Volume 9 | Issue 3 Article 7

1986

Contracts—Covenants Not to Compete Ancillary to the Sale of a Business—Fifteen-Year Restraint is Reasonable

Martha Jett McAlister

CONTRACTS — COVENANTS NOT TO COMPETE ANCILLARY TO THE SALE OF A BUSINESS — FIFTEEN-YEAR RESTRAINT IS REASONABLE. *Hyde v. CM Vending*, 288 Ark. 218, 703 S.W.2d 862 (1986).

In 1972 Hyde Vending Co., Inc. sold its food and drink vending business to CM Vending Co., Inc. The Hyde Co. retained the cigarette and music portion of its business. The sale included machines, trucks, other equipment, and exclusive vending agreements with certain listed industrial and business locations, as well as the goodwill of the business. A covenant not to compete was part of the contract.[1] The covenant provided that Hyde and its stockholders agreed not to compete with CM in any manner for five years after payment of the purchase price. Since the debt repayment could extend for ten years, the total duration of the covenant not to compete could be as long as fifteen years.

In 1979 the CM Company successfully bid for the exclusive food and beverage contract at Arkansas Nuclear One (ANO). CM retained the contract until 1984, when Valley Vending, Inc. obtained the ANO contract. One of the owners of Valley Vending was David Hyde, son of Bert Hyde, who was one of the stockholders of Hyde Vending. Bert Hyde made unsecured loans to Valley Vending and advised and assisted it in the business.

CM brought suit in chancery court, alleging breach of the covenant not to compete because of Bert Hyde's involvement with Valley

1. The full text of the covenant not to compete, as drafted by Hyde's attorneys stated:

> Hyde and each of its stockholders hereby agrees that from and after the closing none of them will, without CM's prior written consent, directly or indirectly own, manage, operate, join, control, or participate in the ownership, management, operation, or control of, or be connected in any manner with, any business, either directly or indirectly in competition with CM, or become interested in any competitor of CM, within a period of five (5) years after payment in full of the purchase price as herein provided and within a radius of fifty miles of the City of Russellville, Arkansas; provided, however, that Hyde shall have the right to maintain certain cigarette vending machines and certain coin operated record playing music machines as specifically listed and described on Exhibit "C" attached hereto, and that it and its stockholders may, as a corporation or as individuals, enter into the music vending machine business, only, without being in violation of this provision; and provided further, that CM will not, during the same period herein enter into the music vending machine business; and, provided further, that either of the parties hereto may in writing waive any portion or all of this particular covenant not to compete.

Hyde v. CM Vending Co., 288 Ark. 218, 220-21, 703 S.W.2d 862, 863-64 (1986).

Vending. The chancellor found that the covenant had been breached, and awarded CM damages and an injunction.

On appeal to the Arkansas Supreme Court, Bert Hyde and the other appellants did not question the sufficiency of the evidence of the breach. However, the appellants did challenge the length of the covenant, claiming that it was unreasonable and, thus, unenforceable. The court upheld the covenant, finding that a duration of fifteen years was reasonable in light of the purchase of goodwill. *Hyde v. CM Vending Co.*, 288 Ark. 218, 703 S.W.2d 862 (1986).

Covenants not to compete have been controversial since their inception in medieval England.[2] These covenants have traditionally been regarded as covenants in restraint of trade.[3] The original rule that all restraints of trade were void first appeared in *Dyer's Case* in 1414.[4] The objections to restraints of trade were based on the social and economic conditions arising out of the apprenticeship system in England.[5] A man's skills in a specific trade were his only means of earning a living. To enforce a covenant not to compete would leave the promisor without a means of livelihood and would deprive society of the individual's skills.[6]

In 1711 the Court of Queen's Bench in *Mitchell v. Reynolds*[7] formulated principles that have been used since to guide courts in cases involving the enforcement of a covenant not to compete.[8] The court recognized that overbroad covenants in restraint of trade were impermissible; however, if the covenant was reasonable and if consideration was given, then the covenant merited enforcement.[9] In *Mitchell*, the covenant at issue was ancillary to the sale of a business.[10] One hundred years later in the English case of *Horner v. Graves*,[11] the court carefully restated the *Mitchell* rule of reason. The court in *Horner* held

2. Blake, *Employee Agreements not to Compete*, 73 HARV. L. REV. 625, 629-37 (1960).

3. *Id.* at 626. *See also* Handler & Larazoff, *Restraint of Trade and the Restatement (Second) of Contracts*, N.Y.U. L. REV. 669, 721 (1982).

