

FILED IN  
JOHNSTON COUNTY  
TISHOMINGO, OKLAHOMA

IN THE DISTRICT COURT OF JOHNSTON COUNTY  
STATE OF OKLAHOMA

NOV 23 2010

Eddie Lee Howard  
Plaintiff,

~~O'CLOCK~~ M.  
CASSANDRA SLOVER, Court Clerk:  
By \_\_\_\_\_ Deputy

vs.

Date: November 23, 2010

Nitro-lift Technologies, LLC

Case No: CJ-2010-57


Defendant.

ORDER

This matter is before the court on a motion to dismiss. The parties have thoroughly briefed and argued the issue to this court and after consideration, this court finds as follows:

1. The Oklahoma statutory provision concerning restraint of trade at 15 O.S.271 is not absolute; the validity of any such restraint is determined by its reasonableness. Key Temporary personnel vs. Cox, Ok. App., 884 P2d 1213 (1994)
2. In Oklahoma, arbitration agreements are generally accepted, 12 O.S. 1851, et seq. and the role of the courts is limited to certain preliminary inquiries in the face of such an agreement, 12 O.S. 1857 (B). This determination by the court is a "gateway" question for the court to the binding effect of the arbitration clause, Oklahoma Oncology vs. US Oncology OK, 160 P3d 936 (2007). Generally, if an otherwise valid clause is not an unreasonable restraint the issues presented under the clause are for the arbitration.
3. In this instance the court here finds there is a valid arbitration clause. It is plainly stated and described in the agreement signed by the parties and the topics covered are reasonable, in that the Defendant in this matter has a legitimate interest in the protection of its confidentialities and proprietary matters. Further the non-competition provision which is designed to prevent competitors from obtaining the benefit of specialized training and knowledge imparted to its employees is likewise reasonable and is restricted to a two (2) year period in application. Finally the provision providing that the employees may not for two (2) years after termination with Nitro-lift solicit or influence any person to terminate employment with Nitro-lift is also reasonable.
4. Although in its argument the plaintiffs suggest they might present a "fraud in the inducement" to This arbitration clause, none was presented here and no finding is entered in that regard.
5. This court finding the arbitration agreement is valid on its face and reasonable in its terms and scope the Temporary Restraining Order sought by the Plaintiffs is denied and the Motion to Dismiss of the Defendant company is granted.

Ordered this 23<sup>rd</sup> day of November, 2010.

  
\_\_\_\_\_  
THE HONORABLE ROBERT M. HIGHSMITH

CERTIFICATE OF SERVICE

I hereby certify that on the 23<sup>rd</sup> day of November , 2010, a true and correct copy was mailed to the following:

1. Micah Knight P.O. Box 1576 Durant, OK. 74702
2. Wallace Coppedge, sorter tray.
3. Kelli M. Masters 100 N. Broadway , Suite 1700 Okla. City. OK. 73102-8820

  
BAILIFF / CLERK