IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRES-CO SYSTEM USA, INC.	:	CIVIL ACTION
	:	
V.	:	
	:	
ROBERT BODELL	:	NO. 05-3349

MEMORANDUM

Dalzell, J. November 15, 2005

In this diversity action to enforce a non-competition clause, plaintiff Fres-co System USA, Inc. filed last summer a motion for a temporary restraining order against its former salesman, Robert Bodell, which we denied after a hearing on July 12, 2005. Fres-co then filed a motion for a preliminary injunction, and we convened a hearing on November 10, 2005. At the close of that hearing, the parties agreed that the matter should be submitted as a trial of the action on the merits, pursuant to Fed. R. Civ. P. 65(a)(2). This memorandum will constitute our findings of fact and conclusions of law under Fed. R. Civ. P. 52(a).[1]

Factual Background

Most of the facts are undisputed. Between July 13, 1998 and May 6, 2005, Robert Bodell worked as a sales representative for Fres-co, which manufactures and distributes

[1] We have diversity jurisdiction because Fres-co is a Delaware corporation whose principal place of business is in Bucks County, Pennsylvania, and Bodell is a citizen of Georgia. The amount in controversy in this equitable action exceeds $75,000.

flexible packaging materials and packaging machinery. Its principal customers are roasters and packagers of coffee. Before coming to Fres-co, Bodell had worked for PrintPak, another flexible packaging company involved in the coffee industry.

Bodell's sales territory for Fres-co was the southeastern United States and the Caribbean. In 2004, Bodell was responsible for about $4 million of packaging sales and $2.5 million in equipment sales.

On June 25, 1998, about three weeks before he began working at Fres-co, Bodell signed a Confidentiality and Non-Competition Agreement ("the 1998 Agreement"). See Compl. Ex. A. On July 15, 1999, Bodell signed a new Confidentiality and Non-Competition Agreement ("the 1999 Agreement"). See Compl. Ex. B. Bodell was not paid extra money to sign the 1999 Agreement.[2] All 350 Fres-co employees -- from the lowest clerical or maintenance worker to the firm's senior officers -- had to sign the same non-compete agreement, and no employee was permitted to negotiate the terms of the 1999 Agreement.

The 1998 Agreement provided, inter alia, that:

> During the course of his/her employment, and for a period of two (2) full years after the termination thereof under any circumstances

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[2] At the November 10 hearing, Lawrence Ashton, Fres-co's Executive Vice President, testified that all employees signed the 1999 Agreement at the time of their appraisal. If they signed it, they were eligible for a later pay raise. Two employees did not sign and were purportedly let go for other reasons. Neither Mr. Ashton nor any other Fres-co representative has offered any evidence that Mr. Bodell or any employee received money or other benefits when he or they signed the 1999 Agreement.

> or for any reason, Employee shall not directly or indirectly solicit business from, engage in, be employed by, contract with, or otherwise do business with any clients, customers, or competitors of Fres-co if such business is of a type which was performed by Fres-co or could be performed by Fres-co without the express specific written consent of Fres-co.

Compl. Ex. A ¶ 7.

In the 1999 Agreement, the form states that for one year after the employee stops working at Fres-co, he or she would not become an employee of a Fres-co competitor "in any 'Line of Business,'" as defined in the agreement, and that he or she would not "solicit business from, contract with, be employed by, or otherwise do business with any customer of Fres-co or assist any other person or entity in doing so in any 'Line of Business'" (the "non-compete"). Id. ¶ 7. Paragraph seven of the 1999 Agreement provides that:

> During the course of his/her employment, and for a period of one (1) full year after the termination thereof under any circumstances or for any reason, Employee shall not directly or indirectly whether as owner, shareholder, director, partner or employee or in any other capacity:
>
> a) compete with Fres-co in any "Line of Business";
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> b) accept employment with or be employed (as an employee, consultant or in any other capacity) by a competitor of Fres-co in any "Line of Business"; or
>
> c) solicit business from, contract with, be employed by, or otherwise do business with any customer of Fres-co or assist any other person or entity in doing so in any "Line of Business".

