

Texas Court Enforces Noncompete Even Though Employee Did Not Physically Sign The Agreement

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As many readers of this blog are aware, enforcing noncompetes can be a tricky business – and this is doubly true in some states. One of those historically difficult states has been Texas. Unlike many states, Texas has a statute - Sections 15.50-15.52 of the Texas Business and Commerce Code – which governs the enforceability of covenants not-to-compete. For many years, Texas courts adhered to a strict view of the statute that resulted in many noncompetes being rejected as unenforceable. This approach has softened in recent years, and Texas courts have been more willing to consider and enforce noncompetes. This week's decision from the Texas Court of Appeals in *Cameron Int'l Corp. v. Guillory* continues the trend. The case involved an employee of an oilfield service business who signed a standard confidentiality agreement when he started his employment, but not a noncompete. Several years into his employment, the company offered him the ability to enroll in a restricted stock agreement which contained a one-year noncompete. Curiously, the employee never physically signed the restricted stock agreement or the noncompete. Instead, when he was given the opportunity to enroll in the program, he was instructed to go online and fill out some electronic forms. The employee did so, and simply indicated his acceptance by clicking on several "requires acceptance" buttons. A few years later, the employee left the company and went to work for a competitor. Once it found out, the employer filed for injunctive relief to enforce the noncompete. The trial court, however, refused to enforce the noncompete and denied the injunction. The employer then sought appellate review. Fortunately for the employer, the Texas Court of Appeals reversed and held that the noncompete was enforceable. The first issue the court grappled with was the appropriate choice of law (the restricted stock agreement provided for Delaware instead of Texas law). Pointing to some recent decisions which have changed long-standing Texas views on this issue, the court found that Delaware law was appropriate. That out of the way, the court then looked to whether the lack of a physical signature posed a problem to enforcing the non-compete. The court found that it did not. Reasoning that Delaware (and also Texas) had adopted the Uniform Electronic Transactions Act, the court concluded that the contract was enforceable because the employee had indicated his acceptance through electronic means. The takeaways? First, case is yet another example of the shift in Texas law with respect to enforcing noncompetes. Second, even without a physical signature on a noncompete, an employer still might be able to enforce it if the employee electronically indicated their assent. Obviously, that isn't the most optimal situation with respect to a noncompete, but it could provide a glimmer of hope in the right case.