# **Research Log**

Case: Nurse Staffing, Inc. v. Smith

Client Code SMI -- CV
Date: December 7, 2011

Parties: Nurse Staffing, Inc. (a Georgia Corporation) and Julia Smith (Georgia Resident -- our client)

Jurisdiction: Georgia

Areas of Law: Employment Law; Torts; Contracts

**Secondary Sources to Consult:** 

Covenants not to Compete: A state-by-state survey / Brian M. Malsberger;

Georgia Contracts: Law and Litigation/John K. Larkins, Jr.

Georgia Jurisprudence – Employment and Labor

First Issue: Are covenants not to compete enforceable in Georgia

Search Terms: Covenant not to compete; employee; employer; valid; enforceable; contracts; non-competition

agreement

### **Statutes from Secondary Sources:**

Statute	Summary	Update
GA CONST Art. 3, § 6, V(c)	A contract or agreement which may have the effect of or which is intended to have the effect of defeating or lessening competition, is unlawful and void.	Still good law
Ga. Code Ann., § 13-8-53	Enforcement of contracts that restrict competition after the term of employment, shall not be permitted against any employee who does not, in the course of his or her employment:	Still good law
	(1)Customarily and regularly solicit for the employer customers or prospective customers;	
	<ul><li>(2) Customarily and regularly engage in making sales or obtaining orders or contracts for products or services to be performed by others;</li><li>(3) Perform the following duties:</li></ul>	
	(3) Perform the following duties:	

G.S.A. § 13-8-2.1		Laws 2011, Act 99, § 3 repealed this section
	(4) Perform the duties of a key employee or of a professional.	
	(C) Have the authority to hire or fire other employees or have particular weight given to suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees; or	
	(B) Customarily and regularly direct the work of two or more other employees; and	
	(A) Have a primary duty of managing the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;	

# **Cases from Secondary Sources:**

Case	Summary	Update
Allen v Hub Cap Heaven	Covenant not to compete valid if	Good law
484 S.E. 2d 259	its strictly limited in time and	
-From Malsberger Treatise	territorial affect	
Jackson v Hart	In certain situations convents	Good law
261 Ga 371	not to compete will be held	
-From Malsberger Treatise	unconstitutional	

**Second Issue:** Is a covenant not to compete signed after employee starts working enforceable? **Search Terms:** Covenant not to compete; restrictive covenant, employee; employer; valid; enforceable; contracts; non-competition agreement; consideration

Statute	Summary	Update
	Consideration is essential to a	Still good law
Ga. Code Ann., § 13-3-40	contract which the law will	
	enforce. An executory contract	
	without consideration is called a	
	naked promise	
Ga. Code Ann., § 13-3-46	Mere inadequacy of	Still good law

consideration alone will not void	
a contract.	

### **Cases from Secondary Sources:**

Case	Summary	Update
Thomas v Coastal 214 Ga 832 (1959)	Consideration exists for non-compete	Good law
From Malsberger Treatise	executed after employment	
Glisson v Global 287 Ga. App. 640	Continued employment not adequate	Good law
(2007)	consideration when executed after	
From Larkins Treatise	signing 2 year written agreement	

#### **Cases from Westlaw:**

Search: ((covenant /5 compete) OR (restrictive /5 covenant)) /30 consideration)

Results: 85

Swartz Investments, LLC v. Vion Pharmaceuticals, Inc., 252 Ga. App. 365, 369, (2001)	for a restrictive covenant to be enforceable, it must be founded on valuable consideration	Good law

Search: ((covenant /5 compete) OR (restrictive /5 covenant)) /30 consideration and continued /5 employ!)

Results: 9

**No Relevant Cases** 

**Third Issue:** Is the thirty mile restriction overbroad

**Search Terms:** reasonable, territory, geographic area, overbroad, scope, Covenant not to compete; employee; employer; valid; enforceable; contracts; non-competition agreement; consideration

Statute	Summary	Update
Ga. Code Ann., § 13-8-53	See above	Good law

## **Cases from Secondary Sources:**

Case	Summary	Update
Beacon Sec Tech v Beasley, 286 Ga.	Restrictive covenant of 8	Good law
App 11. 13 (2007)	county area was overbroad	
Dent Wizard Corp v Brown, 272 Ga.	4 country restriction was	Good law
App 553, 556 (2005)	overbroad	

#### **Cases from Westlaw:**

Search: ((covenant /5 compete) OR (restrictive /5 covenant) OR (non-competition)) /30 (unreasonable or overbroad) /30 (geographic territory))

Results: 36

Case	Summary	Update
Paramount Tax & Accounting, LLC v. H & R Block E. Enterprises, Inc., 299 Ga. App. 596, 601, (2009)	The noncompetition clause in Squire's employment contract fails Non-competition Covenant that was 10 miles beyond Gainesville was overbroad.	Good law
Ceramic & Metal Coatings Corp. v. Hizer, 242 Ga. App. 391 (2000)	Restrictive covenant contained in employment contract was overbroad in terms of territorial coverage, where territory covered by covenant was all of Georgia and Florida	

Search: ((covenant /5 compete) OR (restrictive /5 covenant) OR (non-competition)) /30 (unreasonable or overbroad) /30 (geographic territory) and thirty /5 miles

Results: 1

Case	Summary	Update
Spalding v. Se. Pers. of Atlanta,	the territory was not unreasonable	Good Law
Inc., 222 Ga. 339, 343, (1966)	with a 30 mile restriction of the	
	main office of the corporation	
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**Fourth Issue:** Is the two year time period of non-competition overbroad? **Search Terms:** temporal limitations, time, length, time restrictions, Covenant not to compete; employee; employer; valid; enforceable; contracts; non-competition agreement; consideration

Statute	Summary	Update

Case	Summary	Update

Fifth Issue: If a covenant not to compete is overbroad in any manner can the court rewrite the agreement to

make it reasonable?

**Search Terms:** 

**Sixth Issue:** Burden of Proof