2019 IL App (2d) 180678-U
No. 2-18-0678
Order filed June 17, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MAZZETTA COMPANY, LLC,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 18-CH-0087
	)	
STEPHEN FELSENTHAL and	)	
FORTUNE INTERNATIONAL, LLC,	)	Honorable
	)	Bonnie M. Wheaton,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Birkett and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting defendants' combined motion to dismiss plaintiff's complaint for breach of contract and tortious interference with contract when plaintiff could not allege the existence of a valid and enforceable contract.

¶ 2 Plaintiff, Mazzetta Company, LLC (Mazzetta), filed a three-count complaint seeking to enforce certain restrictive covenants against defendants, Stephen Felsenthal (Felsenthal) and Fortune International, LLC (Fortune) (collectively, defendants). The trial court granted defendants' combined motion to dismiss the complaint pursuant to section 2-619.1 of the Code of Civil Procedure (Code). 735 ILCS 5/2-619.1 (West 2016). Mazzetta appealed, contending that

the trial court erred in dismissing its claims against defendants as it properly alleged all three counts in its complaint. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Mazzetta, a wholesale seafood company, hired Felsenthal as a sales associate in June 2013.[1] As a part of his employment contract, Felsenthal signed a "Noncompetition, Confidentiality and Proprietary Rights Agreement" (the agreement), which contained, in part, paragraphs entitled "Covenant Not to Compete," "Nonsolicitation," "Confidentiality and Company Property," and "Remedies." In October 2017, Felsenthal resigned from Mazzetta and began working for Fortune, a seafood distribution company, as a business development manager. Shortly thereafter, counsel for Mazzetta directed two letters to defendants, requesting that defendants provide written acknowledgment of the agreement and assurances that defendants were in compliance with the terms of the agreement.

¶ 5 On January 17, 2018, Mazzetta filed a three-count verified complaint against defendants: count I sought an injunction against Felsenthal from violating the agreement by working for Fortune, count II alleged that Felsenthal breached his contract with Mazzetta and sought monetary damages, and count III alleged that Fortune tortiously interfered with the contract between Felsenthal and Mazzetta. With respect to the counts generally, Mazzetta alleged that Felsenthal had access to Mazzetta's confidential and proprietary information and identified four general categories of information: (1) customers, suppliers, and vendors; (2) sourcing, harvesting, and processing of products; (3) shipping and distribution of products; and (4) costs, margins, and pricing of products. Mazzetta alleged that Fortune is a direct competitor in

[1] Felsenthal previously worked for Mazzetta as a sales associate from March 2007 to October 2009.

importing frozen seafood products and that Felsenthal joined Fortune "for the purpose of competing with Mazzetta."

¶ 6 Mazzetta continued its general allegations by outlining the specific terms of the agreement. The paragraph entitled "Covenant Not to Compete" contained, in pertinent part, as follows:

> "Employee agrees that so long as he *** is a employee of the Company, and for a period of eighteen (18) months following the effective date of termination of Employee's employment with the Company *** he *** will not, directly or indirectly, engage in (whether as an employee, consultant, proprietor, partner, director or otherwise), or have any ownership interest in, or participate in the financing, operation, management or control of any Competing Organization which does business anywhere within the Restricted Territory ***."

The "Nonsolicitation" paragraph, in pertinent part, provided:

> "Employee shall not, on behalf of any Competing Organization, either as a proprietor, partner, shareholder, officer, director, employee, manager, agent or consultant, or in any other capacity, directly or indirectly: (i) *** during the eighteen (18) month period following the effective date of termination of Employee's employment *** solicit or call (or attempt to solicit or call), or perform services for, any supplier or customer (or employee of a supplier or customer) of the Company *** (a) with whom the Employee serviced, sold to or solicited on the Company's behalf during his/her employment at the Company; or (b) with whom the Employee had contact on the Company's behalf during his/her employment at the Company ***."

¶ 7 The agreement defined "competing organization" as "persons or organizations, including Employee, engaged in, or about to become engaged in, the development, marketing, providing or selling Competing Products/Services." Competing Products/Services had a much longer definition:

> "Products, processes or services *** in existence or under development, that are substantially the same as, or that serve substantially the same functions as, the products and services designed, developed, manufactured, marketed, provided, or under development by Company during the time of Employee's employment *** or about which Employee acquires Confidential Information through Employee's work for Company, including, without limitation, services and products related to the frozen seafood importing business."

