No. 316A-14 22A Judicial District

SUPREME COURT OF NORTH CAROLINA

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BEVERAGE SYSTEMS OF THE CAROLINAS, LLC, Plaintiff-Appellee vs. ASSOCIATED BEVERAGE REPAIR, LLC, LUDINE DOTOLI and CHERYL DOTOLI, Defendants-Appellants	)	From Iredell County No. 12-CVS-1519 No. COA 14-188

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MOTION OF NORTH CAROLINA ADVOCATES FOR JUSTICE FOR LEAVE TO FILE AMICUS CURIAE BRIEF

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TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

The North Carolina Advocates for Justice moves, pursuant to Rule 28(i), N.C. Rules App. Proc., for permission to file an *amicus curiae* brief, submitted herewith. In support hereof, Movant respectfully shows as follows:

NATURE OF MOVANT'S INTEREST

The North Carolina Advocates for Justice ("the Advocates" or "NCAJ") is a professional association of more than 3,000 North Carolina lawyers. NCAJ has a primary purpose of advancing and protecting the rights of those injured by others' wrongdoing, including workers. In furtherance of its mission, NCAJ regularly participates in the legislative process, prepares resource materials, conducts seminars, and appears as *amicus curiae* before state and federal courts to advance and protect the rights, safety, and health of citizens throughout North Carolina. This case presents questions of widespread significance to North Carolina workers.

REASONS AN AMICUS BRIEF IS BELIEVED DESIRABLE

An *amicus* brief is desirable because this case presents a public policy issue of great significance to North Carolina and its citizens. North Carolina has strong statutory and common law prohibitions on restraints of trade. Because noncompetition agreements are a partial restraint of trade, they are "looked upon with disfavor in modern law." *Kadis v. Britt*, 224 N.C. 154, 160, 29 S.E.2d 543, 546 (1944).

Noncompetition agreements are contracts, and generally, as with all other contracts, courts should enforce them as written. Courts do not ordinarily rewrite contracts for the parties to make an otherwise unenforceable contract valid.

In the area of noncompetition agreements, however, our courts have recognized a narrow exception to the general rule governing reformation of contracts. They have permitted trial courts to utilize the "strict blue-pencil doctrine" to reform overly broad terms in noncompetition agreements by permitting the court to strike out severable unreasonable clauses and enforce the remaining reasonable terms.

The Court of Appeals' decision disregards these principles and creates a special rule that would order courts to re-work otherwise illegal, overreaching terms of noncompetition agreements into clauses that can be enforced by employers against their former employees. The ruling below will squelch innovation and new jobs. Overbroad noncompetition agreements severely limit the mobility of employees necessary for start-up businesses and companies looking to relocate. This adverse impact on North Carolina is especially acute when our neighboring states of Virginia and South Carolina take the opposite approach and strictly prohibit the enforceability of overbroad noncompetition provisions.

QUESTIONS OF LAW TO BE ADDRESSED AND POSITION OF AMICUS

Amicus limits its briefing to the issue of whether the Court should adopt the so-called "liberal blue pencil doctrine" and permit courts to rewrite otherwise unenforceable, as overly broad and restrictive, restrictive clauses in noncompetition agreements. NCAJ takes the position that the Court should reject

the doctrine, as inviting courts to rewrite private contracts so that they can be enforced represents a major shift in contract jurisprudence, undermines the long-standing principle that noncompetition agreements are disfavored under the law, and would severely hamper this state's ability to attract new jobs and retain innovative industries.

Respectfully submitted, this, the 16th day of October, 2014.

NORTH CAROLINA ADVOCATES FOR JUSTICE

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CERTIFICATE OF FILING AND SERVICE

I certify that the foregoing *Amicus Curiae* brief of the North Carolina Advocates for Justice has been:

1. Filed electronically with the North Carolina Supreme Court pursuant to Rule 26(a)(2) of the North Carolina rules of Appellate Procedure; and,

2. Served upon all parties to this action pursuant to Rule 26(c) of the North Carolina Rules of Appellate Procedure via electronic mail and first-class U.S. mail, addressed as noted below:

Mr. Kevin C. Donaldson
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This, the 16th day of October, 2014.

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