

**CAUSIN, L.L.C., D/B/A BAYOU  
SAFETY AND SUPPLY**

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**NO. 2018-CA-0706**

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**VERSUS**

**COURT OF APPEAL**

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**PACE SAFETY  
CONSULTANTS, LLC AND  
JAY R. BAKER**

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**FOURTH CIRCUIT**

**STATE OF LOUISIANA**

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APPEAL FROM  
25TH JDC, PARISH OF PLAQUEMINES  
NO. 63-949, DIVISION "A"  
Honorable Kevin D. Conner, Judge

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**Judge Paula A. Brown**

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(Court composed of Judge Roland L. Belsome, Judge Sandra Cabrina Jenkins,  
Judge Paula A. Brown)

**JENKINS, J., DISSENTS WITH REASONS**

Lloyd N. Frischhertz  
Marc Lloyd Frischhertz  
Anthony J. Impastato  
FRISCHHERTZ, POUILLIARD FRISCHHERTZ & IMPASTATO, L.L.C.  
1130 St. Charles Avenue  
New Orleans, LA 70130

**COUNSEL FOR PLAINTIFF/APPELLEE**

Thomas Robert Peak  
John Asley Moore  
Jonathan A. Moore  
TAYLOR PORTER BROOKS & PHILLIPS  
450 Laurel Street, 8th Floor  
P.O. Box 2471  
Baton Rouge, LA 70801

**COUNSEL FOR DEFENDANT/APPELLANT**

**JUDGMENT AMENDED AND AFFIRMED AS AMENDED  
January 30, 2019**

This action involves a nonsolicitation/noncompetition agreement. A dispute arose between Appellee, Causin, L.L.C. d/b/a Bayou Safety and Supply (“Causin”), a former employer and Appellants, Jay R. Baker, (“Mr. Baker”) a former employee, and Mr. Baker’s company, Pace Safety Consultants, LLC (“Pace Safety”)(collectively, “Mr. Baker”). Causin filed in the district court a petition for declaratory judgment, preliminary injunction, permanent injunction and damages (the “Petition”) alleging Mr. Baker violated the conditions of the nonsolicitation/noncompetition and confidentiality agreement (the “Non-Compete Document”) which Mr. Baker signed during his employment with Causin. In turn, Mr. Baker filed an article 965 motion for judgment on the pleadings (the “Article 965 Motion”). Following a trial on the Petition and the Article 965 Motion, the district court rendered a judgment on May 3, 2018, in favor of Causin.

From this judgment, Mr. Baker appeals. For the reasons set forth below, we amend the district court’s judgment, and affirm the district court’s judgment in all other respects.

## **FACTS/PROCEDURAL HISTORY**

Causin is domiciled in Plaquemines Parish and its principal place of business is in Plaquemines Parish. Mr. Baker was employed as a vice-president of Causin. As a condition of his employment, on April, 7, 2017, Mr. Baker was presented with the Non-Compete Document. The Non-Compete Document restricted Mr. Baker from being employed by or engaging in the same or similar business as Causin and from soliciting any of Causin's customers during Mr. Baker's employment and for two years from the date of termination of his employment.

Mr. Baker's employment with Causin ended on July 25, 2017. After leaving Causin, Mr. Baker began his own safety company, Pace Safety, which does business in Plaquemines Parish. Pace Safety is in direct competition with Causin.

On September 13, 2017, Causin filed the Petition against Mr. Baker alleging that Mr. Baker violated the terms of the Non-Compete Document by establishing Pace Safety.

Mr. Baker filed a peremptory exception of nonjoinder of a party (the "Exception") on October 24, 2017, and a renewed Exception on November 2, 2017, asserting that Causin should be ordered to supplement his petition to join all of its subsidiaries and affiliates. Following the district court's granting of the Exception and the renewed Exception, Causin filed its First and Second Supplemental and Amended Petitions adding its subsidiaries and affiliates as plaintiffs.<sup>1</sup>

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<sup>1</sup> Included as plaintiffs were Bayou Supply, LLC; Prosource Supply, LLC; 804 Crescent Avenue, LLC; 111 W. Airline, LLC; 18 Coquille, LLC; Pinz, LLC; and Causin Land, LLC.

