus, if the contract terms are unambiguous, the parties' intent must be ascertained exclusively from the express language of the contract [citation], giving the words used their common and generally accepted meaning." *Id.* A contract is ambiguous if "the language used is susceptible to more than one meaning *** or is obscure in meaning through indefiniteness of expression." (Internal quotation marks omitted.) *Id.* However, ambiguity is not presumed from the parties' disagreement over the contract's meaning; rather, it must be apparent from the language itself. *Id.* In general, ambiguities are resolved against the drafting party. *Bishop v. Lakeland Animal Hospital, P.C.*, 268 Ill. App. 3d 114, 117, 644 N.E.2d 33, 36 (1994). Ambiguities in a covenant not to compete are construed "in favor of natural rights [of free enterprise] and against restriction." *Bloomington Urological Associates, SC v. Scaglia*, 292 Ill. App. 3d 793, 798, 686 N.E.2d 389, 393 (1997).

¶ 12 In this case, the terms of Rakers's employment contract are unambiguous, and giving the words their plain meaning, his resignation triggered the restrictions of the covenant not to compete. "Termination" is "[t]he act of ending something; extinguishment." Black's Law Dictionary 1511 (8th ed. 2004). "Termination of employment," more specifically, is defined as "[t]he complete severance of an employer-employee relationship." *Id.* An ending of an employment relationship by any means, including an employee's resignation, satisfies this definition. See *Bloomington Urological Associates*, 292 Ill. App. 3d at 795, 798, 686 N.E.2d at 391, 392-93 (implicitly considering an employee's resignation from his employer to constitute the termination of his employment, entailing the potential operation of a covenant not to compete). Rakers's contract specified that the termination of his employment "for any cause whatsoever"

would give rise to the restrictive covenant. "Cause" is defined relevantly as "[s]omething that produces an effect or result." Black's Law Dictionary 234 (8th ed. 2004). Applying these definitions, the competition restriction at issue was triggered by the ending, for whatever reason, of Rakers's employment with American Pest Control. Under an ordinary interpretation of his employment contract, Rakers's resignation brought the restriction into force. Rakers is mistaken that the language at issue—"termination for any cause whatsoever of his employment"—is susceptible to more than one meaning; the meaning of the unambiguous term just happens to be broader than Rakers would prefer.

¶ 13 Rakers's counterargument relies principally on the Second District Appellate Court's opinion in *Bishop*. His reliance on that case is unpersuasive. There, a veterinarian's employment contract with an animal hospital allowed for the termination of the contract by either party with or without cause. *Bishop*, 268 Ill. App. 3d at 115, 644 N.E.2d at 34. A covenant not to compete provided, "The Employee agrees that on the termination of his/her employment with the Employer for any cause," the veterinarian's practice would be subject to temporary geographical restrictions. *Id.* When the animal hospital terminated the veterinarian's employment for no cause, the veterinarian sued for a declaration that the covenant not to compete was unenforceable in those circumstances. *Id.* at 115-16, 644 N.E.2d at 34-35. The trial court dismissed her complaint, and she appealed. *Id.* at 116, 644 N.E.2d at 35.

¶ 14 The appellate court reversed the dismissal of the veterinarian's claim that her no-cause termination did not trigger the restrictive covenant. *Id.* at 119, 644 N.E.2d at 37. The court initially found the term "for any cause" in the noncompetition clause was ambiguous as it could be construed to mean "for any cause whatsoever (including no specific cause)" or

construed "to require some cause to exist before its provisions would apply." *Id.* at 117, 644 N.E.2d at 35-36. The court resolved the ambiguity in favor of the veterinarian as the nondrafting party, concluding the clause was not applicable because the animal hospital terminated her employment for no cause and, thus, not "for any cause." *Id.* at 117, 644 N.E.2d at 36.

¶ 15 *Bishop* is materially distinguishable from this case. While the difference in the terms "for any cause whatsoever" in this case and "for any cause" in that case may appear insignificant, the additional term "whatsoever" in the former language resolves the ambiguity found by the *Bishop* court in the latter. In fact, the Second District used the phrase "for any cause whatsoever" to illustrate the possible interpretation of "for any cause" that would apply to a termination of employment for any reason or no specific reason at all. Moreover, unlike *Bishop,* where the employer fired the employee, the present case concerns an employee who resigned and shortly afterward established a competing business—exactly the circumstances a covenant not to compete is designed to address. Thus, we find Rakers's argument based on *Bishop* unpersuasive.

¶ 16 Here, Rakers's resignation constituted the "termination for any cause whatsoever of his employment" and triggered the restrictions of the covenant not to compete. Accordingly, the trial court did not err in granting American Pest Control's motion for preliminary injunction.

¶ 17 III. CONCLUSION

¶ 18 For the foregoing reasons, we affirm the trial court's judgment.

¶ 19 Affirmed.