4. Y. B. Mich. 2 Hen. 5, f. 5. pl. 26 (C.P. 1414), *cited in* Blake, *supra* note 2, at 636. The apprentice (Dyer) signed a covenant not to compete with his master in order to obtain an apprenticeship to learn a trade. Once Dyer had completed his apprenticeship he had the skills necessary to earn a living at his trade. But the covenant not to compete restrained him from working. The court held the covenant to be an invalid restraint on trade.

5. Handler & Larazoff, *supra* note 3, at 721.

6. *Id.*

7. 1. P. Wms. 181, 24 Eng. Rep. 347 (Q. B. 1711), *cited in* Blake, *supra* note 2, at 629.

8. *See* Blake, *supra* note 2, at 630-31.

9. *Id.* at 629.

10. *Id.*

11. 7 Bing. 735, 131 Eng. Rep. 284 (1831), *cited in* Handler & Larazoff, *supra* note 3, at 724-25.

that the covenant might be found reasonable as long as the restraint was no greater than needed to protect the promisee and did not cause economic harm to the public.[12]

By the nineteenth century, strong freedom of contract views had developed, which influenced the judicial determination of reasonableness.[13] Courts tended to uphold covenants not to compete because of their reluctance to interfere with freedom of contract.[14] In 1873 the United States Supreme Court adopted the rule of reasonableness[15] in upholding a covenant not to compete ancillary to the sale of a business. The state courts of New York[16] and Massachusetts[17] quickly followed suit, announcing that they would apply a rule of reasonableness in considering the validity of covenants not to compete.[18] The Arkansas Supreme Court adopted the rule of reasonableness in 1896 in *Webster v. Williams*.[19] In *Webster* the Arkansas Supreme Court upheld a covenant not to compete by determining that the restraint afforded fair protection to the interest of the party in favor of whom it was given, and, yet, was not so large a restraint as to interfere with the economic interest of the public.[20]

Since *Mitchell*, courts have recognized two different types of covenants not to compete.[21] Twentieth century courts have developed different judicial standards for the two types of covenants.[22] Courts apply a stricter standard of reasonableness to restraints in covenants given by employees to employers than to restraints in covenants ancillary to the

---

12. Handler & Larazoff, *supra* note 3, at 724-25.
13. Blake, *supra* note 2, at 640-41.
14. *Id.* at 641-42.
15. Oregon Steam Navigation Co. v. Winsor, 87 U.S. (20 Wall.) 64 (1873). The Oregon Steam Navigation Co. bought a steamer from the California Steam Navigation Co. and signed a covenant not to compete along the coast or waterways of California. Subsequently, Winsor bought the steamer and agreed to the conditions of the prior covenant. Winsor attempted to do business in California and the Oregon Co. then sued to enjoin Winsor. The Supreme Court held that the geographical restraint was reasonable and upheld the covenant not to compete. The Court defined the rule of reasonableness as a test of two possible injuries that might occur if the restraint in a covenant not to compete was too broad. The first possible injury was the injury to the public. If the restraint was unreasonable it unnecessarily deprived the public of the restricted party's labor or business and caused economic harm. The second possible injury was to the promisor. The restraint was too broad if it totally precluded the promisor from pursuing his occupation and thus prevented the promisor from supporting his family.
16. Diamond Match Co. v. Roeber, 106 N.Y. 473, 13 N.E. 419 (1887).
17. Morse Twist Drill & Machine Co. v. Morse, 103 Mass. 73 (1869).
18. *See* Blake, *supra* note 2, at 644.
19. 62 Ark. 101, 34 S.W. 537 (1896).
20. *Id.* at 106, 34 S.W. at 538.
21. Blake, *supra* note 2, at 646-47.
22. *See id.*

sale of a business.[23]

In order to examine and distinguish the two types of covenants not to compete, an understanding of the different protectable interests is necessary. Employer/employee covenants will be discussed briefly,[24] followed by a thorough review of covenants ancillary to the sale of a business.