Thereafter, Mr. Baker filed an Article 965 Motion asserting: (1) Mr. Baker did not agree to the Non-Compete Document; (2) the Non-Compete Document was not signed on behalf of Causin or any of the plaintiffs; (3) the Non-Compete Document did not comply with the requirements of La. R.S. 23:921; and (4) the Non-Compete Document was ambiguous.

A trial was held on April 2, 2018, on Causin's Petition and Mr. Baker's Article 965 Motion. The matter was submitted on the pleadings, briefs, and arguments of counsel; no testimony was taken. However, the parties entered an oral stipulation that if the Non-Compete Document was in fact valid and enforceable, Mr. Baker had violated its terms. As well, the parties stipulated:

**Plaintiffs' Stipulation:**

If permitted to testify, Randy J. Causin would testify that he intended to bind Causin, L.L.C. to that [Non-Compete Document], a copy of which is attached as Exhibit "A" to the original petition herein.

**Defendants' Stipulation:**

If permitted to testify, Jay R. Baker would testify that he signed as presented, without revision, that [Non-Compete Document], a copy of which is attached as Exhibit "A" to the original petition herein, that he returned the [Non-Compete Document] to Karen Causin Gaudet, and that Randy J. Causin did not witness his signature.

On May 3, 2018, the district court issued a judgment in favor of Causin, denying the Article 965 Motion and finding that the Non-Compete Document was a "valid and enforceable non-compete agreement which satisfied the requirements of La. R.S. 23:921." As a result, the district court granted Causin's Petition, and First and Second Supplemental and Amended Petitions in all respects except for the issue of damages which the district court indicated would be heard separately.

The judgment also enjoined Mr. Baker from conducting business in competition with Causin as delineated by the Non-Compete Document.<sup>2</sup>

This appeal follows.

### **THE NON-COMPETE DOCUMENT**

The Non-Compete Document provided in pertinent part:

As a condition of my employment with Causin LLC, Bayou Supply & Safety, its subsidiaries, affiliates, successors, or assigns (together “the Company”), and in consideration of my employment with the Company and my receipt of the compensation now and hereafter paid to me by the Company, I agree to be bound by the following provisions of this agreement:

(A) Employee and the Company acknowledge and agree that the Company is engaged in the highly competitive business of selling cylinder gases, liquid gases, compressed gases, welding supplies, safety supplies, marine supplies, electric tools, pneumatic tools, hand tools, service, rentals and repairs of welding equipment, safety equipment, fire extinguishers, safety training, marine equipment, fasteners, signs, labels, tags, embroidery, work clothing, industrial supplies, and tools to its customers (“the Employer’s Business”) in the parishes within Louisiana identified in Exhibit “A” attached hereto. Employee recognizes that from time to time, the Company’s business may expand to other parishes within Louisiana and/or other counties or municipalities in other states and Employee agrees that Company may amend Exhibit “A” and append it to this agreement with the same force and effect as the original Exhibit “A.” Company will provide Employee with any and all amendments. Employee and the Employer acknowledge and agree that the Company does business in all of the parishes contained in Exhibit “A.” Employee agrees that if the Company provides him with an amendment to Exhibit “A” that it will represent as fact that the Company does business in all of the geographical areas identified in such an exhibit unless the Employee provides the Company with written notice disputing that fact within seven days of his receipt of the amendment.

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<sup>2</sup> The district court ordered that “this is a final and appealable judgment under La. C.C.P. art. 1915.”