> As used in this paragraph "Line of Business" means and includes:
>
> 1) the manufacture, design, development, service, distribution or sale of flexible packaging equipment and/or materials for use in packaging any products for which customers or prospective customers of Fres-co have, at any time during the two (2) year period immediately preceding termination of employment, purchased or contracted to purchase equipment and/or materials from Fres-co (or any affiliate of Fres-co) and shall in any event include, but not be limited to Coffee, Pet Food, Agricultural Chemicals and polymers; and
>
> 2) any other line of business conducted by Fres-co on the date of termination of employment or then in development by Fres-co.
>
> The foregoing prohibition concerning competition shall apply to the geographic areas in which Fres-co has engaged in any business activities (including but not limited to, product sales, marketing or shipments) during the two (2) year period prior to termination of employment.

The form also calls on the employee not to disclose any of Fres-co's confidential information (the "confidentiality clause"). Id. ¶ 3.

After leaving Fres-co, Bodell began working for Ultra Flex Packaging Corp. ("Ultra Flex"), a Fres-co competitor. Despite the restrictions contained in the 1999 Agreement, Bodell contacted at least nine of Fres-co's customers, eight of whom had relationships with Ultra Flex prior to Bodell starting at that company. To date, Fres-co has not lost any money as a result of

Bodell's departure six months ago.

Fres-co sued Bodell, seeking injunctive and declaratory relief on three counts: (1) breach of contract (based on solicitation); (2) misappropriation of trade secrets and confidential and proprietary information; and (3) tortious interference with existing and prospective contractual and business relations (for which Fres-co also seeks damages). At the same time that it filed the complaint, Fres-co filed a motion for a temporary restraining order and a preliminary injunction, and the temporary restraining order was, as noted, denied after a hearing on July 12, 2005.

After expedited discovery, Fres-co renewed its request for a preliminary injunction, one somewhat narrower than the remedy demanded in the complaint. Fres-co requested that we enjoin Bodell from working in the coffee flexible packaging or machinery business in North America or the Caribbean, and revealing any of Fres-co's trade secrets or confidential information. At the close of a hearing on this motion on November 10, 2005, parties agreed that the record on the motion should be submitted as a trial of the action on the merits, pursuant to Fed. R. Civ. P. 65(a)(2).

Legal Analysis

When ruling on a motion for a preliminary injunction, Courts consider four factors: "[A] the likelihood that the applicant will prevail on the merits at final hearing; [B] the

extent to which the plaintiffs are being irreparably harmed by the conduct complained of; [C] the extent to which the defendants will suffer irreparable harm if the preliminary injunction is issued; and [D] the public interest." Opticians Ass'n of America v. Independent Opticians of America, 920 F.2d 187, 191-92 (3d Cir. 1990) (quoting Bill Blass, Ltd. v. Saz Corp., 751 F.2d 152, 154 (3d Cir.1984)). Since this is now procedurally a trial on a final injunction, we no longer look to likelihood of success, but rather to success itself, and balance the equitable factors. Because this case is governed by Pennsylvania law,[3] we first assess whether Fres-co's non-compete language is enforceable under the Commonwealth's law.

I. Non-compete agreements under Pennsylvania law

Pennsylvania courts "permit the equitable enforcement of post-employment restraints only where they are [1] incident to an employment relation between the parties to the covenant, [2] the restrictions are reasonably necessary for the protection of the employer, and [3] the restrictions are reasonably limited in duration and geographic extent." Sidco Paper Co. v. Aaron, 351 A.2d 250, 252 (Pa. 1976). The Pennsylvania Supreme Court has cautioned that "restrictive covenants are not favored in

[3] The 1999 Agreement states that it "shall be construed and interpreted according to the law of the Commonwealth of Pennsylvania." See Compl. Ex. B ¶ 11. Pennsylvania law directs courts presiding over contract disputes to honor parties' choice-of-law provisions. See Nationwide Mut. Ins. Co. v. West, 807 A.2d 916, 920 (Pa. Super. Ct. 2002). Accordingly, we do so here and apply Pennsylvania law.

