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2026 IL App (3d) 250073-U

Order filed September 30, 2026

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2026

SMART MORTGAGE CENTERS, INC,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-25-0073
	)	Circuit No. 20-CH-292
BRIAN NOE, EILEEN PRUITT, NEXA	)	
MORTGAGE, LLC, and SECURED	)	
MORTGAGE PROCESSING, LLC,	)	Honorable
	)	John C. Anderson and
	)	Bennett J. Braun,
Defendants-Appellees.	)	Judges, Presiding.

JUSTICE DAVENPORT delivered the judgment of the court.
Presiding Justice Hettel and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* Summary judgment was proper where plaintiff-employer failed to present evidence justifying the reasonableness of its postemployment restrictive covenants. Affirmed.

¶ 2 Plaintiff, Smart Mortgage Centers, Inc. (SMC), brought this action to enforce restrictive covenants signed by its former employees. The circuit court found the covenants unenforceable and entered summary judgment in favor of defendants, former SMC employees Brian Noe and

Eileen Pruitt, their current employer, Nexa Mortgage, LLC, and an affiliated processing company, Secured Mortgage Processing, LLC. Because SMC has not adequately justified the expansive scope of its covenants, we affirm.

¶ 3

I. BACKGROUND

¶ 4

SMC employed Noe as a mortgage loan officer from October 2013 to December 2019, and it employed Pruitt as a mortgage loan officer from May 2019 to February 2020. Noe signed a “Loan Officer Retention Agreement” with SMC in October 2013 and again in January 2018. Both agreements included the following language:

“Loan Officer agrees and acknowledges that he or she shall not do business with any customer of [SMC], including those [SMC] customers that were produced by Loan Officer during the term of the agreement for a period of one (1) year from the date of Loan Officer’s termination of employment with [SMC]. Loan Officer agrees to advise [SMC] within twenty-four (24) hours of the time of such customer contact in writing if he or she is contacted by [an SMC] customer, seeking to procure a mortgage loan within the one (1) year period following the Loan Officer’s termination of employment with [SMC]. Loan Officer will take no further action to complete a loan for the [SMC] customer without the prior written consent of [SMC].

* * *

Loan Officer shall not solicit, hire or otherwise induce any employee or consultant of [SMC] to terminate its employment or consulting relationship with [SMC].”

¶ 5 In December 2019, Noe resigned from SMC and began working as a loan officer for Nexa, a direct competitor of SMC. In February 2020, Pruitt resigned from SMC and began working for Nexa as a loan officer.

¶ 6 In February 2020, SMC filed a verified, multi-count complaint against defendants. It later amended the complaint seven times. SMC's seventh amended complaint included 14 counts and alleged, in part, that Noe breached the 2013 and 2018 retention agreements (1) by soliciting Pruitt to resign from SMC and join Nexa and (2) by soliciting and closing mortgage loans for numerous SMC clients while at Nexa. It further alleged Nexa tortiously interfered with a contract by inducing Noe and Pruitt to breach their respective retention agreements with SMC.

¶ 7 During a discovery deposition, Noe testified he sent a text message on December 30, 2019, to certain individuals, though he could not remember their names or the number of recipients, stating,

“Just a heads up. I changed mortgage companies to better serve my clients. I'm with the second largest mortgage broker in the USA. Access to five times as many lenders as before, better rates and more programs. I'm licensed in Illinois, Colorado, and Florida and soon Arizona. I have all your past info and am here if you need anything. Have a good New Years. Brian Noe, your mortgage guy. Nexa Mortgage.”

In the year after Noe's resignation from SMC, Noe closed loans for 37 individuals who also appeared in SMC “materials.” A text-message exchange between Noe and Pruitt revealed that Pruitt reached out to Noe soon after his resignation. Noe responded with information portraying Nexa as a more attractive employer than SMC.

