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### Shores v. Global Experience Specialists, Inc., 134 Nev. Adv. Op. 61 (Aug. 2, 2018)

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## CONTRACTS: NONCOMPETE AGREEMENTS

### **Opinion**

The Court considered whether the employer demonstrated a likelihood of success on the merits to uphold a noncompete agreement that prevented the employee from working anywhere in the United States, despite the employer not having established business contacts for such a wide area. Further, it considered whether the employer made the requisite prima facie showing that the noncompete agreement was reasonable in its terms and scope to warrant a likelihood of success on the merits. Because the employer was not able to make a prima facie case, the Court reversed the district court's decision.

### **Background**

Global Experience Specialists, Inc. ("GES") employed Landon Shores as a sales associate from June 2013 to September 2016. In September 2016, Shores was promoted to sales manager, where he was responsible for contracting GES services to build floors and exhibits for conventions and trade shows. Shores signed a Non-Competition Agreement ("NCA") when he accepted the promotion. The NCA prohibited Shores from competing with GES directly or indirectly, or work in a similar capacity for any other competing business. Additionally, Shores was prohibited from working anywhere in the United States for twelve months after his employment with GES ended. In January 2017, Shores took a similar position with another company in southern California.

As a result, GES sued Shores for breach of contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. GES sought damages for injunctive relief and moved for a preliminary injunction to enforce the NCA.

Shores argued that GES could not adequately show a likelihood of success on the merits or that NCA restrictions were reasonable, particularly any reason why their business interests should be protected across the entire country. GES contended that their business interests deserved protection because they conducted business in at least one city in 33 states.

The district court granted the preliminary injunction and ruled the NCA was reasonable given GES' national client base. This appeal followed.

### **Discussion**

#### ***Standard of review***

For a preliminary injunction to be granted, GES must show a likelihood of success on the merits of their case and that they will suffer irreparable harm without preliminary relief. The

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Court may only reverse the district court's decision if the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact.

*The district court abused its discretion in finding that the nationwide noncompete agreement was reasonable*

The Court agreed with Shores that the NCA was unreasonable in scope and extended to a greater area than necessary to protect GES' business interests. Further, the preliminary injunction improperly prohibited him from working in many jurisdictions that GES was not found to have existing business contacts with.

The court held that the district court abused its discretion by failing to adhere to precedent that the geographical scope of a noncompete agreement is limited to areas where "established customer contacts and good will" are present. Here, the Court found it was unreasonable for GES to apply nationwide restrictions in areas where they had no business interest or showing. Despite the nature of ruling on a preliminary injunction based on incomplete facts, GES was still required to demonstrate a reasonable probability of success, including a demonstration that the noncompete was reasonable enough to be enforceable. The Court determined GES failed to demonstrate the NCA was reasonable and did not create greater geographical restrictions than necessary to protect their interests. As a result, the Court held the district court abused its discretion by failing to uphold relevant precedent on noncompete agreements and the Court reversed the preliminary injunction.

### **Conclusion**

The Court upheld precedent stating that noncompete agreements must be limited to the geographical areas to which employers conduct business, so is the case with noncompete agreements that impose national restrictions on employees. Further, the burden is on the employer to make a prima facie showing a noncompete agreement is reasonable when seeking a preliminary injunction.