The agreement defined "restricted territory" as "any market area or any county, parish, territory, or similar division of any state in the United States or province in North America, where the Company does business during the Employee's employment with the company, at the time of Employee's termination, and any area in which the Company has plans to enter at the time of the Employee's termination ***."

¶ 8 The agreement's "Remedies" paragraph provided that "Employee agrees that the period of time, geographic provisions, and scope of activities specified in the foregoing provisions of this Agreement are reasonable and are the minimum such terms necessary to protect the legitimate business interests of the Company and its successors and assigns." The paragraph continued that Felsenthal agreed that money damages would not constitute an adequate remedy for any violation of the agreement, and any such violation "would cause irreparable damage to

the Company." The paragrph further provided that the company would "be entitled to injunctive relief, both temporary and permanent, without bond, to enforce the provisions."

¶ 9 Finally, Mazzetta generally alleged that Fortune hired Felsenthal to directly compete with Mazzetta because Felsenthal would be providing the same or similar services to Fortune as he did for Mazzetta. Felsenthal's position at Fortune would require him to solicit customers, suppliers, and vendors that he was given access to while employed at Mazzetta, which Mazzetta alleged was its confidential information. Felsenthal's solicitation of said customers, suppliers, and vendors would impact Mazzetta because it would "lose revenues as a result of those relationships being comprised and impacted."

¶ 10 With respect to the first count, labeled "Injunction Against Felsenthal and Fortune International," Mazzetta further alleged that the agreement was "a valid, binding and enforceable contract." It continued that Mazzetta had "fully performed its obligations" pursuant to the agreement, but Felsenthal "breached" the terms by accepting employment at Fortune during the term of the restrictive covenants. Felsenthal's actions "injured and damaged" Mazzetta, and it had no other adequate remedy at law. Thus, Mazzetta requested that the trial court enforce the noncompete paragraph of the agreement and stop Felsenthal from working for Fortune.

¶ 11 With respect to the second count, labeled "Breach of Contract Against Felsenthal," Mazzetta realleged that the agreement was "a valid, binding and enforceable contract," that Mazzetta had "fully performed its obligations" pursuant to the agreement, and that Felsenthal "breached" the terms by accepting employment at Fortune during the term of the restrictive covenants. Finally, it alleged that Felsenthal's "breach" injured and damaged Mazzetta "in an amount to be determined through discovery and at trial."

¶ 12 With respect to the third count, labeled "Tortious Interference with Contract Against Fortune International," Mazzetta realleged that the agreement was "a valid, binding and enforceable contract," that Mazzetta had "fully performed its obligations" pursuant to the agreement, and that Felsenthal "breached" the terms by accepting employment at Fortune during the term of the restrictive covenants. It further alleged that Fortune was aware of the agreement and that Fortune, without justification and with malice, induced Felsenthal to breach the agreement and directly or indirectly compete with Mazzetta. This damaged Mazzetta "in an amount to be determined through discovery and at trial."

¶ 13 On March 13, 2018, defendants filed a combined motion dismiss Mazzetta's complaint pursuant to section 2-619.1 of the Code. 735 ILCS 5/2-619.1 (West 2016). In their motion, defendants argued that the first count should be dismissed pursuant to section 2-615 of the Code as insufficient in law because an injunction is a remedy, not an individual cause of action. *Id.* at § 5/2-615(a). Defendants further argued that the second and third counts should be dismissed pursuant to both sections 2-615 and 2-619 of the Code because the allegations were conclusory, the restrictive covenants were facially overbroad, Mazzetta did not identify a legitimate business interest in need of protection, and Mazzetta did not and could not allege any conduct by Fortune to support any valid claim. *Id.* at § 5/2-615(a), 5/2-619(a)(9).

¶ 14 Attached to defendants' motion was a six-page affidavit of Felsenthal averring that he did not have access to confidential information, as any information flowed regularly between sales associates, other departments at Mazzetta, and third parties. The affidavit continued that Mazzetta's customers were not permanent and did not exclusively purchase products from Mazzetta, that Mazzetta's suppliers are publically available, and that Felsenthal found customers through public Internet searches. Any confidential information relating to the pricing of products

was stale, as prices for seafood changed frequently, often daily. After he provided three-weeks' notice of his intention to leave, he was never restricted from accessing any information. Finally, Felsenthal averred that when he left work at Mazzetta, he returned or left all information he had relating to Mazzetta and did not take any information or property with him.

