SDNY Rules that Trump Campaign Non-Disclosure is too Broad to Enforce

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In another strike against restrictive covenants in employment contracts, Judge Paul G. Gardephe of the Southern District of New York ruled in Jessica Denson v. Donald J. Trump For President, Inc. that the non-disclosure and non-disparagement clauses in Trump Campaign ("Campaign") employment contracts are unenforceable.

In the case, the plaintiff was hired to work as a phone bank administrator for the Campaign in 2016 and, like all other Campaign employees, signed a form Employment Agreement that contained very broad non-disclosure and non-disparagement obligations. The non-disclosure prevented her from publicly discussing, among other broad categories, the "personal life," "relationships" and "political and business affairs" relating to then candidate Trump, all of his family members and all their businesses. The non-disparagement clause similarly prohibited disparaging comments made about the Trumps and their businesses.

In 2017, the plaintiff filed a sex discrimination complaint against the Campaign, which responded by commencing an arbitration proceeding against her claiming that she breached the non-disclosure and non-disparagement clauses. The arbitration prompted plaintiff to file a lawsuit in federal court to have the Employment Agreement declared void and unenforceable.

Judge Gardephe ruled that the non-disclosure and non-disparagement clauses were so vague and broad that they could not be enforced under New York law. The Judge Gardephe's ruling focused on how it would be difficult, if not impossible, for a Campaign employee to know what speech would be covered by the non-disclosure and non-disparagement restrictions for two reasons. First, some of the categories of confidential information were too broadly defined and were not sufficiently definite: for example, the "political affairs," "decisions," communications" and "strategies" of the Campaign were so broad that they encompasses any matter related to the Campaign and "it is thus impossible for Plaintiff to know what speech she has agreed to forego." Second, especially as it pertained to the non-disparagement clause, it simply covered too many people and entities. Judge Gardephe noted that "President Trump alone is affiliated with 500 companies."

A critical aspect of Judge Gardephe's decision is that he declined to "blue pencil" the Employment Agreement – in other words, re-write the non-disclosure and non-disparagement clauses to limit them to be more definite. For instance, Judge Gardephe could have rewritten the non-disparagement clause to apply only to President Trump, but he declined to do so. He noted that the Campaign had aggressively attempted to enforce its non-disclosure and non-disparagement clauses were not done in good faith and sought to "suppress speech that it finds detrimental to its interests." Thus, Judge Gardephe ruled that the two clauses were unenforceable in their entirety.

This opinion signals to employers that restrictive covenants in employment contracts should be as definite as possible to increase the likelihood that they will be enforced by courts. It further signals to employers that they should be judicious when trying to enforce restrictive covenants because courts will evaluate whether employers are protecting legitimate interests or acting coercively.