

Wax This! New York Court Finds Restrictive Covenant In Hair Removal Specialist's Employment Agreement Unreasonable and Unenforceable

September 26, 2011 by [Jonathan Sokolowski](#) & [Eric Raphan](#)

On August 19, 2011, in *Eyes of the World v. Boci*, No. CV 46549/09 (N.Y. Civ. Ct. Aug. 19, 2011), Judge Margaret A. Chan held that a former employee's restrictive covenant prohibiting her from providing salon services to any client of her former employer for whom she provided such services during the last 12 months of her employment was overly broad and, thus, unenforceable.

Defendant Miranda Boci ("Boci") was employed by plaintiff Eyes of the World ("Plaintiff") to perform hair removal services until she resigned in early 2009 to work for NYC Waxing, LLC ("NYC Waxing"). Boci's employment agreement with Plaintiff contained a 1-year restrictive covenant which barred Boci from providing "Salon Services" in New York City to any of Plaintiff's clients for whom Boci provided such services during her last year of employment with Plaintiff. Plaintiff commenced the instant action against Boci and NYC Waxing alleging that that Boci breached her post-employment obligations to Plaintiff by servicing eighty six of Plaintiff's former clients once she began working for NYC Waxing.

Judge Chan reiterated that Boci's restrictive covenant must be reasonable in temporal and geographic scope and then will be enforced only: (a) to the extent necessary to protect Plaintiff from unfair competition which stems from the Boci's use or disclosure of trade secrets or confidential customer lists; or (b) if Boci's

services are unique or extraordinary. Judge Chan first concluded that Boci did not have access to trade secrets, client lists or any other of Plaintiff's proprietary information and, thus, the enforcement of the restrictive covenant was not necessary to protect Plaintiff from unfair competition by Boci or NYC Waxing.

Judge Chan then held that despite Boci's training, her job and the skills used for that job are not legally considered unique or extraordinary. Judge Chan further noted that the clients at issue opted to follow Boci to her new employer based upon their needs and her ability and not as a result of any unlawful conduct by Boci or NYC Waxing. Based upon these facts, Judge Chan dismissed Plaintiff's complaint.

Judge Chan's decision should serve as an important reminder to employers that drafting an enforceable restrictive covenant goes beyond simply ensuring that such covenant is reasonable in temporal and geographic scope. Employers must also keep in mind that in order for the covenant to be enforceable, it must be drafted to protect the employer's legitimate business interests. Otherwise, an employer may find that, like Plaintiff in this case, its restrictive covenant is overly broad and, thus, unenforceable.