¶ 15 Mazzetta was granted leave to reply to defendants' motion and filed its response on May 17, 2018. In its response, Mazzetta argued that it pled the ultimate facts necessary to state causes of action for breach of contract and tortious interference with contract against defendants, and it was not required to set out specific evidence in its complaint. It further argued that it should be given a full opportunity to develop the necessary record to support its claims. Finally, it argued that, by signing the agreement, Felsenthal had agreed that the terms of the restrictive covenants were "necessary to protect the legitimate business interest" of Mazzetta and that Felsenthal breached this agreement by working for Fortune.

¶ 16 Attached to the response was a ten-page affidavit of Thomas Mazzetta (Thomas), the Chief Executive Officer of Mazzetta. In the affidavit, Thomas averred that Felsenthal had a substantive role with both customers and suppliers due to his interactions with them at various food shows and conferences. Thomas averred that the restrictive covenants were necessary because Mazzetta had an open floor plan and computer software which allowed all sales associates to access information accounting for Mazzetta's sales history. During the course of his employment, Felsenthal regularly accessed inventory reports, suppliers' reports, orders, costs, as well as contracts between Mazzetta and its vendors, suppliers, and customers and used that information at his work desk and laptop. When Thomas learned that Felsenthal would be working for Fortune, he asked Felsenthal to immediately turn in his cell phone, laptop, key-fob, and to leave the office.

¶ 17 The trial court heard argument on the motion on July 25, 2018. The court found that the restrictive covenants in the agreement were "overbroad and unenforceable" as a matter of law and granted defendants' motion. In so finding, the court stated, "in my 30 years on the bench, I don't think I've ever seen an employment covenant that was more draconian than this" as it prohibited "almost any activity in the seafood business anywhere in the country ***." The court determined that the agreement "fit[] squarely within" the reasoning of previous case law outlining when restrictive covenants are facially unenforceable as a matter of law, and that as a result, there cannot be "any allegation that would be sustained of tortious interference against the employer, nor *** any kind of action for breach of contract." The court concluded, "I think that the arguments of the defendants are well taken. I'm going to grant the motion to dismiss."

¶ 18 Counsel for Mazzetta requested the "opportunity to amend" its complaint if the company "believed there's sufficient facts to do that." The trial court granted Mazzetta's request. However, rather than filing an amended complaint, Mazzetta timely appealed the trial court's order.

¶ 19 II. ANALYSIS

¶ 20 On appeal, Mazzetta contends that the trial court erred in granting defendants' combined motion to dismiss. Mazzetta argues that all three of its claims were well pled and alleged sufficient facts to sustain claims for breach of contract and tortious interference with contract. Defendants counter that the court did not err because the restrictive covenants were facially overbroad and Mazzetta cannot state a legitimate business interest to enforce them. We agree with defendants. Although the court did not expressly identify under which section of the Code, 2-615 or 2-619, it found for defendants, we affirm for the following reasons. See *Burton v.*

Airborne Express, Inc., 367 Ill. App. 3d 1026, 1033 (2006) ("this court may affirm the circuit court's dismissal for any reason appearing in the record.").

¶ 21 A section 2-615 motion to dismiss attacks the legal sufficiency of the complaint by alleging defects on its face and should only be granted when it is apparent that no set of facts can be proved that would entitle the plaintiff to relief. *McIlvaine v. City of St. Charles*, 2015 IL App (2d) 141183, ¶ 14. A court considers all well-pleaded facts and all reasonable inferences from them as true and construes the allegations in a light most favorable to the plaintiff. *C.O.A.L., Inc. v. Dana Hotel, LLC*, 2017 IL App (1st) 161048, ¶ 56. To withstand a section 2-615 motion to dismiss, "a complaint must allege facts that set forth the essential elements of the cause of action." *Visvardis v. Ferleger*, 375 Ill. App. 3d 719, 724 (2007). A dismissal under section 2-615 is reviewed *de novo*. *Id.*