Pennsylvania and have been historically viewed as a trade restraint that prevents a former employee from earning a living." Hess v. Gebhard & Co. Inc., 808 A.2d 912, 917 (Pa. 2002). Because restrictive covenants restrain an employee's trade, they "are strictly construed against the employer." All-Pak, Inc. v. Johnston, 694 A.2d 347, 351 (Pa. Super. Ct. 1997).

A. Incident to an employment relation

When evaluating whether a non-compete agreement is "incident to an employment relation," Pennsylvania courts consider whether adequate consideration supports the agreement. "If an employment contract containing a restrictive covenant is entered into subsequent to employment, it must be supported by new consideration which could be in the form of a corresponding benefit to the employee or a beneficial change in his employment status." Modern Laundry & Dry Clean v. Farrer, 536 A.2d 409, 411 (Pa. Super. Ct. 1988). Since Fres-co and Bodell entered into the 1999 Agreement more than a year after Bodell began working for Fres-co, the non-compete clause cannot be enforced unless Bodell received some "new consideration."

According to the language of the 1999 Agreement, Bodell signed it "in consideration of the nullification of a prior confidentiality and non-competition agreement." Compl. Ex. B, Introduction. The 1999 Agreement differed from the 1998 Agreement in that it (1) reduced the restricted period from two years to one year; (2) introduced and defined the phrase "line of

business;" and (3) eliminated a liquidated damages provision. Fres-co characterizes these lessened restrictions as consideration. See John G. Bryant Co., Inc. v. Sling Testing & Repair, Inc., 369 A.2d 1164, 1169 (Pa. 1977) (finding consideration where a later agreement lessened restrictions of an earlier covenant).

However, as Fres-co has conceded, the company had employees sign the 1999 Agreement because it was concerned that the 1998 Agreement might be unenforceably overbroad. Def.'s Opp'n Ex. 3, Ashton Dep. 141-42, Aug. 29, 2005. If the 1998 Agreement is unenforceable, there were no prior restrictions on Bodell's post-Fres-co activity.[4] In that case the 1999 Agreement's non-compete language would not decrease the period of a restriction (as Fres-co contends), but rather it would increase restrictions on Bodell's post-Fres-co activity by creating a new a one-year restriction where none existed before. This hardly constitutes consideration.

Moreover, Fres-co admits that every employee, however lowly, had to sign the same 1999 Agreement and was not permitted to negotiate any terms. Fres-co argues this was done for consistency across the organization. No doubt this method was administratively convenient and achieved consistency, but whether such an agreement was permissible under Pennsylvania law is quite

[4] As will be seen, our analysis reveals that the 1999 Agreement is unenforceably overbroad. Since Fres-co concedes that the 1998 Agreement is even broader, it, too, must be unenforceable.

a different matter. Lacking consideration since gratuitously sought, the 1999 Agreement fails to satisfy Pennsylvania's requirements and is thus unenforceable on this basis alone.

B. Restrictions reasonably necessary for employer's protection

Pennsylvania law recognizes that non-competition agreements can protect legitimate business interests and that these include "trade secrets of an employer, customer goodwill[5] and specialized training and skills acquired from the employer." Thermo-Guard, Inc. v. Cochran, 596 A.2d 188, 193-94 (Pa. Super. Ct. 1991) (footnote added). At the same time, such agreements may not be used to "eliminat[e] or repress[] competition or to keep the employee from competing so that the employer can gain an economic advantage." Hess v. Gebhard & Co. Inc., 808 A.2d 912, 920-921 (Pa. 2002).

