Five Year non-competition covenant across Canada is upheld as reasonable

June 06, 2023

Non-competition covenants are regularly included in commercial agreements related to the purchase of a business and are critical in ensuring that the vendor of a business does not compete following the sale. However, even in commercial agreements, to be enforceable, non-competition covenants must be reasonable in geographic scope, length of time and the scope of the activity prohibited. Recently, in *Ruel v Rebonne*, 2023 ABCA 156 (CanLII), the Court of Appeal of Alberta upheld a non-competition covenant that prohibited competition in Canada for a period of five years following the sale of the business.

Background facts

As background, Down the Beaten Path was a home décor business that imported home décor items from Mexico for distribution to customers in Canada. In 2014, the plaintiff purchased the business from the defendant pursuant to a Share Purchase and Sale Agreement (the Agreement). The Agreement included a non-competition covenant prohibiting the defendant from competing with Down the Beaten Path in Canada for a period of five years.

Following the sale of the business, the defendant set up a business called Mood Dekor. Mood Dekor engaged in the same business as Down the Beaten Path and imported home décor items from Mexico for distribution to customers in Canada. Mood Dekor utilized the same suppliers as Down the Beaten Path and the home décor items were nearly identical to that of Down the Beaten Path.

At trial, the defendant took the position that the non-competition covenant was not enforceable as it was overly broad. The defendant also argued that the non-competition covenant was not breached as Mood Dekor only sold to customers at trade shows in the United States, which customers from Canada attended.

Trial decision

At trial, the trial judge reviewed the law on non-competition covenants and noted that in commercial agreements, a non-competition covenant will be found to be reasonable and lawful if it is restricted in terms of geography and time.

On the reasonableness of the geographic scope, the trial judge noted that the reasonableness of the geographic scope must be determined based on the evidence as to where the company was doing business at the time it was sold. In this case, at the time it was sold, the business was doing business throughout Canada. The trial judge relied, in part, on a customer list that was provided during the due diligence process which disclosed more than 600 unique customers across Canada. As a result, the trial judge held that the restrictive covenant prohibiting the vendor from competing anywhere in Canada was reasonable.

On the reasonableness of the length of time, the trial judge held that while the five-year restriction was significant, it was not unreasonable in the circumstances. The trial judge noted that the plaintiff had made a significant investment in the business and needed time to generate revenue to repay the investment. As a result, the five-year time period was determined to be reasonable.

As far as the breach of the non-competition covenant, while the defendant suggested that Mood Dekor's business was restricted to the United States, the trial judge concluded that the defendant breached the non-competition covenant as he operated Mood Dekor in Canada and sold to Canadian clients.

Appeal decision

On appeal, the Court of Appeal held that the trial judge applied the correct legal test and concluded that the non-competition covenant was reasonably restricted in terms of the activities of Down the Beaten Path, the territory of the business, and the duration of the non-competition clause in light of the specific circumstances of this case. The Court of Appeal noted that the non-competition covenant was an essential term of the deal and was necessary for the protection of the plaintiff's legitimate interest in maintaining the value of the business.

Key takeaways

This case confirms that even broad non-competition covenants will be enforced in commercial agreements related to the sale of a business. However, if challenged, the Court will look critically at whether the non-competition covenant is reasonable, in terms of geographic scope, length of time, and the scope of the activity prohibited. This case also highlights the importance of restricting the non-competition covenant to where the company does business at the time it is sold and the necessity of having evidence as to where customers were located at that time.

BLG represented the plaintiff at the trial and on appeal. For more information on the enforceability of non-competition covenants, please reach out to one of the key contacts below.

By

Andrew Pozzobon, Briggs Larguinho

Expertise

Disputes, Corporate Commercial

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.