



Delaware Court of Chancery Refuses to Blue Pencil Unreasonable Restrictive Covenants

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In a recent decision, *[BluSky Restoration Contractors, LLC v. Robbins and Popwell](#)*, delivered on March 4, 2026, the Delaware Court of Chancery declined to blue pencil restrictive covenants that it found to be geographically, temporally, and substantively overbroad. Blue penciling is a doctrine allowing courts to sever or narrow unenforceable contract terms while enforcing the balance of the terms or agreement. The Court reasoned that judicial reformation in such circumstances would undermine the goal of requiring parties to draft restrictive covenants specifically tailored to their circumstances and legitimate business interests and would incentivize future parties to compose restrictions without appropriate accuracy and precision.

BluSky Restoration Contractors, LLC (“BluSky”), a nationwide restoration firm, acquired a Tennessee-based restoration business from its co-founders, John David Robbins and Christopher J. Popwell (the “Defendants”). In connection with the transaction, the parties executed an equity purchase agreement and contemporaneous employment and incentive unit award agreements containing noncompetition, nonsolicitation, and confidentiality covenants. The Defendants resigned from BluSky almost five years after the acquisition and started a similar business in Tennessee.

The Court restated its previously established principles that enforceable restrictive covenants must satisfy three requirements: (a) they have reasonable temporal and geographic scope, (b) they advance the legitimate economic interests of the party seeking enforcement, and (c) they survive a balancing of the equities.

Applying this framework, the Court held that a five-year, worldwide noncompetition covenant in the equity purchase agreement exceeded the legitimate business interests of the acquired business, which operated regionally, and was therefore unreasonable and inequitable. The Court declined to credit

contractual acknowledgments of reasonableness, reaffirming that boilerplate provisions do not foreclose judicial scrutiny.

A five-year, worldwide nonsolicitation covenant covering customers and employees was likewise unenforceable because it lacked geographic limitations, prohibited even attempted solicitation, and applied broadly to customers and employees of BluSky's affiliates. The Court emphasized that, in a sale-of-business context, the buyer's legitimate interests are defined by the acquired company's competitive reach, not the purchase price.

The Court reached the same conclusions with respect to the two-year, nationwide noncompetition and nonsolicitation covenants in the Defendants' employment and incentive unit award agreements. Although shorter in duration, those covenants exceeded the Tennessee-based scope of the acquired business. In addition, the nonsolicitation covenant contained similar overbroad modifiers as those cited above. The balance of the equities also favored the Defendants because their compensation reflected regional executive roles and did not justify nationwide restraints.

Finally, the Court held that the confidentiality provisions were overbroad and unenforceable because they lacked temporal limits, applied to all proprietary information without appropriate narrowing, and extended to broadly defined affiliates and a wide range of third-party relationships.

The decision reinforces the Delaware Court of Chancery's unwillingness to rescue overbroad restrictive covenants through blue penciling and underscores the need for acquirors to narrowly tailor such provisions to their legitimate business interests or risk wholesale invalidation.

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