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NBA point guard's father wishes his home court for suit was in Chicago

By Adam J. Glazer

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Ordinarily, when partnerships or employment relationships end abruptly, or a partner or employee leaves disgruntled, no weapon is more important than a well-drafted, up-to-date noncompete agreement. But consider the case of Ronnie Chalmers, father of standout Miami Heat point guard Mario Chalmers.

The elder Chalmers is accused of committing egregious misconduct, including violating a noncompete. After Chalmers was sued in Florida, the 1st District Illinois Appellate Court came down with a coincidental ruling curtailing the effectiveness of noncompetes. One impact of this surprising decision may be to make Chalmers wish he was defending himself in Chicago rather than Miami, but more on that in a moment.

Exactly one month before the Heat closed out their second consecutive championship by defeating San Antonio in Game 7 of the NBA Finals, the elder Chalmers was accused in Miami-Dade County Circuit Court of a colorful array of misconduct. The suit arises from an agreement he entered into with David Sugarman of Miami in December 2012 to jointly operate the sports agency business called Sugartime. Their agreement flamed out in dramatic fashion just four months later.

While Mario Chalmers is known for his steals on the court, Sugarman's lawsuit alleges Ronnie Chalmers was stealing too, but the father's thievery was directed at boxes of proprietary Sugartime documents the night before he resigned, actions captured on video.

Chalmers also allegedly failed to pay his half of the agency's expenses, defamed Sugarman by making false statements about him to recruits, breached his fiduciary duties by meeting with potential clients without the agency's knowledge and delayed the signing of another potential client in order to sign him to a competing agency.

Additionally, the suit charges Ronnie Chalmers with acting in violation of his contractual 12-month, noncompete by poaching potential clients after resigning, including significant 2013 draft prospects. Beyond seeking compensatory and punitive damages, Sugarman seeks an injunction that

would sideline Chalmers from representing clients or working for another sports agency until the noncompete period expires.

The attempt to enforce Chalmers' noncompete agreement is what brings to mind the 1st District's recent decision in *Fifield v. Premier Dealer Services Inc.*, 2013 IL App (1st) 120327. Similar to the Sugartime agency, Premier Dealership Services sought to prevent its employee, Eric Fifield, from working for a competitor in violation of a written agreement. Fifield was employed by the auto insurance administrator Premier Dealership Services and, like Ronnie Chalmers, was required to sign, as a condition of his employment, an agreement not to engage in post-employment competition.

Fifield's post-termination noncompete was for two years, a time period Illinois courts generally accept as reasonable in scope. Yet, the 1st District refused to enforce it on the grounds that it lacked consideration.

Fifield resigned after a little more than three months on the job, which proved significant because the court construed Illinois precedent to require "that there must be at least two years or more of continued employment to constitute adequate consideration in support of a restrictive covenant." That Fifield left voluntarily, rather than be terminated, was immaterial to the consideration analysis under Illinois law.

The particular noncompete provision at issue in Fifield made the case even more unusual. Premier, the employer, argued that the need to protect against the "illusory" benefit of at-will employment oft-referenced by Illinois courts was satisfied here. While promises of continued employment may be illusory where the employment is at-will, Premier relied upon the language in its noncompete provision stating it would not apply if Fifield was terminated without cause during the first year of his employment.

Fifield countered that by only protecting his employment for one year when Illinois courts require two years of continued employment for a noncompete to be effective, the noncompete was unenforceable.

Citing its duty to carefully scrutinize post-employment restrictive covenants, which operate as partial restrictions on trade, the 1st District agreed with Fifield and found the two-year noncompete term at issue was not supported by adequate consideration. In so doing, the court broke with other Illinois decisions that viewed length of employment as but one among several factors to be considered in determining the sufficiency of consideration in favor of a bright line, two-year rule.

This important appellate decision has the potential to resonate among Illinois employers. If, as is often the case, the only consideration extended for a noncompete agreement is new or continued employment, then Illinois courts appear unlikely to enforce its terms until the employee has at least two years of on-the-job service.

This system seems to invite notable mischief. If even egregious misconduct occurs, such as the kind of client-poaching Ronnie Chalmers stands accused of committing in south Florida, then Illinois courts will turn a blind eye to an agreed restrictive covenant until two years of employment have been served. Chalmers allegedly caused all his trouble in just four months and so would be off the hook in Illinois.

As of this writing, the *Fifield* decision may still be appealed further. But unless the 1st District takes another look at Fifield's case or the Illinois Supreme Court steps in, employees receiving no extra consideration beyond employment who decide to breach their noncompete agreements and work against the interests of their current employers will have an open field to do so in Illinois. The only standard to be considered is whether the employee's resignation came within two years of signing the contract.

Somewhere in south Florida, Ronnie Chalmers is wishing his son Mario was traded to the Bulls in 2008, not the Heat.