(B) Employee agrees that Employee will not, during the term of his or her employment and for a period of two years from the date of termination of his or her employment, whether as owner, principle, agent, partner, officer, employee, independent contractor, consultant, licensor, franchisee, or otherwise, alone or in association with any other person become employed or otherwise engaged with any other entity that is engaged in the same or similar business as the Employer's Business in any of the parishes identified in paragraph 5.1(A).

(C) Employee agrees that Employee will not, during the term of his or her employment and for a period of two years from the date of the termination of his or her employment, whether as owner, principle, agent, partner, officer, employee, independent contractor, consultant, licensor, franchisee, or otherwise, alone or in association with any other person directly or indirectly, call upon or solicit any customer of the Company or any subsidiary or affiliate of the Company for the purpose of soliciting and/or selling to, or in any way diverting or taking away, any of said customers in connection with products sold by the Company or products similar to those sold by the Company in any of the parishes identified in paragraph 5.1(A).

\* \* \*

(G) If any court shall determine that any restriction contained in this Agreement is unenforceable, including but not limited to the duration or geographical limits described herein, it is the intention of the parties that the restrictive covenant set forth herein shall not thereby be terminated but shall be deemed amended to the extent to render it valid and enforceable, such amendment to apply only with respect to the operation of the Agreement in the Jurisdiction of the court that has made the adjudication.

Exhibit A, attached to the Non-Compete Document, set forth specific parishes in Louisiana and counties in Mississippi in which Causin did business.<sup>3</sup> Mr. Baker dated and signed a Statement of Compliance which certified that he read and

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<sup>3</sup> Exhibit A stated "Causin LLC, Bayou Supply & Safety, its subsidiaries, and affiliates" and listed the parishes for Louisiana: Acadia, Ascension, Assumption, Avoyelles, Beauregard, Caddo, Calcasieu, Cameron, Concordia, DeSoto, East Baton Rouge, Evangeline, Grant, Iberia,

understood the “Nonsolicitation/Noncompetition and Confidentiality agreement” and “Exhibit ‘A.’” On the Statement of Compliance, Mr. Baker indicated he was an employee, and he set forth his social security number. The Statement of Compliance also bore the signature of Randy J. Causin on a section entitled “Witnessed by Supervisory.”

### **DISCUSSION**

On appeal, Mr. Baker asserts as his sole assignment of error that the district court erred in concluding the Non-Compete Document was valid and enforceable and satisfied the requirements of La. R.S. 23:921. Although Mr. Baker assigns one error, he essentially challenges the district court’s judgment on four grounds: (1) there was no evidence of his intent to be bound by the restrictions contained in the Non-Compete Document; (2) the requirements of La. R.S. 23:921 were not met and the district court failed to strictly construe the document against Causin; (3) the Non-Compete Document is overly broad and overly inclusive because it defines the employer’s business to include “subsidiaries, affiliates”; and (4) the severability clause should not be used to reform the Non-Compete Document because it is ambiguous, and any ambiguity in the severability clause should be interpreted against Causin.

#### *Intent to be bound by the Non-Compete Document*

Mr. Baker contends there was no evidence of any intent of him to be bound by the restrictions contained in the Non-Compete Document. He explains that he

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Iberville, Jackson, Jefferson, Lafourche, Lafayette, Lincoln, Livingston, Madison, Morehouse, Orleans, Ouachita, Plaquemines, Pointe Coupe, Rapides, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terribonne, Vermillion, Vernon, Washington, and West Baton Rouge. Additionally, it listed the counties in Mississippi: Hancock, Union, Jackson, Warren, Perry, Forrest, Lauderdale, Lawrence, Claiborne, Hinds, Madison, Rankin, and Amite.

was not identified in the Non-Compete Document, and his signature on the Statement of Compliance simply acknowledged that he had “read and understood” the Non-Compete Document.