¶ 8 The parties filed cross-motions for summary judgment on the seventh amended complaint, with SMC seeking judgment on 12 counts and defendants seeking judgment on all 14 counts. The circuit court granted defendants’ motion in full and denied SMC’s motion. The court later denied SMC’s motion to reconsider.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 SMC argues defendants were improvidently granted summary judgment as to three counts of the seventh amended complaint. Specifically, it maintains the restrictive covenants were valid and enforceable, and there was substantial evidence that Noe violated the covenants by conducting business with SMC customers while at Nexa and by inducing Pruitt to leave SMC and join Nexa. It also argues the evidence shows Nexa tortiously interfered with the retention agreements by hiring Pruitt while she was an SMC employee.

¶ 12 Summary judgment is appropriate when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2024). “When *** parties file cross-motions for summary judgment, they mutually agree that there are no genuine issues of material fact and that the case may be resolved as a matter of law.” *Iwan Ries & Co. v. City of Chicago*, 2019 IL 124469, ¶ 18. We review *de novo* the ruling on a motion for summary judgment. *Heath v. City of Naperville*, 2024 IL App (3d) 230663, ¶ 49.

¶ 13 SMC argues the evidence shows Noe violated two provisions of the retention agreement: a customer-contact provision and an employee-contact provision. We first consider the enforceability of these two provisions.

¶ 14 “A restrictive covenant, assuming it is ancillary to a valid employment relationship, is reasonable only if the covenant: (1) is no greater than is required for the protection of a legitimate business interest of the employer-promisee; (2) does not impose undue hardship on the employee-promisor, and (3) is not injurious to the public.” *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 17. While this test provides a general framework for assessing reasonableness, the inquiry remains fact dependent and no “inflexible formula” controls. (Internal quotation marks omitted.) *Id.* ¶ 33. Relevant factors “include, but are not limited to, the near-permanence of customer relationships, the employee’s acquisition of confidential information through his employment, and time and place restrictions.” *Id.* ¶ 43. “An employer seeking to enforce a restrictive covenant bears the burden of demonstrating that the full extent of the restraint is necessary for protecting its interests.” *Cambridge Engineering, Inc. v. Mercury Partners 90 BI, Inc.*, 378 Ill. App. 3d 437, 447 (2007). “[W]e review *de novo* the enforceability of a restrictive covenant, based on the unique facts and circumstances in each particular case, with no single, determinative factor.” *AssuredPartners, Inc. v. Schmitt*, 2015 IL App (1st) 141863, ¶ 30 (citing *Arredondo*, 2011 IL 111871, ¶ 12).

¶ 15 A. Customer-Contact Provision

¶ 16 The customer-contact provision is a one-year postemployment restrictive covenant with no geographic limits. It prohibits SMC loan officers from doing business with “any” SMC customer for one year following termination of employment with SMC. During this time, it also requires former loan officers to promptly report any contact initiated by an SMC customer seeking a mortgage loan and to take no further action without SMC’s written consent.

¶ 17 While SMC may have a legitimate business interest in customer relationships developed by its former employees, the customer-contact provision reaches every SMC customer without

regard to the former employee's relationship with that customer. "A nonsolicitation clause is only valid if 'reasonably related to the employer's interest in protecting customer relations that its employees developed while working for the employer.'" *Cambridge Engineering, Inc.*, 378 Ill. App. 3d at 455 (quoting *Lawrence & Allen, Inc. v. Cambridge Human Resource Group, Inc.*, 292 Ill. App. 3d 131, 138 (1997)). "As a result, courts are reluctant to enforce provisions that prohibit former employees from servicing customers that they never had contact with while working for their original employer." *Id.*

¶ 18 Here, the customer-contact provision goes further, barring not only solicitation, but also the passive acceptance of business from any SMC customer. See *Quality Transportation Services, Inc. v. Mark Thompson Trucking, Inc.*, 2017 IL App (3d) 160761, ¶ 26 (distinguishing between solicitation and passive acceptance of business). A covenant barring customer-initiated business imposes restrictions on customers and is therefore subject to greater scrutiny than a covenant not to solicit. *Abbott-Interfast Corp. v. Harkabus*, 250 Ill. App. 3d 13, 20 (1993).