¶ 22 Turning to its first two counts in the complaint, Mazzetta attempted to allege that Felsenthal breached his contract with Mazzetta by accepting work at Fortune. Count I sought an injunction against Felsenthal and Fortune for this breach, and count II sought monetary damages. To sustain a complaint for breach of contract, Mazzetta needed to plead (1) the existence of a valid contract, (2) that Mazzetta fully performed its portion of the contract, (3) that Felsenthal breached the contract, and (4) that Mazzetta sustained damages as a result of Felsenthal's breach. *Boswell v. City of Chicago*, 2016 IL App (1st) 150871, ¶ 18. The claim here turns on the first element: whether a valid contract existed between Mazzetta and Felsenthal, focusing on the specific restrictive covenants in the agreement Mazzetta sought to enforce.

¶ 23 Postemployment restrictive covenants are carefully scrutinized by Illinois courts because they operate as a partial restriction on trade, and Illinois courts abhor restraints on trade. *McInnis v. OAG Motorcycle Ventures, Inc.*, 2015 IL App (1st) 142644, ¶ 26. In order for a restrictive

covenant to be upheld, the restraint must be reasonable and the agreement supported by consideration. *Quality Transportation Services, Inc. v. Mark Thompson Trucking, Inc.*, 2017 IL App (3d) 160761, ¶ 30. The prevailing common-law standard of reasonableness for employee agreements not to compete applies a three-pronged test: the covenant (1) must be no greater than required for the protection of a legitimate business interest of the employer-promisee, (2) does not impose undue hardship on the employee-promisor, and (3) is not injurious to the public. *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 17. "[T]he extent of the employer's legitimate business interest may be limited by type of activity, geographical area, and time." *Id.*

¶ 24 In their respective briefs, both Mazzetta and defendants rely heavily on *Reliable Fire*, 2011 IL 111871. In *Reliable Fire*, a Chicago metropolitan company filed suit against two of its former employees for breaching the agreed upon restrictive covenants in their employment contracts. *Reliable Fire*, 2011 IL 111871, ¶ 7. The covenants provided that the employees would not compete with the company for one year after their termination in Illinois, Wisconsin, or Indiana and that the employees would not solicit any sales or referrals from the company's customers or referral sources. *Id.* at ¶ 4. The supreme court reversed the circuit court's order finding the restrictive covenants unenforceable and outlined the test the circuit court was to use to determine the covenants' reasonableness. *Id.* at ¶ 48. First, the court held that the employer's legitimate business interest is a long-established component of determining reasonableness of restrictive covenants before holding that such reasonableness must be decided on an "*ad hoc* basis" based upon the "totality of the facts and circumstances" of the individual case. *Id.*, ¶ 24, 33, 43. "Factors to be considered in this analysis include, but are not limited to, the near-permanence of customer relationships, the employee's acquisition of confidential information

through his employment, and time and place restrictions." *Id.* at ¶ 43. The court then remanded the case back to the circuit court for it to apply the outlined factors to the case. *Id.* at ¶ 46.

¶ 25 Mazzetta asserts that it has satisfied all three prongs for reasonableness and that its own restrictive covenants were similar to those in *Reliable Fire*; thus the trial court erred in dismissing its complaint. First, Mazzetta argues that, by signing the agreement, Felsenthal acknowledged that the "period of time, geographic provisions, and scope of activities specified" in the covenants were "the minimum such terms necessary to protect [Mazzetta's] legitimate business interest." Mazzetta asserts that there is no proper basis for the court to ignore the written agreement and that the terms of the agreement must therefore be upheld as protecting Mazzetta's legitimate business interest. See *Thompson v. Gordon*, 241 Ill. 2d 428, 442 (2011) ("when parties agree to and insert language into a contract, it is presumed that it was done purposefully, so that the language employed is to be given effect."). However, it has been long established that the reasonableness of a postemployment restrictive covenant is a matter of law to be decided by the court. See *Cambridge Engineering, Inc. v. Mercury Partners 90 BI, Inc.*, 378 Ill. App. 3d 437, 447 (2007); *Dam, Snell and Taveirne, Ltd. v. Verchota*, 324 Ill. App. 3d 146, 154 (2001); *MBL (USA) Corp. v. Diekman*, 112 Ill. App. 3d 229, 237 (1983); *Tower Oil & Technology Co., Inc. v. Buckley*, 99 Ill. App. 3d 637, 642 (1981); *Image Supplies, Inc. v. Hilmert*, 71 Ill. App. 3d 710, 712 (1979); and *Aristocrat Window Co. v. Randell*, 56 Ill. App. 2d 413, 424 (1965). Because such agreements in employment contracts could attempt to uphold provisions that are patently unenforceable in an attempt to circumvent Illinois case law, we will examine the restrictive covenants at issue to determine their reasonableness.