In its written reasons, the district court found that it was undisputed Mr. Baker signed the Non-Compete Document and that Mr. Baker was employed as a vice-president of Causin.<sup>4</sup> The district court reasoned that the Non-Compete Document clearly set forth the parties to the Non-Compete Document:

Defendants argue that the parties to the agreement are not named in the agreement; rather, the terms “employee” and “company” are used. The Court disagrees. The opening paragraph of the Document names the company/employer as “Causin LLC, Bayou Supply & Safety, its subsidiaries, affiliates, successors, or assigns.” Mr. Baker signed at the end of the Document on a line marked “employee.” There is no question as to who the parties to the Document are.

The district court further found that the Non-Compete Document was not a contract and that the parties did not intend for it to be a contract. Instead, the District Court concluded the Non-Compete Document was “a unilateral agreement by Mr. Baker to refrain from competing with Causin, L.L.C. for two years after leaving employment with the company.” We agree.<sup>5</sup>

The record is devoid of any evidence to show that Mr. Baker had a contract of employment; rather, he signed, as an at will employee, the Statement of

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<sup>4</sup> “A judgment and reasons for judgment are two separate and distinct documents. La. Code Civ. Proc. art. 1918. Appeals are taken from the judgment, not the written reasons for judgment.” 429 *Bourbon St., LLC v. RMDR Investments, Inc.*, 16-0800, p. 20 (La. App. 4 Cir. 11/15/17), 230 So.3d 256, 269, *writ denied*, 17-02054 (La. 2/2/18), 235 So.3d 1106 (citations omitted)(footnote omitted). Additionally, “[t]he written reasons for judgment are merely an explication of the trial court’s determinations. They do not alter, amend, or affect the final judgment being appealed . . . .” *Wooley v. Lucksinger*, 09-0571, pp. 77-78 (La. 4/1/11), 61 So.3d 507, 572 (quoting *State in the Interest of Mason*, 356 So.2d 530, 532 (La. App. 1 Cir.1977)). If written reasons are given, the appellate court is entitled to review the written reasons for insight into the district court’s judgment. *Id.*, 09-0571, p. 78 (La. 4/1/11), 61 So.3d 507, 572.

<sup>5</sup> “The existence or non-existence of a contract is a question of fact, and the trial court’s determination of this issue will not be disturbed unless manifestly erroneous or clearly wrong.” *Read v. Willwoods Cmty.*, 14-1475, p. 7 (La. 3/17/15), 165 So.3d 883, 888 (footnotes omitted).



Compliance certifying that he read and understood the “Nonsolicitation/Noncompetition and Confidentiality agreement” and “Exhibit ‘A’”.<sup>6</sup> In the opening paragraph of the Non-Compete Document, the condition for employment was clearly set forth:

As a condition of my employment with Causin LLC, Bayou Supply & Safety . . . and in consideration of my employment with the Company and my receipt of the compensation now and hereafter paid to me by the Company, I agree to be bound by the following provisions of this agreement[.]

After signing the Statement of Compliance, Mr. Baker was employed and paid by Causin until his employment ended.<sup>7</sup> We find Mr. Baker’s assertion that he did not intend to be bound by the Non-Compete Document lacks merit.

*La. R.S. 23:921*

Mr. Baker asserts that the district court erred in concluding that the requirements of La. R.S. 23:921 were satisfied and in failing to strictly construe the Non-Compete Document against Causin.

Nonsolicitation and noncompetition agreements must comply with La. R.S. 23:921 to be valid. Although nonsolicitation agreements are separate from

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<sup>6</sup> See *Read v. Willwoods Cmty.*, 14-1475, pp. 4-5 (La. 3/17/15), 165 So.3d 883, 886-87 (footnotes omitted)(wherein the Supreme Court explained that the employer-employee relationship is a contractual relationship, and an employee is at will or terminable at will “[w]hen a contract does not provide for a limited term, an employer can dismiss the employee at any time and for any reason without incurring liability. When the employer and employee are silent on the terms of the employment contract, the Civil Code provides the default rule of employment-at-will.”). See also, *Cellular One, Inc. v. Boyd*, 94-1783, p. 7 (La. App. 1 Cir. 3/3/95), 653 So.2d 30, 34 (wherein the First Circuit held that the language “any person” used in La. R.S. 23:921(C) included an at will employee and such an employee could enter into a noncompetition agreement.).

