

Significant Appellate Decision - Non-Compete Agreements

April 18, 2003

NONCOMPETE AGREEMENTS On April 17, 2003, the Florida Supreme Court issued its decision in *Corporate Express Office Products, Inc. v. Phillips*, case No. SC01-2741 (Fla. Apr. 17, 2003) (not final until period for rehearing has expired and any motions for rehearing are resolved). In the case under review, the Fifth District Court of Appeal ruled below that non-compete agreements could not be enforced by a successor corporation against former employees, absent a consensual assignment of the noncompete agreement, where the “culture and mode of operation” of the successor corporation was different from that of the previous corporation. The Florida Supreme Court quashed the Fifth District’s reasoning, and instead ruled: Reliance on changes in corporate culture and mode of operation as a measure of whether an employer has changed identity and therefore must obtain a consensual assignment of a noncompete agreement would inject unnecessary uncertainty into corporate transactions. Changes in corporate culture occur frequently, often in response to market forces and without a corresponding change in corporate structure. **As long as the other prerequisites to the validity of a noncompete agreement are met, neither a 100 percent stock purchase nor a merger affects the enforceability of the agreement.** Op. at 17 (emphasis supplied). If you have questions about this bulletin, please call Joseph H. Lang, Jr. in the St. Petersburg office at (888) 821-9191.

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