Fres-co argues that its non-compete form protects legitimate business interests -- customer goodwill and trade secrets. While Fres-co identifies protectable business interests, the terms of the non-compete form far exceed what is reasonably necessary to protect them. The form's language covers

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[5] The Pennsylvania Supreme Court has defined goodwill "as that which represents a preexisting relationship arising from a continuous course of business . . . . [and] the positive reputation that a particular business enjoys." Hess v. Gebhard & Co. Inc., 808 A.2d 912, 922 (Pa. 2002) (internal quotations and citations omitted).

We will assume there may be some aspect of "trade secret" in the packaging machines Fres-co makes. It is, however, undisputed that most of Fres-co's employees -- and most assuredly Bodell -- are not engineering or technical personnel.

not only customers in the coffee market, but all "lines of business" for Fres-co and "any affiliate of Fres-co," "includ[ing], but not limited to Coffee, Pet Food, Agricultural Chemicals and polymers." See Compl. Ex. B ¶ 7(c)(1). Fres-co's "affiliates" include an Italian company, Goglio, Def.'s Opp'n Ex. 3, Ashton Dep. 132:22-24, and a Chinese company, Goglio Tiangin, which is owned by GoPack, an Italian company, see id. 133:2-17. Therefore, the form language by its terms reaches at least four industries on three continents. This international cross-industry protection is unquestionably broader than is necessary to protect any legitimate concerns Fres-co might have as they relate to a salesperson who sold for them in the coffee market in the southeastern United States and the Caribbean.

C. Restrictions reasonably limited in duration and geographic extent

A final consideration under Pennsylvania law is whether the restrictions imposed are reasonably limited in duration and geographic extent. Bodell concedes that one year may be reasonable, but takes issue with the geographic scope, which, as already discussed, is international both by its terms and as proposed for our modification.

We note that Fres-co's motion seeks a narrower prohibition than what is contained in its latest iteration of the non-compete form, specifically one that would prohibit Bodell from operating in the North American and the Caribbean coffee markets. Because the parties have requested a final decision on

the merits, we must examine the express terms of the non-compete.

We first note Fres-co's argument that a restriction covering territory congruent with the scope of its coffee market is reasonable under Pennsylvania law. While courts have upheld this principle, such cases typically involve covenants with fewer deficiencies that the one we examine today. See, e.g., Viad Corp. v. Cordial, 299 F.Supp.2d 466, 477 (W.D. Pa. 2003) (upholding non-competition covenant covering United States and Canada where employer marketed and sold in those areas and defendants did not challenge the geographic scope); Prison Health Servs. v. Umar, No. 02-2642, 2002 U.S. Dist. LEXIS 12267, at *19-20 (E.D. Pa. May 8, 2002) (upholding five-year nationwide noncompetition agreement where the court found no doubt that consideration was given); QVC v. Bozek, No. 96-1756, 1996 U.S. Dist. LEXIS 4770, at *10 (E.D. Pa. Apr. 12, 1996) (finding a one-year nationwide noncompetition provision reasonable because QVC conducted business through national broadcasts and defendant had received consideration).

The non-compete at issue here is not even limited to Bodell's former sales territory (the states of the old Confederacy and the Caribbean), nor even to his industry (coffee packaging products). It is thus impermissibly broad in geographic scope.

Having failed to meet Pennsylvania's standard for enforceability of non-competes, Fres-co cannot succeed on the merits and therefore is not entitled to injunctive relief.

II. Reforming the Non-compete Language

Fres-co asks that if this Court finds the 1999 Agreement overly broad, we should narrow it and apply injunctive relief to the non-compete as we have modified it. While the non-compete is unenforceable because of overbreadth and lack of consideration, we will assume for the purposes of this reformation analysis that Bodell received consideration for the 1999 Agreement. Is reformation warranted in this case?