<sup>7</sup> The express language of La. R.S. 23:921(A) denotes that the noncompetition agreement can be a “contract or agreement.” Additionally, in *Litig. Reprographics & Support Servs., Inc. v. Scott*, 599 So.2d 922, 924 (La. App. 4<sup>th</sup> Cir. 1992), this Court held that La. R.S. 23:921 did not require that “a non-competition agreement be dated or even be written to be valid.”

noncompetition agreements, the requirements of La. R.S. 23:921 are applicable to both. *Choice Prof'l Overnight Copy Serv., Inc. v. Galeas*, 11-0034, p. 6 (La. App. 4 Cir. 5/25/11), 66 So.3d 1216, 1220 (citing *Vartech Systems, Inc. v. Hayden*, 05-2499, p. 14 (La. App. 1 Cir. 12/20/06), 951 So.2d 247, 260).

The applicable version of La. R.S. 23:921(A) in effect when Causin presented Mr. Baker with the Non-Compete Document as a condition of his employment provided:<sup>8</sup>

A. (1) **Every contract or agreement**, or provision thereof, by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, except as provided in this Section, shall be null and void. However, every contract or agreement, or provision thereof, which meets the exceptions as provided in this Section, shall be enforceable. (emphasis added.)

One of the exceptions set forth in Subpart (C) of La. R.S. 23:921 provides:

Any person, including a corporation and the individual shareholders of such corporation, who is employed as an agent, servant, or employee may agree with his employer to refrain from carrying on or engaging in a business similar to that of the employer and/or from soliciting customers of the employer within a specified parish or parishes, municipality or municipalities, or parts thereof, so long as the employer carries on a like business therein, not to exceed a period of two years from termination of employment . . . .

Mr. Baker, a former employee of Causin, opened a business in direct competition with Causin; thus, the exception to (A)(1) set forth in subpart (C) of La. R.S. 23:921 is at issue.

In order to be a valid nonsolicitation/noncompetition agreement pursuant to La. R.S. 23:921(C), three overarching requirements must be met: (1) a two-year

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<sup>8</sup> In *Choice Prof'l Overnight Copy Serv., Inc. v. Galeas*, 11-0034, p. 6 (La. App. 4 Cir. 5/25/11), 66 So.3d 1216, 1219 (citation omitted), this Court explained that “[w]ith respect to the applicability of La. Rev. Stat. 23:921, the version of the statute that was in effect at the time that the employment agreement in question was executed shall be applied to determine whether the noncompetition provisions contained therein are enforceable.” In this case, the Non-Compete Document was executed in April 2017.

maximum duration, (2) a list of the areas in which the former employee is restrained, and (3) competition between the former employee and employer. *See* Jacob Ecker, At the Breaking Point: Adapting Louisiana Employment Noncompetes Law to the Information Age, 75 La. L. Rev. 1317, 1333 (2015). If an exception set forth in La. R.S. 23:921 is met, subpart (A) provides that “every contract or agreement, or provision thereof, which meets the exceptions as provided in this Section, shall be enforceable.”<sup>9</sup>

Mr. Baker does not dispute that requirements 1 and 3 of subpart (C) are met; instead, he urges requirement 2—the geographical restriction—of subpart (C) is not met. Because review of this issue involves the application or interpretation of subpart (C), a *de novo* standard of review is applicable. *Red Stick Studio Dev., L.L.C. v. State ex rel. Dep’t. of Econ. Dev.*, 10-0193, p. 9 (La. 1/19/11), 56 So.3d 181, 187; *See J4H, L.L.C. v. Derouen*, 10-0319, p. 7 (La. App. 1 Cir. 9/10/10), 49 So.3d 10, 14 (citation omitted)(wherein the court held when the underlying issue is whether a noncompetition agreement falls within the exception found in La. R.S. 23:921(C), it involves interpretation of a statute which is a question of law subject to *de novo* review.). Additionally, Louisiana courts employ a strict construction of

