COURT OF APPEALS
DECISION
DATED AND FILED

May 10, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-1988

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

INDEPENDENT INSPECTIONS, LTD.,

PLAINTIFF-APPELLANT,

V.

DAVID STURDEVANT,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Racine County: ALLAN B. TORHORST, Judge. *Affirmed.*

Before Brown, P.J., Nettesheim and Anderson, JJ.

¶1 ANDERSON, J. Independent Inspections, Ltd. (Independent) seeks to enforce a noncompetition clause against its former employee, David Sturdevant, because when he left the firm he went to work as an in-house building inspector for the town of Lyons (town). Independent appeals from an order denying its

motion for summary judgment and dismissing its complaint against Sturdevant. We affirm the trial court's order and agree with its decision that the noncompetition clause does not cover Sturdevant's employment with the town because the town does not compete with Independent in providing building inspections.

¶2 Independent provides building and construction site inspections to clients throughout Wisconsin. Sturdevant began to work for the firm on May 12, 1997. At that time, he signed an employment agreement that included a noncompetition clause effective for the year after his employment with Independent terminated.

¶3 Specifically, the noncompetition clause prohibited any future employment with competitors as follows:

> Employee shall give employer at least 30 days written notice of termination. Employee also agrees that in addition to any other limitations, that during his or her employment and for a period of one year after termination of his or her employment, the employee will not directly or indirectly engage in, or in any manner be connected with or employed by any employer, firm, corporation, municipality or other entity that competes with Employer in providing services.
>
> This restriction includes accepting employment with a municipality to provide inspection services in-house. This restriction is limited by the following geographic territory: the non-compete limit shall extend to a radius of 7 miles from any municipality that was a client of Employer within one year of the Employee's termination and/or is a client of Employer during Employee's employment or where a proposal from Employer was pending at the time that the Employee's employment was terminated.

¶4 In August 1998, Sturdevant notified Independent that he was resigning from the firm. He began working as an in-house building inspector for

the town on October 1, 1998. The town has never been Independent's client, and Independent did not have any pending proposals with the town. Believing that Sturdevant's employment with the town was a breach of the noncompetition clause of its employment agreement with him, Independent filed suit against him. It sought a temporary restraining order and summary judgment. Both were denied. The trial court dismissed Independent's complaint instead. Independent appeals.

¶5 When reviewing a summary judgment, we apply the standards in WIS. STAT. § 802.08(2) (1997-98)[1] in the same manner as the trial court. *See* ***Kreinz v. NDII Sec. Corp.***, 138 Wis. 2d 204, 209, 406 N.W.2d 164 (Ct. App. 1987). Summary judgment is appropriate when material facts are undisputed and the issue presented is one of law. *See* ***Radlein v. Industrial Fire & Cas. Ins. Co.***, 117 Wis. 2d 605, 609, 345 N.W.2d 874 (1984). Generally, the interpretation of a contract presents a question of law, suitable for summary judgment resolution. *See* ***Caraway v. Leathers***, 58 Wis. 2d 321, 328, 206 N.W.2d 193 (1973).

¶6 WISCONSIN STAT. § 103.465 permits covenants in employment contracts that restrict departing employees' ability to work for competitors of their former employer within a specified territory and for a specified time period as long as such restrictions are reasonably necessary for the former employer's protection. The purpose of a covenant not to compete is to prevent for a time the competitive use of information or contacts gained as a result of departing employees' association with their former employers. *See* ***Chuck Wagon Catering, Inc. v. Raduege***, 88 Wis. 2d 740, 751, 277 N.W.2d 787 (1979).

[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶7 Independent argues that the trial court erred when it concluded that Sturdevant's employment with the town was not in violation of the second paragraph of the noncompetition clause in Independent's employment agreement with him. It does not dispute the trial court's conclusion that the town is not a competitor of Independent's, which is required by language in the first paragraph of the clause. It maintains that Sturdevant breached the second paragraph's prohibition that he not "accept[] employment with a municipality to provide inspection services in-house."

¶8 After reviewing the trial court's oral decision, we find that it addressed Independent's argument in detail and are greatly aided by its analysis. The court noted that at first glance Sturdevant appeared to be violating the clause's second paragraph because he was working for a municipality as an in-house inspector. However, after reviewing the functions of the town's in-house inspector position, the court resolved that the town was not Independent's competitor and, because of this, the municipality was not covered under the clause's second paragraph.

¶9 The court determined that the operative phrase of the noncompetition clause was that the employee was prohibited from working for a "municipality or other entity that *competes* with Employer in providing services." (Emphasis added.) The town indicated in its affidavits that it intended to always employ an in-house inspector and was not in the market to contract for services provided by inspection firms like Independent. And most importantly, the town uses its in-house inspector to fulfill its legally imposed inspection obligations according to its building code, but does not market such services. Because the town's in-house inspector's function is to fulfill the town's building code

obligations, the court resolved that the town was not competing with Independent to provide inspection services to clients. We agree.

¶10 As for the second paragraph of the clause, the trial court determined that this clause was defined by and related back to the clause's first paragraph. Therefore, Sturdevant could only be prohibited from working for a municipality as an in-house inspector, as proscribed in the clause's second paragraph, if this municipality was Independent's competitor according to the clause's first paragraph. The second paragraph explains the clause's geographical limitations for municipalities, but does not further address the competition factor. Because the town does not meet the competitor definition of the first paragraph, the geographical limitations of the second paragraph do not apply. We concur with the trial court's thoughtful analysis on this issue.

¶11 In summary, the purpose of the noncompetition clause in the employment agreement is to protect Independent's competitive interests, and applying the clause to Sturdevant under these facts will not further that goal. The trial court's summary judgment denial and dismissal of Independent's complaint is affirmed.

By the Court.—Order affirmed.

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