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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0987

Medtronic, Inc.,
Respondent,

vs.

Terry E. Hedemark,
Appellant.

Filed March 3, 2009
Affirmed
Bjorkman, Judge

Anoka County District Court
File No. 02-C9-06-012161

Jonathan S. Parritz, Wayne S. Moskowitz, Maslon Edelman Borman & Brand, LLP, 3300 Wells Fargo Center, 90 South 7th Street, Minneapolis, MN 55402 (for respondent)

Kevin P. Hickey, Bassford Remele, P.A., 33 South 6th Street, Suite 3800, Minneapolis, MN 55402 (for appellant)

Considered and decided by Peterson, Presiding Judge; Bjorkman, Judge; and Crippen, Judge.[*]

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[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D   O P I N I O N

BJORKMAN, Judge

This appeal arises from a dispute between a company and its former employee regarding enforcement of a competition-based forfeiture provision in a company-wide stock-option plan. The former employee challenges the district court's dismissal of his claims on summary judgment. We affirm.

FACTS

In October 1998, respondent Medtronic, Inc. made an offer of employment to appellant Terry Hedemark. Medtronic memorialized that offer in a letter to Hedemark, which addressed various aspects of Medtronic's offer, including base salary and commissions. The letter also contained the following language about stock options: "Upon hire, you will be recommended for a $100,000 stock option. In your second year of employment you will be recommended for a $100,000 stock option. The options will be granted and priced based on the market price on the date of the approval of the stock option." Hedemark accepted the employment offer and began working for Medtronic.

In early 1999, Hedemark accepted the first of two stock-option awards. In connection with this transaction, Hedemark signed a two-page stock-option agreement. By signing the agreement, Hedemark acknowledged that he was bound by "the terms and conditions set forth . . . in the Medtronic, Inc. 1994 Stock Award Plan," (the Plan), which Medtronic adopted in 1994 to govern all incentive awards of stock to employees and directors of Medtronic. Provision 5 of the stock-option agreement, labeled "**Forfeitures**," states that "The Company may require you to return or forfeit stock received . . . in the event of any of the occurrences set forth in Section 14(j) of the Plan." The agreement also set forth specific information regarding exercising the option. In the fall of 1999, Hedemark signed a second $100,000 stock-option agreement, with provisions essentially identical to those in the first. Hedemark held the stock options until June 6, 2006, earning a net profit of approximately $57,061 after a same-day sale.

In early July 2006, Hedemark received an offer of employment from St. Jude Medical, Inc. (St. Jude), a competitor of Medtronic. Hedemark voluntarily terminated his employment with Medtronic on July 14, 2006, and began working for St. Jude five days later.

In a letter dated September 7, 2006, Medtronic advised Hedemark that his stock options were subject to forfeiture because he exercised them "within the period commencing six months before termination of [his] employment and [he is] performing services for a competitor." Medtronic directed Hedemark to return all stock received from the exercise of the options or repay the net proceeds he received from the exercise. Medtronic enclosed a copy of the Plan, which contains the following provision, section 14(j):

> **Forfeitures.** In the event an Employee has received or been entitled to payment of cash, delivery of Stock or a combination thereof pursuant to an Award within the period beginning six months prior to the Employee's termination of employment with the Company and its Affiliates . . . , the Company, in its sole discretion, may require the Employee to return or forfeit the cash and/or Stock received with respect to the Award (or its economic value as of (i) the date of the exercise of Options or Stock Appreciation Rights, (ii) the date of, and immediately following, the lapse of restrictions on Restricted Stock or the receipt of Stock without restrictions,

> or (iii) the date on which the right of the Employee to payment with respect to Performance Shares vests, as the case may be) in the event of any of the following occurrences: performing services for or on behalf of a competitor of, or otherwise competing with the Company or any Affiliate, unauthorized disclosure of material proprietary information of the Company or any Affiliate, a violation of applicable business ethics policies or business policies of the Company or any Affiliate, or any other occurrence specified in the related Agreement. The Company's right to require forfeiture must be exercised not later than 90 days after discovery of such an occurrence but in no event later than 15 months after the Employee's termination of employment with the Company and its Affiliates.

Hedemark refused to repay Medtronic or return the stock, and Medtronic initiated this breach-of-contract action. Hedemark asserted a counterclaim seeking a declaration that the forfeiture provision of the Plan is unenforceable. Both parties moved for summary judgment on the issue of the enforceability of the forfeiture provision in section 14(j) of the Plan, and Medtronic sought summary judgment on its breach-of-contract claim.

The district court denied Hedemark's motion, granted Medtronic's motion and awarded $57,061 in damages based on Hedemark's breach of the stock-option agreements. Medtronic subsequently requested attorney fees, which the district court denied. This appeal follows.

D E C I S I O N

On appeal from summary judgment, this court determines whether genuine issues of material fact exist and whether the district court erred as a matter of law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). In doing so, we "view the evidence in the light most favorable to the party against whom [summary] judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). We will affirm a district court's grant of summary judgment if it can be sustained on any ground. *Winkler v. Magnuson*, 539 N.W.2d 821, 827 (Minn. App. 1995) (quotation omitted), *review denied* (Minn. Feb. 13, 1996).

