



BLOGS

Noncompetes

Eleventh Circuit Affirms in Part, Reverses in Part, District Court Determination to Blue Pencil and Enforce Noncompete Agreement

The Eleventh Circuit Court of Appeals recently affirmed in part, and vacated in part, a district court's issuance of an injunction preventing a franchisor's enforcement of a noncompete covenant as written but allowing enforcement of the covenant as modified, or "blue penciled," by the court. *Baldwin v. Express Oil Change, LLC*, 87 F.4th 1292 (11th Cir. 2023).

The Eleventh Circuit Court of Appeals recently affirmed in part, and vacated in part, a district court's issuance of an injunction preventing a franchisor's enforcement of a noncompete covenant as written but allowing enforcement of the covenant as modified, or "blue penciled," by the court. *Baldwin v. Express Oil Change, LLC*, 87 F.4th 1292 (11th Cir. 2023). Baldwin, a former employee of a franchisee operating Express Oil Change stores, brought an action against Express, seeking a declaratory judgment that his restrictive covenant violated Georgia law and an order enjoining Express from enforcing the agreement. The restrictive covenant limited Baldwin's ability to work for or otherwise be involved in competing automotive service businesses in the entire state of Georgia and Alabama, as well as a five-mile radius of any of the 1,100 automotive repair or service facility business operated by Express or its affiliates in the United States. The duration of the covenant was for a period of four years, but after 18 months the area of the noncompete would no longer include the entirety of Georgia and Alabama and Baldwin would be permitted to become an employee of a competitive business even within the reduced noncompetition area.

The district court concluded that the covenant, as written, was unenforceable under the Georgia Restrictive Covenants Act (GRCA). First, it concluded the covenant's geographic scope was unreasonable and unenforceable. Second, it concluded the four-year term was presumptively unreasonable under the GRCA, which presumes unreasonable a covenant sought to be enforced against a former employee of a business if its duration exceeds two years. The court blue penciled the covenant to make it enforceable by altering the covenant in four ways: it reduced the term of the covenant from four years to two; it eliminated the states of Georgia and Alabama from the noncompetition area; it amended the five-mile radius provision so that the noncompetition area only applied to those Express locations Baldwin previously had overseen; and it eliminated the provisions that stepped down certain restrictions on Baldwin at the 18-month mark. The district court enjoined Express from enforcing the covenant as written, permitted enforcement as blue-penciled by the court, and required Baldwin to post a \$40,000 injunction bond. Express appealed.

The Eleventh Circuit dismissed as moot Express' arguments pertaining to the modification of the covenant's 18-month mark because 18-months had already passed. It affirmed the district court determination that the geographic scope of the covenant was unreasonable, but concluded the district court abused its

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discretion by determining that duration of the covenant was unreasonable because the GRCA establishes a presumption that a five-year restrictive covenant is reasonable when sought to be enforced against an executive employee who receives consideration in connection with a sale of the assets of the business and, in this case, Baldwin received significant consideration upon the sale of the franchised locations to Express. The Eleventh Circuit rejected Express' argument that the district court lacked authority to blue pencil the covenant, because the GRCA expressly authorizes the court to do so to protect the legitimate business interests of a party when faced with an otherwise unenforceable covenant. Finally, the court considered the remaining preliminary injunction factors, concluding Baldwin demonstrated a likelihood of success on the merits that the covenant was unenforceable as written, was likely to suffer irreparable harm, the balance of equities were satisfied by using its blue-pencil authority to grant targeted relief, and the public interest favored an injunction because enforcing an unreasonable covenant contravenes the public interest and the public would be better served by having access to Baldwin's skills.