

DISTRICT COURT

NON-COMPETE COVENANT: 2-year non-compete period for insurance agent reasonable, covenant reasonable ... arbitration provision valid... Plaintiff not judicially estopped from pleading alternative claims... Todd.

Debra Larsen began working for Western States Ins Agency in 5/00 as a "personal line" agent. She was given a recurring book of business continuity of clients that she had not retained through two new efforts, and recorded annual Producers Employment agreements. The first page of her PEA which she entered into in 2015 spelt out that "ITES AGREEMENT IS SUBJECT TO ABRUPTION." It also included a "Covenant Not to Compete." She quit in 2015 and started his Agency for Montana, claiming that she could not meet the new legislation criteria in the 2016 PEA. She also claimed that she had no chance to negotiate the agreement, and requests a declaratory judgment that the arbitration, non-compete, and liquidated the damages clauses are unenforceable under Montana law. She pled it the alternative that the entire PEA is unenforceable under Montana law. Western agents that became she pled these alternative claims she has pled herself or of court for playing "fast and loose" with the Court. However, "the rules of civil government expressly permit alternative pleadings such as a complaint, and in an answer." Matthews (Mont. 1979; Rule 86(c)).

"A reasonable and limited covenant restraining trade will be considered valid. These things are essential to such a covenant. If it must be partial or restricted in its operation in respect either to time or place," I'm mutile on some good consideration and 31 minutes of reasonable, that is, it should afford only a fair protection to the parties of the party in whose favor it is made, and must not be so large in its operation as to interfere with the interests of the public." Curl (Mont. 2003).

Larsen does not dispute the first 2 elements. The covenant is limited to 24 months and to only Western clients that she continues to keep a few own customers. She was given an existing book of business when beginning her employment which gave her access to an income 3 times the average county wage.

She does dispute element 3, arguing that duration of the restriction is unreasonable; the amount of liquidated damages is unreasonable, and Western actions render the entire covenant unreasonable. She argues that because the PEA were only 1 year contacts the non-compete covenant should be 1 year based. She argues that this work Western greater protection than under contract law. However, she offers no supporting case law. Parties are free to contact to whatever they want at long as the contract is not illegal for for an illegal purpose. Larsen was given an opportunity to obtain a good position only potential to make a large amount of money if she increased her existing book of business. She had been in the insurance business for 20 years and signed a similar agreement in her prior job, so the arguments that she was sent in a position to fully comprehend what he was getting into does not hold water with the Court. "Although contracts in restraint of trade are generally void by statute, \$28.7 cents. Covenants tend to compete extending beyond one year are enforceable when they are in writing, \$28.4-2030. Whether the terms are copied and reasoned in time and place." Individual Nursing Staff (Mont. 2003). Because Montana courts recognise non-compete covenants that extend beyond 1 year that are reasonable, 25-24 month fixed duration in the PEA is enforceable. Larsen entered into 5 consecutive PEAs and was fully aware of the terms. She cannot now claim that the 24-month period is unreasonable and against Montana law.

Larsen claims that Western actions make the entire covenant unreasonable. She claims that it broke its promise to provide additional resources and attains some time asked her to include the Book of Business as an unreasonable level. She claims that it informed customers that she was on a "leave of absence" months after she had quit, made no attempt to retain her customer and earn a fee. Larsen claims that they would want to follow her to her new opinion, and referred customers to her and then proceed to reap the benefits of receiving money owned to it under the PEA. However, she is a veteran agent. Western cannot be assumed to have made her take any referral. She obviously has a mind of her own and can make her own informed decisions, whether she could have attained a higher level on her book of business in so a factor which makes non-compete covenant unreasonable. This perhaps would make the part of the agreement specifically relating to job performance punishable, but has absolutely no effect on a non-compete covenant. She cite no case law other than Curl that discusses that the covenants must be reasonable. Therefore this argument also does not hold water. The covenants was reasonable.

Larsen argues that the PEA arbitration clause is unenforceable. It is clear Tom Ross (Mont. 2002) that the PEA was a contract of admission. It was a standardised form and Larsen was left to confer accept or reject it on a stake-free leave. He said, However, this decision is drawn that it is unenforceable. It was within her reasonable expectations. Id. Because of her industry experience she knew that when entering into the PEA she would be accepting some benefits as well as some burdens. But the most defining fact is the bold hope both notice or arbitration on the 1st page. In her 30 years of insurance work she had signed many employment agreements, and in fact had signed one at Beansdon before she came to Western that had some of the same participation as the First Western inclusion in its PEA. She was a sophisticated agent who had signed a other PEA with Western. She presented no evidence that she did not read the standardised contract before entering it. Her actions and the facts do not affect the assertion that the arbitration provisions was not within her reasonable expectations.

Larsen does not address any of the 8 factors in Moss (dealing with arbitrators and the arbitration provisions before this Court can look at the 'unconceivability, unduly oppressive or against public policy' factors outlined in [Ment. 1999]). Therefore the Court relied 99 no further regarding arbitration provision not being enforceable. She cited Justice Nelson's special concurrence in Moss to show which factors the Court must consider when determining whether a waiver was voluntary, knowing and intelligent in an arbitration clause in an adhesive contract. However, however, it might go online mandates that the 5 factors listed must first be addressed before even considering the New policy factors. Therefore, Larsen has not met the burden of proving whether or not the contract was unduly oppressive, unconceivable or against public policy. The PEA is enforceable and specifically, the arbitration provision is enforceable. All issues of damages or fees must be submitted to arbitration.

Larsen v Western States Ins Agency, Yellowstone DV 06-56, 11/8/06.

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