

Insights: Alerts

Georgia Supreme Court Finds Restrictive Covenants Not Required to Contain Express Geographic Restriction

September 11, 2024

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In a win for Georgia employers seeking to enforce restrictive covenants, the Supreme Court of Georgia [ruled](#) that restrictive covenants are not required to contain an express geographic limitation to be enforceable under the Georgia Restrictive Covenants Act, O.C.G.A. § 13-8-50 *et seq.* (“GRCA”). *See N. Am. Senior Benefits, LLC v. Wimmer* (“*Wimmer II*”), S23G1146, 2024 WL 4029937 (Ga. Sept. 4, 2024).[1] The Opinion reverses existing Georgia Court of Appeals precedent requiring express geographic limitations in post-employment non-competes (covenants restricting a former employee from competing with the former employer after the term of employment) and non-recruitment provisions (covenants restricting a former employee from soliciting the employees of a former employer after the term of employment).

In *N. Amer. Senior Benefits, LLC v. Wimmer* (“*Wimmer I*”), 368 Ga. App. 124 (2023), the Court of Appeals held that the GRCA required post-employment non-recruitment provisions to contain an express geographic term. *Wimmer I* followed the Court of Appeals' prior decision in *CarpetCare Multiservices v. Carle*, 347 Ga. App. 497 (2018). In *CarpetCare*, the Court of Appeals found that a non-compete that did not contain an express geographic term was unenforceable under O.C.G.A. § 13-8-53(a). Because non-recruitment provisions (like non-competes) are governed by O.C.G.A. § 13-8-53(a), the Court of Appeals in *Wimmer I* concluded that non-recruitment provisions must also contain an express geographic term.[2]

The Supreme Court reversed the Court of Appeals' decision in *Wimmer I* and disapproved *CarpetCare* to the extent inconsistent with its decision. The Supreme Court concluded that “[w]hether a given covenant is reasonable in geographic area under subsection (a) is not dependent on whether its geographic scope is expressly stated but, rather, on the facts and circumstances of the case, as measured by the requirements of the GRCA.” *Wimmer II*, 2024 WL 4029937, *6.

In reaching this conclusion, the Supreme Court found that the language of the GRCA “means what it says.” *Id.* O.C.G.A. § 13-8-53(a) permits enforcement of restrictive covenants “so long as such restrictions are reasonable in time, geographic area, and scope of prohibited activities.” The Supreme Court held that “nothing in the text of subsection (a) mandates that a restrictive covenant contain an explicit geographic term, nor does subsection (a) prohibit a covenant’s geographic area from being expressed in implied terms.” *Id.* at *4. Rather, “the plain text of subsection (a) requires with respect to geographic restrictions on competition that any such restriction be reasonable, regardless of whether the restriction is expressly stated or implied.” *Id.* The Court noted that its

reading of O.C.G.A. § 13-8-53(a) was in line with the GRCA's "more permissive and flexible approach to restrictive covenants." *Id.* at *5.

This decision offers important clarification of the GRCA and provides significant relief to Georgia employers who have been in limbo since the Court of Appeals' June 2023 ruling. *Wimmer II* makes clear that restrictive covenants in Georgia (including non-competes and non-recruitment clauses) are not required to include an express geographic limitation. Employers, however, should think carefully before removing geographic limitations from non-compete provisions. In remanding the case to the trial court, the court emphasized that the geographic scope of restrictive covenants must be assessed for reasonableness "in light of the totality of the circumstances including, but not limited to, the total geographic area encompassed by the provision, the business interests justifying the restrictive covenant, the nature of the business involved, and the time and scope limitations of the covenant."

In *Wimmer II* (and in other cases involving non-recruitment provisions), the question on remand will be whether it was "reasonable to prohibit the Wimmers from recruiting for employment any NASB employee regardless of the employee's location for the term of the covenant." *Id.* at 5. Georgia courts have consistently found similar provisions reasonable and enforceable. But in the case of non-competes (where the restriction is not necessarily limited to certain employees), an express geographic limitation (or lack thereof) will still be an important part of the reasonableness inquiry.

If you have any questions about this Alert, the Supreme Court of Georgia's ruling, or the enforceability of restrictive covenants generally, please contact one of the authors or the attorney(s) in our firm with whom you are regularly in contact.

[1] Kilpatrick submitted an amicus brief in this matter in support of Appellant North American Senior Benefits, LLC on behalf of Georgians for Lawsuit Reform and the Georgia Chamber of Commerce.

[2] O.C.G.A. § 13-8-53(b) provides that "no express reference to geographic area" is required for post-employment provisions barring the solicitation of *customers*. Although non-recruitment clauses seem to share more in common with non-solicitation of customer provisions than non-competes, the Court of Appeals found enforceability of non-recruitment provisions fell under the broader § 13-8-53(a).

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