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<sup>9</sup> Before the 2010 amendment, subpart (A)(1) of La. R.S. 23:921 provided: “Every contract or agreement, or provision thereof, by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, except as provided in this Section, **shall be null and void.**” (emphasis added). Effective August 15, 2010 subpart (A)(1) was amended and revised to provide: “Every contract or agreement, or provision thereof, by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, except as provided in this Section, shall be null and void. However, every contract or agreement, or provision thereof, which meets the exceptions as provided in this Section, **shall be enforceable.**” (emphasis added).

noncompetition agreements. See *SWAT 24 Shreveport Bossier, Inc. v. Bond*, 00-1695, pp. 4-5 (La. 6/29/01), 808 So.2d 294, 298.<sup>10</sup>

Mr. Baker asserts that the noncompetition clause—paragraph B—and the nonsolicitation clause—paragraph C—do not specify the parishes where he is restrained from competing and soliciting. He points out that both paragraphs B and C reference “paragraph 5.1(A)” as setting forth the parishes where he is restrained but that “paragraph 5.1(A)” does not exist in the Non-Compete Document. Mr. Baker urges, as a result, the Non-Compete Document should be found null and unenforceable.

The district court found the Non-Compete Document satisfied the requirements of La. R.S. 23:921:

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<sup>10</sup> In *SWAT 24 Shreveport Bossier, Inc.*, 00-1695, pp. 4-5, 808 So.2d at 298, the Supreme Court held in pertinent part:

Louisiana has long had a strong public policy disfavoring noncompetition agreements between employers and employees. *Louisiana Smoked Products, Inc. v. Savoie’s Sausage & Food Products*, 96-1716, p. 11 (La.7/1/97), 696 So.2d 1373, 1379 . . . .

Louisiana’s strong public policy restricting these types of agreements is based upon an underlying state desire to prevent an individual from contractually depriving himself of the ability to support himself and consequently becoming a public burden. See *McAlpine v. McAlpine*, 94-1595, p. 11 (La.9/5/96), 679 So.2d 85, 91. Because such covenants are in derogation of the common right, they must be strictly construed against the party seeking their enforcement. *Hirsh v. Miller*, 249 La. 489, 187 So.2d 709, 714 (1966); *Turner Professional Services, Ltd. v. Broussard*, 99-2838, p. 3 (La. App. 1 Cir. 5/12/00), 762 So.2d 184, 185.

Following the decision in *SWAT 24 Shreveport Bossier, Inc.*, the legislature, by Act 2003, No. 428, effective August 15, 2003, broadened the scope of non-compete agreements by amending La. R.S. 23:921 to provide:

D. For the purposes of Subsections B and C, a person who becomes employed by a competing business, regardless of whether or not that person is an owner or equity interest holder of that competing business, may be deemed to be carrying on or engaging in a business similar to that of the party having a contractual right to prevent that person from competing.

The Court finds that the Document at issue satisfies the criteria in La. R.S. 23:921. The Document provides that the employee (Mr. Baker) may not participate in a business similar to that of the Causin companies, and it specifically describes all of the types of business in which the Causin companies engage. Further, the Document further lists, in an addendum, the parishes and counties in which the employee is barred from competing. Defendants complain that the Document's description of the restricted geographic area is overbroad, as it lists most of the parishes in Louisiana, as well as some counties in Mississippi. However, the size of the geographic area that is restricted under the agreement does not render the restriction overly broad. It is sufficient that the parishes and counties in which defendants are restricted from doing business are specifically named. See Petroleum Helicopters, Inc. v. Untereker, 98-1816, p. — (La. App. 3 Cir. 3/31/99), 731 So.2d 965,967, writ denied, 99-1739 (La. 8/5/99), 747 So.2d 40 (“[A]n agreement that fails to specify the ‘parish or parishes, municipality or municipalities, or parts thereof where the employer does business is unenforceable.”). Finally, the Document specifies that the restrictions on defendants will end two years from the termination of Mr. Baker's employment with Causin, L.L.C.

