

## Press Release

# Akerman Achieves First Impression Victory for Blue Mountain Enterprises in CEO Non-Compete Dispute

February 10, 2022

Top 100 U.S. law firm Akerman LLP achieved a case of first impression for client Blue Mountain Enterprises, a California-based construction services company, in its breach of contract action against former chief executive officer. While California has long been hostile to non-compete agreements, the Court of Appeal affirmed the enforceability of the post-termination solicitation ban.

Blue Mountain alleged, inter alia, violation of a customer non-solicitation covenant in an employment agreement that was part of a joint venture involving the CEO's transfer of his ownership interests in several businesses to Blue Mountain as part of its formation of the company.

While transferring his ownership interests to Blue Mountain, the CEO also entered into an employment agreement with the company. After the CEO's employment ended he formed a competing company and began to solicit several companies in violation of his employment agreement. The CEO argued the agreement was void under California law.

The trial court disagreed, and the Court of Appeal affirmed. According to the courts, the CEO disposed of all of his ownership interests in businesses he contributed to the joint venture while concurrently agreeing to the non-solicitation covenant in his

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employment agreement. As a result, the non-solicitation covenant fell under a statutory exception in Section 16601 of the Business & Professions Code (excepting “any owner of a business entity selling or otherwise disposing of all of his or her ownership interest in the business entity”).

The Court of Appeal published its decision for multiple reasons, including that it is the first decision to make an affirmative finding that certain conduct constituted solicitation, as a matter of law. It also held that despite California’s strict policy voiding covenants not to compete, the statutory exception applied that made the agreement at the center of the litigation enforceable. The Court also held that it was permissible to adjudicate just one of multiple alleged contract breaches. Last, it affirmed a fee award in favor of Blue Mountain while recognizing opposing counsel engaged in scorched-earth tactics.

The Akerman team representing Blue Mountain was led by litigation partner Dean Dickie in Chicago, commercial disputes partner Joshua Mandell in Los Angeles, and litigation associate Haley Greenberg in Los Angeles.

## **About Akerman**

Akerman LLP is a top 100 U.S. law firm recognized among the most forward-thinking firms in the industry by Financial Times. Its more than 700 lawyers and business professionals collaborate with the world’s most successful enterprises and entrepreneurs to navigate change, seize opportunities, and help drive innovation and growth.