The employer has three basic interests that may be protected by obtaining a reasonable covenant not to compete from an employee.[25] First, the employer's return on investment in the training of an employee is considered a protectable interest.[26] Second, an employer has a protectable interest in confidential information, such as trade secrets or special business practices.[27] Finally, in certain businesses, customer lists are considered valuable enough to protect.[28]

The employee who is bound by a covenant not to compete maintains a strong interest in preserving the means to provide economically for himself and his family.[29] His skills and knowledge may be his only valuable asset.[30] Additionally, a person seeking employment is usually in an unequal bargaining position with the employer; thus, it is unlikely that the covenant was actually bargained for.[31] In order to protect the employee, courts guard against broad and oppressive covenant provisions drafted by the employer by declaring the entire contract void.[32]

The Arkansas courts have defined the acceptable parameters of employee covenants not to compete, particularly the acceptable duration of these covenants. Although courts decide each case based upon

---

23. *See id.* at 647. *But see* 14 S. WILLISTON, A TREATISE ON THE LAW OF CONTRACTS § 1643 at 147-51 (3d ed. 1972). Professor Williston doubted the validity of the distinction between the two types of covenants. He felt that the ultimate question in both was the protection of the promisee's rights and the protection of the public.

24. It is beyond the scope of this note to consider in depth all the Arkansas cases pertaining to employer/employee covenants not to compete. A general overview of employee covenants is given in order to provide the reader with a basis for distinguishing the different judicial standards for the two types of covenants not to compete.

25. *See* Blake, *supra* note 2, at 651-74.

26. Orkin Exterminating Co. v. Murrell, 212 Ark. 449, 206 S.W.2d 185 (1947).

27. Witmer v. Arkansas Dailies, Inc., 202 Ark. 470, 151 S.W.2d 971 (1941).

28. Borden, Inc. v. Huey, 261 Ark. 313, 547 S.W.2d 760 (1963). *But cf.* Rector-Phillips-Morse, Inc. v. Vroman, 253 Ark. 750, 489 S.W.2d 1 (1973) (real estate data recorded in a card index file system not secret); Miller v. Fairfield Bay, Inc., 247 Ark. 565, 446 S.W.2d 660 (1969) (real estate salesman's knowledge of prospective buyers not a trade secret).

29. WILLISTON, *supra* note 23, § 1644A at 174-78.

30. *See id.* at 177 n.7.

31. Blake, *supra* note 2, at 647-48.

32. Rebsamen Ins. v. Milton, 269 Ark. 737, 600 S.W.2d 441 (Ark. App. 1980). *See also* WILLISTON, *supra* note 23, § 1636 at 88-94.

its particular circumstances,[33] they tend to uphold one-year employee covenants as reasonable,[34] while generally finding three-year covenants unreasonable.[35] In *Borden, Inc. v. Huey*[36] the Arkansas Supreme Court found a one-year employee covenant not to compete reasonable in order to protect the employer's customer lists. The court found that an outside salesman enjoyed a unique personal relationship with the employer's customers making the employer vulnerable whenever such an employee left.[37] In *All-State Supply, Inc. v. Fisher*[38] the Arkansas Supreme Court found a two-year employee covenant reasonable, in light of the training provided by the employer and the confidential information obtained by the employee.[39]