¶ 26 Mazzetta's noncompete paragraph mandates that Felsenthal not "engage" as an "employee, consultant, proprietor, partner, director or otherwise" or "have any ownership

interest," or "participate in the financing, operation, management or control" in a substantially similar business including, without limitation, any frozen seafood importing business in "any market area or any county, parish, territory, or similar division of any state in the United States or province in North America" where Mazzetta currently does business in, did any business in while Felsenthal was employed there, or has plans to do business in, for 18 months following his termination. On its face, this is overly broad on two fronts: first, the activities in which Felsenthal is prohibited from engaging in and second, the geographic restraint.

¶ 27 The noncompete provision here specifically seeks to prevent Felsenthal from engaging as an employee in a substantially similar business. In prohibiting Felsenthal from engaging in any type of employment activity in a substantially similar business, namely the business of importing frozen seafood, the covenant does not specify the restriction to "sales," the position Felsenthal held at Mazzetta for over four years. This means that Felsenthal could not take any position—whether that be in marketing, research, IT, or any other non-sales capacity—in a seafood business, which severely limits the Felsenthal's employment ability in the seafood industry. Although Mazzetta argues that it has a legitimate business interest in restricting Felsenthal's employment, restricting him from working in any capacity in the seafood industry is over broad. "Such blatant overbreadth goes far beyond the standard for acceptable activity restrictions[.]" *Cambridge Engineering*, 378 Ill. App. 3d at 454 (holding that a "blanket bar on all activities for competitors" in an employer's noncompetition covenant was void and because if a former employee were working "in an entirely noncompetitive capacity, he would still be violating the terms of the contract").

¶ 28 Further, the geographic limitations at issue here are vastly dissimilar from those in *Reliable Fire*. There, the geographic limitations only included the tri-state area generally known

as the Chicago metropolitan area, where the original employer did business. The geographic limitations at issue here span from the southernmost province of Panama to the northernmost province of Canada and include any place Mazzetta did business from June 2013 onwards, regardless if Mazzetta still did business there, as well as any potential place in which Mazzetta planned to do business in when Felsenthal left. We cannot hold that such a widespread geographic limitation, with potentially limitless restrictions, is necessary to protect the employer's legitimate business interests, as it would require Felsenthal to move to a new continent in order to pursue any career in the seafood industry. *Eichmann v. National Hospital & Health Care Services, Inc.*, 308 Ill. App. 3d 337, 345 (1999) ("Courts uphold only those noncompetition agreements which protect the employer's legitimate proprietary interests and not those whose effect is to prevent competition *per se*.").

¶ 29 Similarly, the nonsolicitation provision prohibits Felsenthal from soliciting or calling any supplier or customer with whom he had "serviced, sold to or solicited on [Mezzetta's] behalf" at any point in time during his employment or with whom he had any contact with on [Mazzetta's] behalf during his employment. Although the provision limits Felsenthal's participation to companies that he personally engaged with on Mazzetta's behalf, it asserts that any potential customer that Felsenthal came into contact with, regardless of whether any actual business was conducted, is off-limits. This is too broad. *Cf. Zabaneh Franchises, LLC v. Walker*, 2012 IL App (4th) 110215, ¶ 21 (holding a restrictive covenant prohibiting accountant from servicing former employer's clients that she personally serviced valid because it "does not prohibit defendant from preparing taxes or providing related services to the general public, or to [former employer's] clients generally.").

¶ 30 At oral argument, counsel for Mazzetta seemingly requested that we interpret the noncompete and nonsolicitation provisions of the agreement narrowly and rewrite the terms of the restrictive covenants to limit Felsenthal's postemployment restrictions to not using Mazzetta's confidential information or soliciting sales from its costumers that he worked with for 18 months. Counsel argued that the trial court did not analyze the terms of the restrictive covenants in the way it intended them to be read, and, if the restrictions were to be so tailored, that it would satisfy the first element of its breach of contract claims. Counsel requested that we read the terms not as they appear in the four corners of the document, but rather under its more tailored understanding. We will not. It is not the job of this court to rewrite the contract for Mazzetta, and we will not do so on its behalf. See *Berryman Transfer and Storage Co., Inc. v. New Prime, Inc.*, 345 Ill. App. 3d 859, 863 (2004).

