

National Instrument, LLC v. Braithwaite (complaint attempting to enforce non-compete and seeking injunctive relief prohibiting employment)

In *National Instrument, LLC v. Braithwaite* [¹], the Circuit Court for Baltimore City considered Plaintiff National Instrument's ("National") complaint for a temporary restraining order, preliminary injunction and permanent injunction in attempts to prohibit Defendant Braithwaite ("Braithwaite") from working for IntelliTECH.

National manufactures liquid filling systems in an industry that is highly specialized and small. It competes with only about seventeen other similar companies worldwide, IntelliTECH being one of them. Prior to operating as a limited liability company, National operated as a corporation, National Instrument Company, Inc. ("NIC"). NIC was merged into National in 2004 in order to take advantage of certain statutory benefits afforded to limited liability companies. No change in the operations of National occurred other than the change in its formation. Braithwaite began work with National in 1983 and worked his way up in the company, holding several positions of prominence and occupying a seat on National's executive board. Through his positions in the company, Braithwaite gained intimate knowledge of National's proprietary systems.

Prior to gaining such lofty positions, Braithwaite had executed a Confidentiality and Non-Competition Agreement (the "Agreement") pursuant which he agreed for two years after he left National's employ that he would not work for a company that competed with National. In 2006, Braithwaite decided to resign from National. He weighed job offers from three companies closer to home, one of which was IntelliTECH. Because IntelliTECH directly competed with National, National informed Braithwaite that if he elected to work there, National would enforce the Agreement. Braithwaite ultimately chose to work for IntelliTECH and National subsequently filed an action to enforce the Agreement and enjoin Braithwaite's employment.

The parties agreed that the Court needed only to decide two matters, whether National could enforce the Agreement that Braithwaite had previously signed with NIC prior to its merger with National and whether the Agreement was invalid on its face. Braithwaite first argued that the Agreement could not be enforced because it could not be assigned by NIC to National since it was a personal services contract. However, while it is settled that personal services contracts can not be assigned without prior written approval of the other contracting party, the Court held that National acquired the Agreement through its merger with NIC, by application of law, and not by assignment. Specifically, the articles of merger of NIC into National stated that the assets of each corporation would transfer to and vest in the successor of the merger without further action. Because the Court viewed the Agreement as an asset of NIC, it transferred to National in the merger. In support of this particular premise, the Court cited several decisions of courts faced with statutory language similar to that of Maryland where it was held that covenants not to compete are business assets that transfer from the merging company to the surviving company by operation of law, not by assignment.

¹ 2006 WL 2405831 (Md. Cir. Ct.).

Additionally, where the merger was merely a change in corporate structure and not the merger of two unrelated entities, the Court held that the change in the business form should not work a prohibited assignment. In this case, the merger of NIC into National simply changed the corporate structure. Accordingly, the Court found that the Agreement had not been assigned but merely passed from NIC to National by operation of law. And, citing *Munchak Corp. v. Cunningham* [²], the Court further held that even if the Agreement had been assigned, the policy against assignability of certain personal service contracts was to prohibit an assignment of a contract in which the obligor undertakes to serve only the original obligee. However, when one contracts with a corporation, they almost certainly have contemplated that there could be a change in the corporation and its personnel. A successor corporation, the Court stated, could enforce a covenant not to compete between its predecessor and an employee where the employee's duties had not changed after the merger and/or the employee failed to object to the merger and continue to accept the benefits of employment. In this case, Braithwaite's duties did not change, and he continued to work for National for years after the merger, accepting numerous promotions during that time that exposed him to National's confidential information.

Braithwaite next argued that the Agreement was too broad and thus invalid. The Agreement precluded Braithwaite's employment with a competing company for two years anywhere in North America. However, the Court did not agree that this was too broad a scope. According to the Court, covenants not to compete are analyzed by Maryland courts on a case by case basis with consideration of three factors: (1) whether the restraint of the covenant is necessary to protect the business of the employer, (2) whether the covenant imposes a greater restraint than necessary to secure the employer's business, and (3) whether the degree of injury to the public from the loss of the service and skill of the employee is such as to warrant non-enforcement of the covenant. In this case, the Court held the restraint was warranted to protect National's business and goodwill. Through the various positions he held, Braithwaite had gained sufficient knowledge of National's workings such that if he worked at a competing company, competitors could use the information he possessed in a manner detrimental to National. With respect to the geographical scope of the covenant, the Court determined that, due to the specialized nature of the relevant industry, it was likely that companies all over North America would be competing with each other in the field. In determining whether the scope of a covenant's limitation is reasonable, courts focus on the relevant market of the employer. If, according to the Court, the relevant market of an employer was both national and global, a covenant limited to a narrow geographic region would be meaningless. Thus, in this case, because there were companies all across North America which competed directly with National, the Court held that the geographical scope of the Agreement was reasonable.

Finally, the Court held that the two year limitation of the Agreement was not excessive in light of the fact that it would allow the information Braithwaite possessed relating to National's systems and operations to become stale and less harmful to National while still allowing Braithwaite to obtain employment outside National's specific market niche during the period. Weighing the burdens placed on Braithwaite and society by the Agreement against the benefits to National, the Court ultimately held that the Agreement was not overly broad and could be enforced.

² 457 F.2d 721, 725-726 (4th Cir. 1972).