We agree. The geographical restriction requirement of La. R.S. 23:921(C) provides that an employee is “to refrain from carrying on or engaging in a business similar to that of the employer and/or from soliciting customers of the employer within a specified parish or parishes, municipality or municipalities, or parts thereof, so long as the employer carries on a like business therein. . . .” In *Aon Risk Servs. of Louisiana, Inc. v. Ryan*, 01-0614, p. 5 (La. App. 4 Cir. 1/23/02), 807 So.2d 1058, 1062, this Court found the legislative intent regarding La. R.S. 23:921 was “to require that the employer be required to do more than just make a general reference to parishes and municipalities in which it did business.” This Court explained that “[b]y specifying the parishes, etc. and requiring that the employer be doing business in them, the employee is not later caught in a position where he finds that he has given up much more than he bargained should his employer greatly expand the geographic range of his business after the agreement is executed.” *Id.*, 01-0614, p. 5, 807 So.2d at 1062. In *Medivision, Inc. v. Germer*,

617 So.2d 69, 72 (La. App. 4<sup>th</sup> Cir. 1993), this Court held that “under the plain language of the statute [La. R.S. 23:921], a non-competition agreement must specify the ‘parish or parishes, municipality or municipalities, or parts thereof.’” In *Vartech Sys., Inc.*, 05-2499, p. 11, 951 So.2d at 258 (citations omitted), the First Circuit explained that in a noncompetition agreement the geographic limitation must be express and clearly discernable, and the statute contemplates that the parishes specified in the agreement must be parishes where the ex-employer actually has a location or customers. *See also, Bell v. Rimkus Consulting Grp., Inc. of Louisiana*, 07-996, p. 11 (La. App. 5 Cir. 3/25/08), 983 So.2d 927, 933-34.

Viewing the Non-Compete Document as a whole, it clearly and expressly sets forth the specific parishes and counties where Causin did business in which Mr. Baker was restricted from competing and soliciting. Thus, we find requirement 2 of La. R.S. 23:921, subpart (C), was met.

Mr. Baker, citing *Medivision, Inc.*, 617 So.2d 69, asserts that in the event this Court finds the geographic restriction is met, the portion of the Non-Compete Document which allows Causin to expand the number of parishes or counties it does business in at a later date renders the Non-Compete Document unenforceable. In *Medivision, Inc.*, this Court reviewed whether a noncompetition agreement was binding under Louisiana law. The noncompetition agreement provided that the eye doctor, for one year after employment terminated, could not provide “ophthalmological services at any location within ten miles of any office of the Center existing during the term of this agreement.” *Id.* at 72. The term “Center” was defined as “an eye care center currently located at 3434 Houma Boulevard, Metairie, Louisiana . . . and any future additional offices in the Greater New

Orleans Area.” *Id.* This Court found the lack of specific territorial limitations failed to meet the requirements of La. R.S. 23:921.

We find *Medivision, Inc.* distinguishable. In the case *sub judice*, the two-year Non-Compete Document sets forth the specific parishes and counties where Causin does business *and* provides an avenue for Mr. Baker to contest the expansion of the list of where Causin does business. We find the inclusion of Causin’s option to expand the list—which has not been exercised—subject to Mr. Baker’s ability to dispute the expansion, does not invalidate the geographical restriction requirement of La. R.S. 23:921(C) being met.

Accordingly, we find the requirements of La. R.S. 23:921(C) are met, and this claim lacks merit.