On the other hand, courts generally apply a more liberal standard of reasonableness to covenants not to compete ancillary to the sale of a business than to employment covenants.[40] When one buys the business of another, he purchases more than the physical assets of the business.[41] He is willing to pay more to get the "goodwill" of the business as well.[42] Thus, the seller voluntarily promises to restrain himself from trading with others, and receives additional consideration in exchange for that promise.[43]

Since 1896 Arkansas courts have consistently applied the test of reasonableness in determining the validity of covenants not to compete.[44] According to the rule of reasonableness, a covenant not to compete is valid if the covenant affords a fair protection of the interest

33. McLeod v. Meyer, 237 Ark. 173, 372 S.W.2d 220 (1963).

34. Borden, Inc. v. Huey, 261 Ark. 313, 547 S.W.2d 760 (1977). *See also* Orkin Exterminating Co. v. Murrell, 212 Ark. 449, 206 S.W.2d 185 (1947).

35. Rector-Phillips-Morse, Inc. v. Vroman, 253 Ark. 750, 489 S.W.2d 1 (1973); Miller v. Fairfield Bay, Inc., 247 Ark. 565, 446 S.W.2d 660 (1969).

36. 261 Ark. 313, 546 S.W.2d 760 (1977).

37. *Id.* at 316, 546 S.W.2d at 761-62. Huey was an outside salesman for Borden. He signed a covenant not to compete for one year within a specified geographic area. The court found one year to be reasonable, as the restraint coordinated with one year business cycles within the industry.

38. 252 Ark. 962, 483 S.W.2d 210 (1972). All-State Supply was engaged in the sale of audio visual equipment to schools, and Fisher was an outside salesman trained by All-State.

39. *Id.* at 965, 483 S.W.2d at 212.

40. McLeod v. Meyer, 237 Ark. 173, 372 S.W.2d 220 (1963); *see also* 54 AM. JUR. 2D *Monopolies, Restraints of Trade, and Unfair Trade Practices* § 543 (1971).

41. 6A A. CORBIN, CORBIN ON CONTRACTS § 1385, at 46 (1962).

42. *Id.*

43. *Id.*

44. Webster v. Williams, 62 Ark. 101, 34 S.W. 537 (1896); *see also* Madison Bank and Trust v. First National Bank of Huntsville, 276 Ark. 405, 635 S.W.2d 268 (1982); Borden, Inc. v. Huey, 261 Ark. 313, 547 S.W.2d 760 (1977); McLeod v. Meyer, 237 Ark. 173, 372 S.W.2d 220 (1963); Wright v. Marshall, 182 Ark. 890, 33 S.W.2d 43 (1930).

intended to be protected, and if it does not harm the public.[45] Covenants ancillary to the sale of a business are generally held valid in Arkansas, if they reasonably protect the purchaser and do not harm the public.[46] Whether a restraint provision is reasonable or unreasonable is a matter to be determined by the particular circumstances of each case.[47]

Arkansas does not recognize the "cut down rule."[48] Therefore, if any provision of a covenant is found invalid, the entire covenant is void.[49] The court looks at three factors in determining the reasonableness of such covenants: geographical range of the covenant, duration of the covenant, and the activities restricted by the covenant.[50] If the covenant not to compete lasts longer than is necessary to protect the purchaser, covers a geographic area larger than is necessary, or prohibits a seller from engaging in activities unnecessarily, the covenant will be found unreasonable.[51]

The general rule regarding the acceptable geographical range of a covenant not to compete ancillary to the sale of a business is that the territory included must be necessary to protect the promisee's interest.[52] The Arkansas Supreme Court in *Madison Bank and Trust v. First National Bank of Huntsville*[53] upheld a covenant encompassing a ten-mile radius. The court in *Madison* reasoned that informed busi-

45. *Webster*, 62 Ark. at 102, 34 S.W. at 538.

46. Wright v. Marshall, 182 Ark. 890, 33 S.W.2d 43 (1930). *Cf.* Wren v. Pearah, 220 Ark. 888, 249 S.W.2d 985 (1952) (a covenant not to compete in a deed for sale of land found unreasonable and against public policy).