The Pennsylvania Supreme Court has repeatedly held that "where the covenant imposes restrictions broader than necessary to protect the employer . . . a court of equity may grant enforcement limited to those portions of the restrictions which are reasonably necessary for the protection of the employer." Sidco, 351 A.2d 250, 254 (Pa. 1976) (citing many cases in support of this proposition). Bodell concedes that this Court can exercise its broad discretion in fashioning an injunction that enforces a modified version of the restrictive covenant, but he argues that it should not, relying primarily on Reading Aviation Service, Inc. v. Bertolet, 311 A.2d 628 (Pa. 1973).

In Reading Aviation, the Pennsylvania Supreme Court upheld a lower court's refusal to grant an injunction for a non-compete that was unlimited in time and space. The court noted that the "inherently unequal bargaining positions" of employers and employees required covenants of non-competition to be closely scrutinized. Id. at 630. It found that the "open-ended restrictions" on the employee imposed "an unconscionable burden

on his ability to pursue his chosen occupation" and that the restrictions were "far greater than are reasonably necessary" for the employer's protection. Id. The court considered the possible adverse effects of courts rewriting such agreements to make them reasonable, namely that "[t]he objection to such a practice is that it tends to encourage employers . . . possessing superior bargaining power over that of their employees . . . to insist upon unreasonable and excessive restrictions, secure in the knowledge that the promise may be upheld in part, if not in full." Id. at 630-31 (quoting § 1647C of Williston's treatise on contracts, Third Ed. 1972).

Fres-co argues that the 1999 Agreement's provisions "do not run afoul of Reading Aviation; to the contrary, they are well within cases like Bell Fuel and Sidco," Pl.'s Mem. 14, which are two later cases that discussed Reading Aviation. We therefore examine Sidco Paper Co. v. Aaron, 351 A.2d 250 (Pa. 1976), and Bell Fuel Corp. v. Cattolico, 544 A.2d 450 (Pa. Super. Ct. 1988).

In Sidco, the Pennsylvania Supreme Court emphasized that Reading Aviation concerned a geographically unlimited covenant that could have been limited at the time the contract was formed. See Sidco Paper Co. v. Aaron, 351 A.2d 250, 256-57 (Pa. 1976) (upholding grant of preliminary injunction enforcing a two-year non-compete where terms of covenant limited it to employer's trade territory and employer further limited injunction to defendant salesperson's specific territory). Sidco explained that:

> This sort of gratuitous overbreadth militates against enforcement because it indicates an intent to oppress the employee and/or to foster a monopoly, either of which is an illegitimate purpose. An employer who extracts a covenant in furtherance of such a purpose comes to the court of equity with unclean hands and is, therefore, not entitled to equitable enforcement of the covenant.

Id. 257.

Fres-co contends there is no "intent to oppress" here because the restriction is only for one year and because Bodell's agreement covers only coffee, which is only a portion of the entire flexible packaging industry. However, by its express terms, the non-compete is not limited to the coffee industry, nor to the region in which Bodell worked, nor to the Fres-co customers Bodell contacted while an employee there, nor even to the Fres-co customers in existence when Bodell left. All such limitations could have been included in the 1999 Agreement without sacrificing the consistency that Fres-co sought and still protecting legitimate business concerns.

Furthermore, the non-compete applies to any line of business "in development by Fres-co" at the time of an employee's departure. Fres-co admits that Bodell would not have been familiar with all of the Fres-co projects in development when he left,[6] yet its non-compete seeks to legally bind him to exactly

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[6] The deposition of Lawrence Ashton, Fres-co's Executive Vice President, is instructive:

> Q. Can you name any project that was in development [in May 2005]?
> A. Not with any reasonable certainty.

such knowledge. Such vagueness in terms means any employee leaving Fres-co would do so at his or her peril. This is precisely the type of abuse of an employer's vastly superior bargaining power that the Supreme Court of Pennsylvania condemned in Reading Aviation. Given that Fres-co could have inserted such limiting provisions in the 1999 Agreement, but chose not to, reformation here would effectively ratify "gratuitous overbreadth" and the oppression that has occurred.[7]

In Bell Fuel, 544 A.2d 450 (Pa. Super. Ct. 1988), the employer, Bell Fuel Corporation, sought to enforce a covenant

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Q. Okay. You would agree with me that Mr. Bodell would not have been familiar with all of the projects under development by Fres-co in May of '05; is that correct?
A. I would agree he would not be aware, yes.
Q. He would not be aware?
A. Correct.