¶ 19 We emphasize the customer-contact provision's sweeping reach does not make it *per se* unreasonable. See *Arredondo*, 2011 IL 111871, ¶ 33 (rule of reason is not a formulaic inquiry). Rather, the broader the restraint, the stronger the factual showing needed to establish reasonableness. See *id.* ¶ 17; *Abbott-Interfast Corp.*, 250 Ill. App. 3d at 18, 20. The provision's sweeping reach thus demands greater scrutiny and requires SMC to provide substantial justification to establish reasonableness. SMC has provided this court with no such justification.

¶ 20 SMC points generally to customer relationships Noe developed during his six years at SMC and to the December 30, 2019, text message that Noe sent to at least some of his former customers, in which he announced his move to another mortgage company and invited the former customers to contact him for future business. These facts may justify protecting customer relationships Noe

developed while at SMC. But they do not justify barring him from doing business with *every* SMC customer or from passively accepting customer-initiated business. Indeed, the very conduct SMC highlights as proof of impropriety illustrates that a narrower nonsolicitation restriction would have been sufficient.

¶ 21 Notably, SMC does not argue it maintains near-permanent relationships with its customers. It argues, instead, that defendants forfeited any reliance on the issue of near-permanency by failing to raise that issue in the summary-judgment proceedings. It also notes that *Arredondo* rejected near-permanency as a dispositive test.

¶ 22 SMC’s attempt to sideline the near-permanency factor is not well-taken. Although it is not a dispositive factor, near-permanency remains relevant under the totality-of-the-circumstances inquiry. *Arredondo*, 2011 IL 111871, ¶ 43. And given the customer-contact provision’s application to “any” SMC customer and even to customer-initiated business, the durability of SMC’s customer relationships is particularly relevant in assessing reasonableness. (Furthermore, defendants, as appellees, may defend the judgment on any basis supported by the record even if they did not advance that basis below. See *People v. P.H.*, 145 Ill. 2d 209, 220 (1991).)

¶ 23 Because SMC relies on the reasonableness of the provision’s one-year restriction, *Hanchett Paper Co. v. Melchiorre*, 341 Ill. App. 3d 345 (2003), provides a useful point of comparison. In *Hanchett Paper*, the court affirmed a preliminary injunction enforcing a one-year restrictive covenant barring a former employee from doing business with customers the employee had serviced while working for the employer. *Id.* at 355. The court observed the employer had presented evidence that developing a customer relationship takes “months to years,” and the employer “invested millions of dollars each year” to acquire customers and cultivate “extensive customer buying information.” *Id.* at 353. The court also observed the employer had presented

¶ 27 The employee-contact provision is a postemployment restrictive covenant of indefinite temporal and territorial reach. It prohibits SMC’s former loan officers from inducing “any [SMC] employee or consultant” to terminate employment or consulting relationship with SMC.

¶ 28 Although workforce stability is a legitimate business interest (*Arpac Corp. v. Murray*, 226 Ill. App. 3d 65, 76 (1992)), the employee-contact provision may not extend further than necessary to protect that interest. *Northwest Podiatry Center, Ltd. v. Ochwat*, 2013 IL App (1st) 120458, ¶ 46. Evidence that Noe recruited Pruitt could certainly justify protection against recruitment of similarly situated loan officers. But it does not justify barring Noe from recruiting for the rest of his career “any employee or consultant” on SMC’s payroll, regardless of whether that employee or consultant had any meaningful connection to SMC’s competitive interests. See *id.* ¶ 47 (holding that a covenant with no temporal limit was unreasonable where the employer failed to show that such an indefinite restraint was necessary to protect its legitimate interests).