47. McLeod v. Meyer, 237 Ark. 173, 372 S.W.2d 220 (1963).

48. Brown v. Devine, 240 Ark. 838, 402 S.W.2d 669 (1966). *See* Blake, *supra* note 2, at 683-84. When a restrictive covenant is determined to be overbroad, this rule allows the court to pare down the excessive terms (area, duration, or scope) and enforce the covenant to the extent the court considers reasonable. *See also* CORBIN, *supra* note 41, § 1390 at 67-69 (1962). The "blue pencil" rule is described by Professor Corbin as a mechanical means of narrowing down a restraint which is unreasonable because it is excessive. For the rule to be followed, a covenant must be so worded that the excessive restraint can be eliminated by crossing out a few words with a "blue pencil," leaving words that can be construed as a complete and valid contract. *See* Blake, *supra* note 2, at 682-83. One possible effect of the "blue pencil" or "cut down" rule is to encourage employers to draft covenants that are on the side of excessiveness. Generally, the employee will abide by the covenant, even if it is too restrictive. The employer drafting the overbroad covenant may realize that even if the employee challenges the covenant in court, the worst outcome would be the judicial enforcement of a more reasonable covenant.

49. Rector-Phillips-Morse, Inc. v. Vroman, 253 Ark. 750, 489 S.W.2d 1 (1973).

50. Easley v. Sky, Inc., 15 Ark. App. 66, 689 S.W.2d 356 (1985).

51. *Id.*

52. Annotation, *Sale — Covenant as to Competition — Area*, 46 A.L.R.2D 119, 363 (1956). The annotation shows that the majority of jurisdictions uphold a ten-mile restriction ancillary to the sale of a business.

53. 276 Ark. 405, 635 S.W.2d 268 (1982).

nessmen entered into the covenant and that the restriction in banking services and competition would not harm the small community.[54] The Arkansas Court of Appeals in *Easley v. Sky, Inc.*[55] upheld a one hundred-mile restraint, but only in light of very special circumstances. *Easley* involved the sale of a truck-stop, and the general rule in such a sale is for distributors to space the franchises about 150 miles apart.[56] This special business practice guided the court in its determination that the restraint was reasonable.[57]

A covenant not to compete ancillary to the sale of a business may also restrict the activities of the seller. In a case involving the sale of a tailor's shop, the Arkansas Supreme Court in *Bledsoe v. Carpenter*[58] held that the promise not to compete with the purchaser in the business of tailoring or hatting was reasonable. In *Hultsman v. Carroll*[59] the Arkansas Supreme Court upheld as reasonable a promise by the seller of a service station not to sell gasoline at a lower price at a station across the street.

Arkansas joins the majority of states in upholding covenants not to compete ancillary to the sale of a business if the facts of the case demonstrate that the length of the restraint is reasonable.[60] The Arkansas courts have upheld covenants not to compete of various lengths. In *Bledsoe* the Arkansas Supreme Court found a five-year covenant not to compete reasonable in the cleaning, pressing, and tailoring business.[61] Sixty years later in *Madison Bank and Trust v. First National Bank of Huntsville*,[62] the Arkansas Supreme Court carefully considered all of the surrounding circumstances in determining the validity of a ten-year covenant not to compete. The court stressed the fact that the covenant was ancillary to the sale of a bank, and found it important that both parties entered into the covenant voluntarily.[63] The court characterized the covenant not to compete as part of the consideration that the buyer paid to obtain the bank.[64]

---

54. *Id.* at 411-12, 635 S.W.2d at 272.
55. 15 Ark. App. 66, 689 S.W.2d 356 (1985).
56. *Id.* at 68, 689 S.W.2d at 359.
57. *Id.*
58. 160 Ark. 349, 254 S.W. 677 (1923).
59. 177 Ark. 432, 6 S.W.2d 551 (1928).
60. Annotation, *Sale — Covenant as to Competition — Time*, 45 A.L.R.2D 77, 115 (1956). This annotation provides a thorough breakdown of covenants not to compete ancillary to the sale of a business, by type of business sold as well as by length of the covenant.
61. 160 Ark. 349, 254 S.W. 677 (1923).
62. 276 Ark. 405, 635 S.W.2d 268 (1982).
63. *Id.* at 408, 635 S.W.2d at 270.
64. *Id.* at 410, 635 S.W.2d at 271.

