

S.D.N.Y. Declines to Enforce No-Hire Agreement for Lack of Protectable Interest

February 27, 2014

A federal district court judge declined to enforce a no-hire agreement that would prevent the plaintiff's former chief technology officer (CTO) from being hired by the defendant, its direct competitor. Applying New York's well-established reasonableness analysis to the no-hire restrictive covenant, the court found that the covenant was not necessary to protect the plaintiff's legitimate business interests.

Reed Elsevier Inc. v. TransUnion Holding Company, No. 13-CV-8739, (S.D.N.Y. Jan. 8, 2014): A federal district court judge declined to enforce a no-hire agreement that would prevent the plaintiff's former chief technology officer (CTO) from being hired by the defendant, its direct competitor. Applying New York's well-established reasonableness analysis to the no-hire restrictive covenant, the court found that the covenant was not necessary to protect the plaintiff's legitimate business interests. Under New York law, those interests are limited to the protection of trade secrets, confidential customer information, and client base, as well as to prevent irreparable harm where the employee's services are unique or extraordinary. Although the CTO was a high-level executive, the court held that the no-hire provision was unenforceable because: the CTO had limited knowledge of sensitive projects; his responsibilities were mainly managerial and supervisory rather than client-focused; and there was no evidence that his services required any special talent. Importantly, the court refused to recognize that the general risk of possible employee attrition was a legitimate business interest recognized by the New York courts. This decision therefore serves as a reminder that New York courts will continue to "rigorously examine" restrictive covenants—even no-hire provisions—and limit enforcement to only protectable business interests.