Hedemark argues that the stock-option awards were included in his employment offer without any competition-based conditions and, therefore, he is entitled to exercise his stock options free of any such restrictions. The district court determined that the offer letter was solely "an offer of employment and too indefinite to constitute an enforceable contract with respect to the stock options." We agree.

A contract does not exist unless the parties have agreed "with reasonable certainty about the same thing and on the same terms." *Peters v. Mut. Benefit Life Ins. Co.*, 420 N.W.2d 908, 914 (Minn. App. 1988). "When the parties know that an essential term of their intended transaction has not yet been agreed upon, there is no contract." *Malevich v. Hakola*, 278 N.W.2d 541, 544 (Minn. 1979). And under Minnesota law, a corporation may not enter into a contract to award stock options without the authorization of its board. *See* Minn. Stat. § 302A.401, subd. 1 (2008) (permitting a corporation to "issue securities and rights to purchase securities only when authorized by the board").

The 1998 offer letter stated that Hedemark would be "recommended" to receive two $100,000 stock options during the first two years of his employment. Hedemark acknowledges that the offer letter contained no other relevant information, such as a vesting schedule and expiration dates.[1] Because the language in the offer letter is too indefinite, lacked critical terms, and is legally insufficient to bind Medtronic to make a specific stock-option award, stock options were not part of Hedemark's employment contract with Medtronic.

The stock-option agreements Hedemark and Medtronic entered into in 1999 are stand-alone contracts. By executing the agreements, Hedemark agreed to be bound by the terms of the Plan in exchange for receiving the stock-option awards.[2] Hedemark read the stock-option agreements and signed his name at the end of each two-page document, no more than three inches below a paragraph alerting him to the Plan's forfeiture provision. Hedemark chose not to read the Plan but concedes that Medtronic made the Plan available to him online.

Hedemark contends that even if he agreed to the terms of the Plan by signing the stock-option agreements, the forfeiture provision in section 14(j) is unenforceable as an unreasonable noncompete agreement. The enforceability of a contract provision presents a question of law, which we review de novo. *Share Health Plan, Inc. v. Marcotte*, 495 N.W.2d 1, 3 (Minn. App. 1993), *review denied* (Minn. Mar. 30, 1993).

We agree that the plain language of section 14(j), which permits Medtronic to require forfeiture based, in part, on competition, constitutes a noncompete agreement.

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[1] A stock option is different from a stock award. An option gives an employee the right to purchase shares of stock at an exercise price based on the stock's market value on the date the option is awarded.

[2] The stock-option agreements provide that Hedemark expressly "agree[d] to the terms and conditions in [the stock-option agreement] and the Plan."

See Minneapolis Pub. Hous. Auth. v. Lor, 591 N.W.2d 700, 704 (Minn. 1999) (stating "[u]nambiguous contract language must be given its plain and ordinary meaning"); *Harris v. Bolin*, 310 Minn. 391, 394-95, 247 N.W.2d 600, 602-03 (1976) (assessing a forfeiture penalty imposed for competition according to principles applicable to noncompete agreements). Under Minnesota law, noncompete agreements in an employment setting are "looked upon with disfavor, cautiously considered, and carefully scrutinized." *Bennett v. Storz Broadcasting Co.*, 270 Minn. 525, 533, 134 N.W.2d 892, 898 (1965). When evaluating noncompete agreements, courts determine whether the agreements "serve a legitimate employer interest and are not broader than necessary to protect this interest." *Kallok v. Medtronic, Inc.*, 573 N.W.2d 356, 361 (Minn. 1998); *see also Harris*, 310 Minn. at 394 n.3, 247 N.W.2d at 603 n.3 (permitting enforcement of forfeiture penalties imposed for competing only when "reasonable in scope after balancing the interests of the employer and employee"). "If the employer's interest predominates, the noncompete agreement is valid and enforceable." *Kallok*, 573 N.W.2d at 361.

1. The forfeiture provision serves a legitimate employer interest.

We first consider whether the anti-competitive provisions of section 14(j) serve a legitimate interest. Employers have a valid interest in protecting trade secrets, confidential information, and the company's goodwill, including relationships with customers. *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 456 (Minn. App. 2001); *Webb Publ'g Co. v. Fosshage*, 426 N.W.2d 445, 450 (Minn. App. 1988). The secretary of Medtronic's compensation committee explained that Medtronic awards stock options because it "want[s] employees to share in the wealth of the company and contribute to its growth." Likewise, Medtronic has determined forfeiture of stock-option awards is appropriate if employees leave Medtronic, particularly if they do so to solicit Medtronic customers on behalf of a competitor. The Plan itself declares that it is intended to "motivate key personnel" and "facilitate recruiting and retaining key personnel of outstanding ability." The undisputed record supports the district court's determination that the Plan, including section 14(j), "serves legitimate business interests of promoting and rewarding employee loyalty as well as maintaining stable, consistent relationships between the sales force and customers."