In older cases the Arkansas Supreme Court has upheld extremely long covenants not to compete ancillary to the sale of a business. In *Robbins v. Plant*,[65] decided in 1927, the Arkansas Supreme Court upheld a twenty-year covenant not to compete, while addressing the main issue of the case which was a question of liquidated damages.[66] The court summarily mentioned that covenants ancillary to the sale of a business are generally not against public policy,[67] but otherwise gave little indication as to why this covenant was valid. Apparently, the court focused on protecting the purchase of goodwill rather than on the duration of the covenant.[68]

Similarly, the Arkansas Supreme Court in *Hultsman v. Carroll*[69] upheld a covenant not to compete that mentioned no specific length of time. The only time limit mentioned in the covenant pertained to the length of time that the purchaser would be carrying on the business.[70] The seller promised not to sell gasoline at a lower price at a station across the street during that time.[71] Ultimately, the holding in this case, validating a covenant not to compete with no specific length, is very limited because the undetermined time restraint applied only to a single specific activity, the sale of gasoline, and to a specific location.[72]

The Arkansas law on the reasonable length of a covenant not to compete in the sale of a business seemed well settled after the court upheld the ten-year covenant in *Madison Bank and Trust* in 1982.[73] However, in 1984 the United States District Court for the Western District of Arkansas held in *Stubblefield v. Siloam Springs Newspapers, Inc.*[74] that a ten-year restraint was unreasonable. The court carefully analyzed the Arkansas cases on employee covenants and on covenants ancillary to the sale of a business.[75] It then looked at the sale involved and reasoned that since one man was selling a small business, the case more closely resembled an employee covenant case.[76] The court held that the ten-year length of the covenant not to compete was

65. 174 Ark. 639, 297 S.W. 1027 (1927).
66. *Id.* at 643, 297 S.W. at 1029.
67. *Id.*
68. *Id.* at 646, 297 S.W. at 1030.
69. 177 Ark. 432, 6 S.W.2d 551 (1928).
70. *Id.* at 435, 6 S.W.2d at 552.
71. *Id.*
72. *Id.*
73. 276 Ark. 405, 635 S.W.2d 268 (1982).
74. 590 F. Supp. 1032 (W.D. Ark. 1984).
75. *Id.* at 1035-36.
76. *Id.* at 1036.

unreasonable.[77] The district court noted that *Madison Bank and Trust* was not controlling, and that because of the factual differences in the two cases, *Madison Bank and Trust* was "not even strong persuasive authority."[78]

The facts in *Stubblefield* indicated that the covenant was ancillary to the sale of a business,[79] yet, the court applied the stricter reasonableness test of employee covenants not to compete.[80] From the time of the *Stubblefield* decision in 1984 until the decision in *Hyde v. CM Vending Co.*[81] in 1986, the Arkansas appellate courts decided only one case involving covenants not to compete ancillary to the sale of a business. That case was *Easley v. Sky, Inc.*,[82] in which the Arkansas Court of Appeals upheld a five-year covenant not to compete. In view of the fact that from 1985 to 1986 there were no other decisions by the Arkansas appellate courts involving covenants not to compete, the effect of the decision in *Stubblefield* was unclear.

