

Private Agreements Do Not Rule When It Comes to Enforcing Remedy Provisions of Non-Competes



The interplay between two well-recognized legal principles came into sharp focus in a case recently decided by the Minnesota Supreme Court. The right of private individuals and businesses to agree upon a particular remedy for a contract breach was juxtaposed against a court's discretion to grant or deny an equitable remedy. The court's discretion won out. The case, *St. Jude Medical, Inc. v. Heath Carter*, 913 N.W.2d 678 (Minn. 2018), warrants the attention of every attorney drafting non-compete agreements in Minnesota.

Most employers include a detailed remedy provision in non-compete agreements they ask employees to sign. And for good reason. Employees are then informed from the outset of potential consequences if they breach. The remedy provision typically includes statements that the employee recognizes the harm the employer will incur in the event of a breach. These statements became the focus of the dispute between St. Jude and Heath Carter.

As part of his employment with St. Jude, Carter signed an employment agreement that included a non-disclosure covenant, a non-competition covenant and a remedies provision. The remedies provision provided: "In the event [Carter] breaches the covenants contained in this Agreement, [he] recognizes that irreparable injury will result to SJM [St. Jude], that SJM's remedy at law for damages will be inadequate, and that SJM shall be entitled to an injunction to restrain the continuing breach by [Carter]." All fine and good to have an employee sign off on these prospective statements. But what if, in fact, a breach by an employee of a non-competition agreement does not cause irreparable injury to the employer. That is what happened for St. Jude when Carter left to join a competitor, Boston Science.

St. Jude sued Carter, claiming that Carter's employment at Boston Scientific breached Carter's non-competition covenant and there was an imminent threat that he either had or would necessarily disclose St. Jude's confidential information. St. Jude asked for an injunction against Carter, but no damages. The trial court found a breach of Carter's employment agreement. But here is the rub – the court concluded that St. Jude had not been harmed by Carter's breach so St. Jude was not entitled to an injunction – notwithstanding the language in the remedy provision where Carter states that any breach will result in irreparable harm. Keep in mind here that St. Jude was unable to prove that Carter had disclosed any of St. Jude's confidential information or that there was even a likelihood of future disclosure, despite extensive discovery. All St. Jude had to offer were Carter's statements about irreparable harm in the employment agreement.

The Minnesota Supreme Court held that these prospective statements are not enough to obtain an injunction against a former employee. The Supreme Court recognized the general concept that the court will enforce the agreement of the parties as expressed in the language of the contract. However, when an employer seeks an equitable remedy, the court needs to consider factors beyond the intent of the parties to the contract, "no matter how unambiguously that intent may be expressed in a contract provision." The express language of the contract will not control a court's use of its equitable powers. The Supreme Court concluded: "Allowing the terms of private agreements to dictate whether a court must issue an injunction would interfere with a court's equitable jurisdiction and powers."

Interestingly, while focusing on St. Jude's lack of evidence of actual harm, the Supreme Court cited to a 1920 case and listed out situations where it may be appropriate for a court to infer irreparable harm such as where customer good will is a stake, or when an employee actually takes business secrets with an intent to benefit from the secrets, or when a risk exists that the secrets will be disclosed in the subsequent employment. The Supreme Court made clear that an inference of irreparable harm is just that and can be rebutted. St. Jude had no evidence that Carter took any business secrets and no customer goodwill was at stake. For St. Jude, again, all it had was the contract provision saying that there would be irreparable harm in the event of a breach. This was not enough to infer harm from a breach.

There are important takeaways from *St. Jude v. Carter* for non-compete agreements. Certainly employers should still include the generic prospective statements of irreparable harm in the event of a breach. They can't hurt (no pun intended). But employers should also include as much detail as possible about the employee's role in the company and the specific harms that may ensue in the event of a breach. And then if the employee leaves to go work for a competitor, recognize that not every breach causes irreparable harm even if language in the agreement says it will.

MARY KNOBLAUCH IS A SHAREHOLDER OF ANTHONY OSTLUND BAER & LOUWAGIE P.A. MARY IS A LABOR AND EMPLOYMENT AND BUSINESS LITIGATOR WITH MORE THAN 25 YEARS OF EXPERIENCE REPRESENTING HER CLIENTS IN BUSINESS AND EMPLOYMENT-RELATED DISPUTES AND PROBLEMS. SHE HAS A PARTICULAR EMPHASIS ON ADVICE AND LITIGATION INVOLVING NON-COMPETITION AND NON-SOLICITATION AGREEMENTS, UNFAIR COMPETITION, AND EMPLOYMENT CONTRACT DISPUTES. SHE ENJOYS WORKING WITH HER CLIENTS TO REACH BUSINESS-ORIENTED RESULTS. FOR MORE INFORMATION, VISIT WWW.ANTHONYOSTLUND.COM.