

Massachusetts Lawyers Weekly

[LinkedIn post didn't violate non-compete — this time](#)

By: Brandon Gee November 14, 2013

Judge Thomas P. Billings of the Massachusetts Superior Court's Business Litigation Session has weighed in on one of the biggest unresolved questions in employment law: whether a social media post can constitute a violation of a former employee's non-competition agreement.

In his Oct. 24 decision in *KNF&T Staffing Inc. v. Muller, et al.*, Billings declined to issue a preliminary injunction, but appeared to leave the door open for a finding that a LinkedIn post could violate a non-solicitation clause in a non-competition agreement under different circumstances.

The plaintiff, a staffing firm, sued former employee Charlotte Muller after she left the company for a new job at Panther Global Group, another Boston staffing firm that competes with KNF&T in some fields of placement.

Among several alleged violations of her non-competition agreement, KNF&T noted in its complaint that Muller updated her profile on professional networking site LinkedIn to reflect her new job, "resulting in notification to all of Muller's 500+ LinkedIn contacts, including the numerous contacts she established during, and which were related to, her employment at KNF&T."

"We thought this was the equivalent ... of notifying all those people she had changed jobs to a competitor," says Thomas H. Tucker of Duxbury, who represents the plaintiff. "She had a bunch of the former employer's customers among her connections and this was like sending out a letter to solicit people to her new business."

Billings rejected the argument and noted that the staffing firms don't compete in certain industries.

"Quite simply, Muller was not and is not prohibited from soliciting or accepting any potential client — whether or not it is a present client of KNF&T — for recruitment of IT professionals, or anyone else in a field in which KNF&T does not recruit," Billings wrote.

In a footnote, Billings said that the same reasoning applies to Muller's LinkedIn activity, where she listed only generic skills and responsibilities such as "staffing services" and "recruiting."

"There is no more specific mention of any of KNF&T's 'Fields of Placement' than this," the judge wrote. "So long as Muller has not and does not ... solicit or accept business in the Fields of Placement for herself or others ... she will not have violated the covenant not to compete."

Billings' narrowly tailored reasoning on the issue did not address the larger question of whether a social media post could ever violate a restrictive covenant under different circumstances. Mark D. Szal of Boston, who represents Muller, said he believes the answer is "obviously not."

“The argument was that updating a LinkedIn profile was akin to mailing a letter to all of your connections,” he says. “That is just not the case. For myself personally, I’ve changed jobs, updated my LinkedIn profile and six months later talked to connections who had no idea.”

Nonetheless, Szal concedes that “social media, particularly in the context of employment, is an evolving area of the law” and that “with respect to this particular LinkedIn issue, the caselaw is especially sparse.”

Szal relied on the 2012 Superior Court case *Invidia LLC v. DiFonzo*, which held that an employee’s Facebook post about a new job did not violate her non-solicitation agreement.

But Tucker argues that the two social media sites should not be treated the same in an employment law context.

“The whole point of LinkedIn, it seems to me, is job-related,” Tucker says. “Postings there are completely different than sending out a message to all your friends on Facebook.”

In a *Lexology* article earlier this month, Erik B. von Zeipel of Seyfarth Shaw wrote that “research has not uncovered any published court decisions specifically addressing when LinkedIn activity may violate a non-solicitation agreement” and suggested that employers and their lawyers consider including in employment contracts provisions that specify “the employer’s ownership of LinkedIn accounts and contacts,” require “departing employees to delete LinkedIn accounts, or to relinquish control over accounts to their former employers,” impose “limits on employees’ contacts with co-workers and customers through LinkedIn,” require “departing employees to delete LinkedIn contacts with co-workers and customers” and require “departing employees not to establish or re-establish such contacts through LinkedIn.”