REED, ROBERTS ASSOCIATES, INC. v. STRAUMAN
40 N.Y.2d 303, 353 N.E.2d 590, 386 N.Y.S.2d 677 (1976)
Court of Appeals of New York.

WACHTLER, Judge.

. . . Reed, Roberts Associates, Inc., with over 6,000 customers being served through some 21 offices scattered throughout the Nation and with gross sales of almost $4 million, is one of the top three companies in its field. The lion's share of its business involves supplying advice and guidance to employers with respect to their obligations under State unemployment laws. The object of this service is to minimize the tax liability and administrative expenses involved in complying with these laws. Other services performed by Reed, Roberts include consultation regarding workmen's compensation, disability benefits and pension plans. This action was commenced by Reed, Roberts to prevent a former employee from competing against them and soliciting their customers.

When John Strauman was hired by Reed, Roberts in November, 1962 he signed a restrictive covenant which read in pertinent part: "I do therefore consent that at no time shall I either directly or indirectly solicit any of your clients, and I do further agree that for a period of three years from the date of termination of my employment that I will not either directly or indirectly be engaged in, nor in any manner whatsoever become interested directly or indirectly, either as employee, owner, partner, agent, stockholder, director or officer of a corporation or otherwise, in any business of the type and character engaged in by your company within the geographical limits of the City of New York and the counties of Nassau, Soffolk and Westchester."

Strauman's first position as an employee of Reed, Roberts was technical man-auditor. Since he had four years' experience in the field by virtue of having previously worked for a major competitor, Strauman became a valuable employee and over the next 10 years received three important promotions rising to senior vice-president in charge of operations. Throughout his tenure with Reed, Roberts, Strauman was instrumental in devising most of the forms utilized by the company in rendering its service and in setting up its computer system. On becoming vice-president he was given increased responsibility with regard to internal affairs including the formulation of company policy. Importantly, however, he was not responsible for sales or obtaining new customers. The record indicates that while the business forms used by Reed, Robrets were unique to that service industry, they were not much different from those used by other companies.

After 11 years with Reed, Roberts, Strauman decided to strike off on his own and formed a company called Curator Associates, Ins. This company was in direct competition with his former employer and was even located in the same municipality. Although Reed, Roberts alleges that Curator has been soliciting its customers, Curator sustained losses of some $38,000 with gross sales of only $1,100 during its first year of operations. Nevertheless, fearful of competition from the former employee, Reed, Roberts commenced this action seeking to enforce the posttermination covenant not to compete signed by Strauman in 1962. Specifically Reed, Roberts

seeks to enjoin Strauman and Curator from engaging in the business of unemployment tax control within the metropolitan area for a period of three years and to enjoin them from soliciting any of Reed, Roberts' customers permanently.

The trial court granted this relief in part. The court refused to prohibit defendants from engaging in a competitive enterprise finding that there were no trade secrets involved here and that although Strauman was a key employee his services were not so unique or extraordinary as to warrant restraining his attempt to compete with his former employer. Nevertheless the court believed that it would be unjust and unfair for Strauman to utilize his knowledge of Reed, Roberts' internal operations to solicit its clients and permanently enjoined defendants from doing so. The Appellate Division affirmed, without opinion. We believe the order of the Appellate Division should be modified to the extent of reversing so much thereof as grants a permanent injunction against the defendants.

Generally negative covenants restricting competition are enforceable only to the extent that they satisfy the overriding requirement of reasonableness. Yet the formulation of reasonableness may vary with the context and type of restriction imposed. For example, where a business is sold, anticompetition covenants will be enforceable, if reasonable in time, scope and extent. These covenants are designed to protect the goodwill integral to the business from usurpation by the former owner while at the same time allowing an owner to profit from the goodwill which he may have spent years creating. However, where an anticompetition covenant given by an employee to his employer is involved a stricter standard of reasonableness will be applied.

In this context a restrictive covenant will only be subject to specific enforcement to the extent that it is reasonable in time and area, necessary to protect the employer's legitimate interests, not harmful to the general public and not unreasonably burdensome to the employee . . . Undoubtedly judicial disfavor of these covenants is provoked by "powerful considerations of public policy which militate against sanctioning the loss of a man's livelihood." Indeed, our economy is premised on the competition engendered by the uninhibited flow of services, talent and ideas. Therefore, no restrictions should fetter an employee's right to apply to his own best advantage the skills and knowledge acquired by the overall experience of his previous employment. This includes those techniques which are but "skillful variations of general processes known to the particular trade."

Of course, the courts must also recognize the legitimate interest an employer has in safeguarding that which has made his business successful and to protect himself against deliberate surreptitious commercial piracy. Thus restrictive covenants will be enforceable to the extent necessary to prevent the disclosure or use of trade secrets or confidential customer information. . . . In addition injunctive relief may be available where an employee's services are unique or extraordinary and the covenant is reasonable. This latter principle has been interpreted to reach agreements between members of the learned professions.

With these principles in mind we consider first the issue of solicitation of customers in the case at bar. The courts below found, and Reed, Roberts does not dispute, that there were no trade secrets involved here. The thrust of Reed, Roberts' argument is that by virtue of Strauman's position in charge of internal administration he was privy to sensitive and confidential customer information which he should not to permitted to convert to his own use. The law enunciated in Leo Silfen, Inc. v. Cream, 29 N.Y.2d 387, 328 N.Y.S.2d 423, 278 N.E.2d 636 is dispositive. There, as here, the plaintiff failed to sustain its allegation that the defendant had pirated the actual customer list. Rather Silfen argued that in light of the funds expended to compile the list it would be unfair to allow the defendant to solicit the clients of his former employer. We held that where the employee engaged in no wrongful conduct and the names and addresses of potential customers were readily discoverable through public sources, an injunction would not lie. Similarly here there was no finding that Strauman acted wrongfully by either pilfering or memorizing the customer list . . . . More important, by Reed, Roberts' own admission every company with employees is a prospective customer and the solicitation of customers was usually done through the use of nationally known publications such as Dun and Bradstreet's Million Dollar Directory where even the name of the person to contact regarding these services is readily available . . . . It strains credulity to characterize this type of information as confidential. Consequently, the trial court's determination that Strauman and Curator should be permanently enjoined from soliciting Reed, Roberts' customers as of the date of his termination was erroneous.

Apparently, the employer is more concerned about Strauman's knowledge of the intricacies of their business operation. However, absent any wrongdoing, we cannot agree that Strauman should be prohibited from utilizing his knowkedge and talents in this area. A contrary holding would make those in charge of operations or specialists in certain aspects of an enterprise virtual hostages of their employers. Where the knowledge does not qualify for protection as a trade secret and there has been no conspiracy or breach of trust resulting in commercial piracy we see no reason to inhibit the employee's ability to realize his potential both professionally and financially by availing himself of opportunity. Therefore, despite Strauman's excellence or value to Reed, Roberts the trial court's finding that his services were not extraordinary or unique is controlling and properly resulted in a denial of the injunction against operating a competing business.

Accordingly, the order of the Appellate Division should be modified in accordance with this opinion.

BREITEL, C.J., and JASEN, GRBRIELLI, JONES, FUCHSBERG and COOKE, JJ., concur.