¶ 29 SMC argues the breadth of its employee-contact provision is justified by *InsureOne Independent Insurance Agency, LLC v. Hallberg*, 2012 IL App (1st) 092385. In *Hallberg*, the court upheld a *one-year* restrictive covenant barring the defendants from inducing “any employee or agent” to leave the employer and join a *competing business*. *Id.* ¶¶ 24, 67. The restrictive covenant in *Hallberg* thus included both a fixed duration and a competitive nexus. *Id.* ¶ 24. SMC’s provision has neither. It does not impose a temporal limit and does not tie the prohibited solicitation to employment with an SMC competitor. Accordingly, while *Hallberg* shows that a categorical employee restriction may be reasonable when otherwise confined, it does not support the open-ended restraint SMC chose here. The employee-contact provision is therefore unreasonable as a matter of law.

¶ 30 C. The Covenants May Not Be Narrowly Enforced

¶ 31 In its reply brief, SMC appears to argue that its overly broad provisions are nonetheless reasonable because its lawsuit seeks to protect only legitimate business interests. Specifically, SMC asserts it does not wish to enforce the customer-contact provision as to customers that had no business with Noe while he was in SMC’s employ. It further argues that it only seeks to enforce the employee-contact provision against Noe for his recruitment of a similarly situated loan officer, not a hypothetical receptionist or janitor. This argument was not raised in SMC’s opening brief. Arguments raised for the first time in a reply brief are forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020); *Sylvester v. Chicago Park District*, 179 Ill. 2d 500, 507 (1997).

¶ 32 Forfeiture notwithstanding, this argument is without merit. SMC is requesting, in effect, that this court narrow the restrictive covenants to match the conduct this lawsuit seeks to restrain. The court in *AssuredPartners* rejected a similar maneuver when the employer sought to enforce an overbroad restrictive covenant only as to clients the employee had serviced, despite the contract expressly authorizing judicial revision. *AssuredPartners, Inc.*, 2015 IL App (1st) 141863, ¶¶ 42, 50. The court emphasized that it would not “rescue a drafter from the risks of crafting a restrictive covenant that is patently overbroad.” *Id.* ¶ 42.

¶ 33 The retention agreements at issue here do not contemplate judicial revision. But even if they did, we would not be inclined to modify the overbroad covenants. The customer-contact provision reaches all SMC customers, regardless of Noe’s relationship with them, and bars even the passive acceptance of their business without SMC’s written consent. The employee-contact provision, moreover, reaches every SMC employee, regardless of role, and contains no competitive nexus or time limit. Salvaging these broad restrictions would require this court to decide the scope of persons and conduct covered, and, for the employee-contact provision, the duration of the restraint. We will not recast the provisions into narrower covenants that SMC could

have drafted in the first instance. See *Eichmann v. National Hospital & Health Care Services, Inc.*, 308 Ill. App. 3d 337, 348 (1999) (declining to cure substantial defects in restrictive covenants where doing so would effectively create a new agreement and discourage narrow and precise draftsmanship).

¶ 34

D. Tortious Interference

¶ 35

Finally, SMC argues summary judgment should have been entered in its favor on its claim against Nexa alleging tortious interference with a contract. The first element of this cause of action is “the existence of a valid and enforceable contract between the plaintiff and another.” *Lawrence & Allen, Inc.*, 292 Ill. App. 3d at 133. Because the restrictive covenants between SMC and Noe are unenforceable, SMC cannot establish this threshold element and its tortious-interference claim necessarily fails. See *id.* at 144.

¶ 36

III. CONCLUSION

¶ 37

SMC’s postemployment restrictive covenants are unreasonable as a matter of law. SMC has not established concrete grounds for barring Noe from doing business with SMC customers he never served or solicited. Nor has it established concrete grounds for barring Noe from recruiting, indefinitely, any SMC employee or consultant, regardless of that employee’s or consultant’s connection to SMC’s competitive interests.

¶ 38

We affirm the judgment of the circuit court of Will County.

¶ 39

Affirmed.