¶ 31 Our analysis of these restrictive covenants is further supported by examining *Assured Partners, Inc. v. Schmitt*, 2015 IL App (1st) 141863. In *Assured Partners*, the court found a set of restrictive covenants, including noncompetition and nonsolicitiation provisions, overbroad and unenforceable as a matter of law. *Assured Partners*, 2015 IL App (1st) 141863 ¶ 61. The restrictions prohibited a wholesale insurance broker, specializing in a lawyers' professional liability insurance, from working in professional liability insurance anywhere in the United States and from soliciting any business from potential customers (and their subsidiaries) of his former employer. *Id.* at ¶¶ 35, 40. In holding these provisions to be unenforceable, the court noted, "[r]estrictions on activities should be narrowly tailored to protect only against activities that threaten the employer's interest." (Internal quotation marks omitted.) *Id.* at ¶36.

¶ 32 Like the restrictions in *Assured Partners*, here the provisions would enjoin Felsenthal from working anywhere in North America where Mazzetta had conducted business since 2013

and from soliciting any business from potential customers that he had any contact with while employed with Mazzetta. A restrictive covenant is not valid if it is broader than necessary to protect the employer's legitimate business interests. *Cambridge Engineering*, 378 Ill. App. 3d at 452 (2007). The restrictive covenants here are much broader than necessary to protect any legitimate business interest that it may have in maintaining its customer base.

¶ 33 Therefore, on their face, the restrictive covenants Mazzetta sought to enforce against Felsenthal cannot be upheld as reasonable. Regardless of whatever additional factual basis Mazzetta could or would obtain during discovery, it would not be entitled to relief for breach of contract on unenforceable contractual provisions. The trial court thus did not err in dismissing Mazzetta's first two counts against Felsenthal.

¶ 34 A similar analysis is also applicable to Mazzetta's third count against Fortune—tortious interference with contractual rights. To successfully plead a claim of tortious interference with contractual rights against Fortune, Mazzetta must have alleged (1) the existence of a valid and enforceable contract between it and Felsenthal; (2) Fortune's awareness of this contractual relation; (3) Fortune's intentional and unjustified inducement of a breach of the contract; (4) a subsequent breach by Felsenthal, caused by Fortune's wrongful act; and (5) damages. *Douglas Theater Corp. v. Chicago Title & Trust Co.*, 288 Ill. App. 3d 880, 883 (1997). Because the covenants are unenforceable, there is no valid and enforceable contract between Mazzetta and Felsenthal. Mazzetta cannot get past the first element of its claim against Fortune, and we must uphold the trial court's dismissal of the third count.

¶ 35 Finally, Mazzetta argues that the addition of the affidavits from Felsenthal and Thomas created a factual dispute that cannot be addressed at the motion to dismiss stage. While it is true that only in "extreme cases will a court find such an agreement invalid on its face" *Baird &*

Warner Residential Sales, Inc. v. Mazzone, 384 Ill. App. 3d 586, 593 (2008), the covenants here fit the definition of extreme. The noncompete paragraph does not allow for Felsenthal to work in any seafood business in any capacity anywhere in North America that Mazzetta currently does business or has plans to do so. Further, the nonsolicitiation covenant forbids Felsenthal from soliciting any business from any client that he contacted, at any point in time, while working for Mazzetta, regardless of whether he or Mazzetta actually did business with the client. We agree with the trial court's assertion that these provisions are "draconian" and that they are unenforceable as a matter of law.

¶ 36 Because the covenants are facially overbroad and unreasonable, the agreement between Felsenthal and Mazzetta is not enforceable. This necessarily negates the first element of both claims Mazzetta attempts to allege against defendants: a valid and enforceable contract between it and Felsenthal. Therefore, Mazzetta cannot sustain a claim of breach of contract against Felsenthal or tortious interference with contract against Fortune.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the trial court's order dismissing Mazzetta's complaint against defendants.

¶ 39 Affirmed.