Def.'s Opp'n Ex. 3, Ashton Dep. 20:9-18.

[7] We note that the non-compete is not the only provision demonstrating Fres-co's desire to oppress its employees. The first provision of the 1999 Agreement, which is cognate to the first provision of the 1998 Agreement, states, in language perhaps more suitable for one entering religious orders, that:

> Employee shall devote the whole of his/her time, attention, allegiance, loyalty, effort, and energies to the performance of his/her duties as an employee of Fres-co, and to the advancement of Fres-co's legitimate business interests and shall not, either directly or indirectly, alone or in partnership, be employed or engaged by any other competing business, person or entity, be connected with or concerned in any other competing business in any manner or fashion during the term of his/her employment (except that Employee may own less than one percent of the common stock of any publicly traded corporation.

Compl. Ex. B ¶ 1 (emphasis added).

that, inter alia, restrained Anthony Cattolico, Jr. from "contact[ing] or solicit[ing] customers of the Company" after employment with Bell ceased. Id. at 452. The Superior Court of Pennsylvania, in reversing the trial court's conclusion that the covenant was void on its face and unmodifiable, found that the trial court had inappropriately analogized that case to Reading Aviation.

> Reading merely requires us to refuse to enforce any covenant that is manifestly unreasonable in light of the employer's needs and is excessively burdensome to the employee in pursuing his occupation. Thus, the question is overall reasonableness, to be judged against the employer's needs and the impact on the employee. In the instant case, the impact on the employee is limited to the inability directly to lure away Bell's customers. If Cattolico wishes, he may set up shop next door to Bell in a directly competitive business or he may work for any of Bell's competitors. He simply may not solicit Bell's customers or use or disclose Bell's protectible confidential business information. Thus, the covenant is not prima facie unreasonable within the holding of Reading Aviation.

Id. at 459.

Bell Fuel's facts plainly differ from those here. While Cattolico could still pursue his chosen profession under Bell's non-compete, Fres-co most certainly seeks to prevent Bodell from working in his chosen industry. Applying Bell Fuel's framework of "overall reasonableness," we balance Fres-co's legitimate interests in protecting customer goodwill and such trade secrets as it has against Bodell's inability to work anywhere on this continent (and in several foreign countries) in

the profession in which he has spent more than seven years.[8]

Fres-co cites several other cases to support its argument that this Court should apply Pennsylvania law to reform the 1999 agreement and enforce it as modified. In two cases, including one this Court decided, the facts differed critically in that the covenants at issue suffered from relatively minor defects. See Vector Sec., Inc. v. Stewart, 88 F. Supp. 2d 395, 400 (E.D. Pa. 2000) ("While the covenant limits to some degree the customer base from which the defendants may draw, the clause does not prohibit them from working in the alarm security field or from competing with Vector for new subscribers."); QVC, Inc. v. Tauman, No. 98-1144, 1998 U.S. Dist. LEXIS 4383, at *8-17 (Apr. 3, 1998) (Dalzell, J.) (reforming a contract by altering its term after concluding that the fairly narrow restrictive covenant was supported by consideration and, except for a flaw in its duration, was valid and enforceable).