If there was any confusion in the law of covenants not to compete, the Arkansas Supreme Court, in *Hyde v. CM Vending Co.*,[83] clarified the law in this area. In *Hyde* the court determined that a covenant not to compete for fifteen years was reasonable,[84] and emphasized that the reasonableness of a covenant not to compete in the sale of a business should be judged by the accompanying circumstances.[85] It held that the protectable interest of CM Vending was the value of the goodwill that CM had purchased,[86] and found the purchase of goodwill of particular significance because Hyde Vending was poised and ready to compete in the vending business.[87] The court stated that CM's only method of protecting its recent purchase was through the use of a covenant not to compete.[88]

The court noted that the only cases cited by Hyde in which the court refused to uphold the covenants not to compete were those found in employment contracts.[89] The court stated that employee covenants

77. *Id.* at 1037.
78. *Id.* at 1036.
79. *Id.* at 1033.
80. *Id.* at 1036.
81. 288 Ark. 218, 703 S.W.2d 862 (1986).
82. 15 Ark. App. 66, 689 S.W.2d 356 (1985).
83. 288 Ark. 218, 703 S.W.2d 862 (1986).
84. *Id.* at 223, 703 S.W.2d at 865.
85. *Id.* at 222, 703 S.W.2d at 864.
86. *Id.* at 223, 703 S.W.2d at 864-65.
87. *Id.*
88. *Id.*
89. *Id.* at 222, 703 S.W.2d at 864.

not to compete are judged by a stricter standard.[90]

In holding that the fifteen-year duration was reasonable, the court in *Hyde* followed a line of Arkansas cases in which varying lengths of time have been found to be reasonable. The court in *Hyde* mentioned that the Arkansas Supreme Court had upheld a five-year covenant in *Bledsoe v. Carpenter*;[91] a ten-year covenant in *Madison Bank and Trust v. First National Bank of Huntsville*;[92] a twenty-year covenant in *Robbins v. Plant*;[93] and a covenant without a time limit in *Wright v. Marshall*.[94]

The court in *Hyde* enjoined Bert and Nancy Hyde from competing with CM because they were parties to the original contract.[95] It also enjoined Valley Vending from aiding or abetting the Hydes in breaching the contract.[96] The court awarded damages to CM Vending for profits lost on the ANO contract that Valley Vending had wrongfully obtained by competing against CM.[97]

Hyde v. CM Vending Co. is significant because the Arkansas Supreme Court drew a very bright line between the two types of covenants not to compete. The court reemphasized the strict standards that it applies to employee covenants. However, when reviewing covenants not to compete ancillary to the sale of a business, the court indicated that it will uphold all covenants not to compete that contain reasonable restraints necessary to protect the purchaser's interest.

The court had no difficulty in finding a fifteen-year covenant not to compete reasonable. There is some significance in the fact that this is five years longer than what has generally been considered valid. However, the greater significance of the *Hyde* decision lies in the court's consideration of the reasons behind the fifteen-year covenant not to compete. Apparently, the presence of loan repayment schedules and monies invested strengthens the reasonableness of a covenant with a longer duration. The court's attention to the financial arrangements supporting the covenant not to compete ancillary to the sale of a business is particularly significant for attorneys drafting such documents in the future. An attorney who incorporates valid business reasoning into

---

90. *Id.*

91. *Id.* (citing Bledsoe v. Carpenter, 160 Ark. 349, 254 S.W. 677 (1923)).

92. *Id.*, (citing Madison Bank and Trust v. First National Bank of Huntsville, 276 Ark. 405, 635 S.W.2d 268 (1982)).

93. *Id.*, (citing Robbins v. Plant, 174 Ark. 639, 297 S.W. 1027 (1927)).

94. *Id.*, (citing Wright v. Marshall, 182 Ark. 890, 33 S.W.2d 43 (1930)).

95. *Id.* at 223, 703 S.W.2d at 865.

96. *Id.*

97. *Id.* at 224, 703 S.W.2d at 865.

the decision on the length of the covenant not to compete will be strengthening the reasonableness of the covenant. Thus, the court in *Hyde* demonstrated that sound financial and business decisions are a part of the rule of reasonableness in covenants not to compete ancillary to the sale of a business.

Martha Jett McAlister