*Reference to “subsidiaries, affiliates”*

Mr. Baker asserts the Non-Compete Document is overly broad and overly inclusive because it defines the employer’s business to include “subsidiaries, affiliates.” Mr. Baker complains that the Non-Compete Document “broadly seeks to restrict Baker, in every possible capacity, from engaging in a business that Causin LLC may not conduct and that Baker has never participated.” Mr. Baker references *Paradigm Health Sys., L.L.C. v. Faust*, 16-1276 (La. App. 1 Cir. 4/12/17), 218 So.3d 1068, 1073, wherein the appellate court, quoting *Vartech Sys. Inc.*, 05-2499, p. 12, 951 So.2d at 259 n.15, noted that an ““employer is only entitled to keep ex-employees from competing with the employer’s actual business . . . .””

Causin responds that the Non-Compete Document clearly defines Causin’s business, and Causin’s employer/employee relationship with Mr. Baker. Causin urges that within the four corners of the Non-Compete Document the words

“subsidiaries and affiliates” are not attributable to any of the other companies owned by Mr. Causin. Causin contends that reference to “subsidiaries and affiliates” in the Non-Compete Document does not render the document as a whole ambiguous or invalid, and in the event this Court finds reference to “subsidiaries, affiliates” is offending language, the language can be removed. We agree.

In the case *sub judice*, the Non-Compete Document specifically described all of the types of business in which Causin was engaged, and set forth the parishes and counties in which Causin did business. As well, it clearly set forth that Causin was the employer and that Mr. Baker was the employee. Reference to “subsidiaries, affiliates” was merely an accessory clause in the Non-Compete Document, and the reference is not needed for the existence of the agreement. As a result, we amend the judgment and delete the reference to “subsidiaries, affiliates” contained in the Non-Compete Document, and find the remainder of the agreement stands. *See Morse v. J. Ray McDermott & Co., Inc.*, 344 So.2d 1353, 1358 (La. 1976) (wherein the Supreme Court explained, quoting Planiol, Volume 2, Section 1269, p. 720, that an immoral or illegal condition within a contract annuls the entire agreement only “to the extent to which the agreement depends on it. The judges are therefore always free to recognize, by interpretation of the will of the parties, that the condition inserted in the contract is only an accessory clause to which the contract was not subject for its existence; in which case, the illegal, immoral or impossible condition is effaced and the agreement subsists as to the rest.”); *See also, Henderson Implement Co. v. Langley*, 97-1197 (La. App. 3 Cir. 2/4/98), 707 So.2d 482, 485-86 (wherein the appellate court, citing *Morse*, 344 So.2d at 1358, 1370, affirmed the district court’s judgment effectively removing reference to the accessory clause—“subsidiaries and affiliated corporations”—in a



non-compete agreement and upheld the remainder to the agreement.); *Cf. Wadick v. Gen. Heating & Air Conditioning, LLC*, 14-0187 (La. App. 4 Cir. 7/23/14), 145 So.3d 586, 599.

#### *Severability Clause*

Mr. Baker asserts the severability clause should not be used to reform the Non-Compete Document because it is ambiguous, and any ambiguity in the severability clause should be interpreted against Causin.

In the case *sub judice*, the severability clause was not utilized by the district court or this Court to render its decision. Thus, this issue is moot.

### **CONCLUSION**

Based upon our *de novo* review, we find Mr. Baker agreed to and accepted the nonsolicitation and noncompetition restrictions contained in the Non-Compete Document as a condition of his employment. The Non-Compete Document met the requirements of La. R.S. 23:921(C). La. R.S. 23:921(A) provides that “every . . . agreement . . . which meets the exceptions as provided in this Section, shall be enforceable.” Accordingly, we amend the judgment to delete the accessory clause of “subsidiaries, affiliates” contained in the Non-Compete Document and affirm the district court’s judgment in all other respects.

### **JUDGMENT AMENDED AND AFFIRMED AS AMENDED**