Another recently decided case bears a closer resemblance to the facts here, yet important differences exist. Coventry First, LLC v. Ingrassia, No. 05-2802, 2005 U.S. Dist. LEXIS 13759, at *26-27 (E.D. Pa. July 11, 2005) (narrowing the terms and the geographic scope from the United States, Puerto

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[8] Fres-co was willing to hire Bodell after he had worked for a competitor, PrintPak, and had him continue calling on his former PrintPak's clients without apparent offense to Fres-co's competition sensibilities. Having benefitted from the experience and customer contacts that Bodell gained working for a competitor, Fres-co now wants to ensure that no other company can do what it did with Bodell.

Rico and Canada to the defendant employee's former five-state territory). Notably, Coventry First found the non-compete at issue was supported by consideration, and that the plaintiff employer was likely to succeed on the merits, in part because of the defendant's questionable activities while still in the plaintiff's employ. Id. at *26-27. In this case, we have already shown why the non-compete fails under Pennsylvania law for lack of consideration, and Fres-co has not impugned the quality of Bodell's record while working as a Fres-co employee.

Sitting in equity, a court has broad powers to craft appropriate injunctive relief, but it must carefully weigh all the facts of the case in deciding what is equitable. The cases Fres-co cites are not in the same league as this case, largely because the language of those covenants was narrower. Here we are asked to either enforce the non-compete or completely rewrite it and then enforce it. If we were to do the latter, perhaps Bodell would get some limited relief and Fres-co's legitimate interests would be protected, but we would then sanction Fres-co's choice to make all of its 350 employees sign a gratuitously overbroad non-compete lacking in consideration. This is precisely the "heads the employer wins, tails the employee loses" situation against which the Pennsylvania Supreme Court set its face in Reading Aviation.

We cannot ignore the Pennsylvania Supreme Court's admonition that restrictive covenants are disfavored and "historically viewed as a trade restraint that prevents a former

employee from earning a living." Hess, 808 A.2d at 917. When covenants are included in agreements to "eliminat[e] or repress[] competition or to keep the employee from competing so that the employer can gain an economic advantage, the covenant will not be enforced." Id. at 920-921. Given the over-reaching terms of Fres-co's non-compete adhesion form, we cannot view it as anything other than a restraint unnecessarily preventing Bodell from earning his living in the business he knows. Even if Bodell had received consideration for the 1999 Agreement, it would be inequitable to reform that form under these highly oppressive circumstances.

Having recognized an overbreadth problem with its 1998 Agreement, Fres-co failed properly to address it. Now it asks this Court to take on a wholesale rewriting that properly belongs to corporate decision-makers working with their counsel. We decline this expansive invitation to exercise our equitable powers to help this employer stifle legitimate competition by a salesman merely seeking to ply his trade.

Conclusion

Fres-co's non-competition language contained in its 1999 Agreement is unenforceable for lack of consideration and overbreadth. Moreover, for the reasons discussed, this is a case in which granting relief would be inequitable. We therefore deny Fres-co's motion for a final injunction. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRES-CO SYSTEM USA, INC.	:	CIVIL ACTION
v.	:	
ROBERT BODELL	:	NO. 05-3349

ORDER

AND NOW, this 15th day of November, 2005, upon consideration of plaintiff's renewed motion for preliminary injunction (docket entry #14) and defendant's response thereto (docket entry #18), and after a hearing at which the parties agreed that the record and this motion should be submitted as a trial of the action on the merits pursuant to Fed. R. Civ. P. 65(a)(2), and in accordance with the accompanying Memorandum, it is hereby ORDERED that:

1. Plaintiff's motion is DENIED; and
2. The Clerk shall CLOSE this case statistically.

BY THE COURT:

Stewart Dalzell, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRES-CO SYSTEM USA, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
ROBERT BODELL	:	NO. 05-3349

JUDGMENT

AND NOW, this 15th day of November, 2005, in accordance with the accompanying Order and Memorandum, JUDGMENT IS ENTERED in favor of defendant Robert Bodell and against plaintiff Fres-co System USA, Inc.

BY THE COURT:

Stewart Dalzell, J.