2. The forfeiture provision is reasonable in scope.

There is little dispute that Medtronic's approach to furthering the first of these interests, rewarding employee loyalty, is reasonable. The Plan promotes and rewards employee loyalty by affording certain individuals the opportunity to purchase company stock at a fixed price and by requiring forfeiture of all unexercised stock options when an employee leaves the company. But Hedemark challenges the second of Medtronic's interests, discouraging competitive activity, arguing that requiring forfeiture of any exercised stock options when an employee leaves Medtronic less than six months after exercise and engages in competition is an unreasonable approach to maintaining stable, consistent relationships between Medtronic's sales force and its customers. We disagree.

The noncompete provision set forth in section 14(j) is unlike many noncompete agreements because it affords Hedemark almost complete control over how it will affect him. In this regard, section 14(j) is similar to the forfeiture provision at issue in *Pillsbury*

Co. v. Elston, 283 N.W.2d 370 (Minn. 1979). *Pillsbury* involved a provision in a stock-option agreement that permitted the employer to repurchase all shares of stock the employee purchased within six months prior to employment termination. 283 N.W.2d at 371. Like Hedemark, the employee in *Pillsbury* "controlled the timing of his voluntary decision to terminate his employment." *Id.* at 373. All either employee needed to do to avoid forfeiting his stock options was to remain with the company for at least six months after exercising the options. Thereafter, both were free to retain the benefit of the stock options and immediately undertake other employment without restraint. Although *Pillsbury* did not involve a noncompete agreement, the similarity between section 14(j) and the provision at issue in *Pillsbury* demonstrates that section 14(j) does not necessarily "limit[] the right of [Hedemark] to work and to earn a livelihood" and thus does not implicate the fundamental reason noncompete agreements are "looked upon with disfavor." *Bennett*, 270 Minn. at 533, 134 N.W.2d at 898.

Several other aspects of section 14(j) likewise demonstrate its reasonableness. First, the nature of Hedemark's work for Medtronic required regular personal contact with doctors at approximately 15 hospitals in the Sacramento, California area. Medtronic's concern that Hedemark could manipulate the relationships he developed during his years with Medtronic is reasonable. *See Walker Employment Serv., Inc. v. Parkhurst*, 300 Minn. 264, 271, 219 N.W.2d 437, 441 (1974) (recognizing that "[e]nforcement of restrictive covenants against professional employees is based on the relationship that is created"); *Bennett*, 270 Minn. at 534, 134 N.W.2d at 899 (requiring consideration of the "nature and character of the employment" when assessing reasonableness). Second, the restriction is substantially limited as to time, applying only if Hedemark left Medtronic to engage in competition within six months after exercising his stock options. And Medtronic could not enforce the forfeiture provision beyond 15 months after Hedemark left Medtronic. *See Overholt Crop Ins. Serv. Co. v. Bredeson*, 437 N.W.2d 698, 703-04 (Minn. App. 1989) (upholding two-year restriction when work required close contact with customers and employee "established a good relationship" with customers).

The absence of a territorial limitation, while a legitimate concern in many cases, does not render section 14(j) unreasonable. *See Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993) (observing that a noncompete agreement "lacking a territorial limit perhaps will often be held to be unreasonable"). We have previously held that the absence of such a limitation does not render a noncompete agreement per se unenforceable and, indeed, "[t]here may very well be instances in which a restrictive covenant unlimited as to territory is reasonably necessary to protect the employer's interests, for example, in employment with multinational corporations." *Id.* Nothing in the record indicates that it is unreasonable for a multinational corporation like Medtronic to omit a territorial limitation, particularly considering the other applicable limitations. Moreover, the record establishes that Hedemark works for St. Jude in almost exactly the same geographic area, with the same customers, as he did for Medtronic. Application of section 14(j) to Hedemark under these circumstances is reasonable. *See Overholt*, 437 N.W.2d at 703 (upholding as reasonable a noncompete agreement limited to areas in which the employee actually worked); *cf. Bess v. Bothman*, 257 N.W.2d 791, 794-95

(Minn. 1977) (adopting view that court may enforce a noncompete agreement to the extent it is reasonable).

3. The forfeiture provision is supported by independent consideration.

Finally, Hedemark argues that section 14(j) is unenforceable because it is not supported by independent consideration. If a noncompete agreement is made independent of the initial employment contract, it must be supported by separate consideration. *Freeman v. Duluth Clinic, Ltd.*, 334 N.W.2d 626, 630 (Minn. 1983). "The adequacy of consideration for [noncompete agreements] signed during an ongoing employment relationship will depend upon the facts of each case." *Id.* Hedemark does not contend that a stock option is insufficient consideration to support a noncompete agreement. Rather, he argues that the stock options at issue here do not constitute consideration for the forfeiture provision because they were included in the original employment offer. But we have determined that the offer letter did not create an enforceable contract as to the stock-option awards. Because the stock-option agreements demonstrate that Medtronic issued the awards in exchange for Hedemark's agreement to be bound by the terms of the Plan, including section 14(j), we reject Hedemark's argument.

Based on the undisputed facts and Minnesota law, we conclude that the forfeiture provision in section 14(j) of the Plan is enforceable against Hedemark as a reasonable noncompete agreement.

Affirmed.