

New Eighth Circuit Opinion Likely to Increase Summary Judgments in Noncompete Litigation

by William J. Miller

Restrictions on employee movement between employers are a frequent source of litigation. No employer wishes to develop an employee with industry expertise only to see that employee jump ship to a competitor and use her skills and relationships to benefit her new employer. A common method for limiting this outcome is insertion of a noncompete provision (or clause) in the employee's employment agreement. While generally enforceable in most states, including Iowa, the restrictions inherent in such provisions necessarily create conflict in a modern economy.

The legal principles surrounding noncompete provisions do not always permit a summary resolution, resulting in costly litigation for all involved in a matter in which a critical employee wishes to move between employers. For instance, in determining whether a noncompete provision (also known as a covenant not to compete) is reasonable and capable of enforcement under Iowa law, a court must consider three factors:

- (1) Whether the covenant is reasonably necessary to protect the employer's business;
- (2) The effect on the employee if the court enforces the covenant; and
- (3) Whether enforcing the covenant is prejudicial to the public interest.

Iowa Glass Depot, Inc. v. Jindrich, 338 N.W.2d 376, 381 (Iowa 1983); accord *Revere Transducers, Inc. v. Deere & Co.*, 595 N.W.2d 751, 761 (Iowa 1999). Some courts have found that reasonableness is a fact-intensive analysis that requires resolution by a jury. However, a recent opinion of the United States Court of Appeals for the Eighth Circuit held the opposite, which may greatly enhance the chances of summary judgment in these cases.

In *Ag Spectrum Co. v. Elder*, Case No. 16-3113 (8th Cir. Aug. 2, 2017), the court considered whether Ag Spectrum should be permitted to enforce a noncompete provision with a former independent contractor, Vaughn Elder. Elder originally began

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employment with Ag Spectrum as a sales representative “selling fertilizer, nutrients, and crop-management services.” He later became an Area Manager, pursuant to an “independent-contractor agreement.” In affirming summary judgment to Elder, the Court held that, in “balancing the benefits and burdens under the traditional reasonableness test[,] . . . Ag Spectrum’s noncompete provision is unreasonable and therefore unenforceable.”

While the court’s ultimate analysis of the noncompete provision is informative, what is more impactful for future cases is the court’s prediction that Iowa law preserves for the court, not a jury, the responsibility of deciding whether a noncompete provision is “reasonable.” Many would assume the determination of whether a particular thing is reasonable is a quintessential factual issue for resolution by a jury. In fact, Iowa law is silent as to whether this is a correct assumption. As a result, the Eighth Circuit had to predict how the Iowa Supreme Court would answer this question.

To make this prediction, the Eighth Circuit first observed that in a 2004 opinion, the Iowa Supreme Court “held that a similar issue—whether a liquidated-damages provision is an unenforceable penalty—is a question of law for the court.” Analogizing to the *Ag Spectrum* case, the Eighth Circuit noted that the enforceability of a noncompete provision presented a similar “public-policy question based on reasonableness.”

The Eighth Circuit then observed that other courts “have generally held that the ultimate question of enforceability is one of law rather than fact.” While acknowledging contrary authority, the Eighth Circuit concluded, “[f]acts are crucial to the enforceability analysis, but we think the Iowa Supreme Court would recognize the ultimate question to be for the court.”

By reserving for the courts the resolution of disputed facts regarding a noncompete provision’s reasonableness, the Eighth Circuit has likely reinvigorated summary judgment as an avenue for resolving a core question in nearly every case involving a challenge to a noncompete provision. The opinion will not bind Iowa state court judges, but is likely to be followed in all levels of Iowa courts unless and until the Iowa Supreme Court resolves the issue differently. For these reasons, it is probable that fewer cases involving noncompete provisions will go to trial, but will instead be resolved more quickly either by the court or by settlement driven by the court’s determination of enforceability. For employees and employers operating in a fast-paced business world, this should be a welcome development.