

Team Presentation; Ana J. Lopez

Chapter 13 Past Consideration

Access Organics v. Hernandez & Mike Vandenberg

1. The contract(non-compete)agreement under which one party (Andy Hernandez) agrees not to initiate a similar profession or trade in competition against his employer(Access Organics) given in relevant part: For good thought (consideration) and as an inducement for Access Organics (the Company)to employ Andy Hernandez, the signee of this contract as employee hereby consents not to directly or indirectly engage in competency with the business of the company and its descendants during the period of employment and two years after the termination of it.
2. The District Court granted the temporary restraining order Access Organics which stated: “Andy Hernandez and Mike Vandenberg (Defendants) are prohibited from owning, operating and managing any business involved in the same trade as Access Organics, Inc.
3. Access Organics disputes that Hernandez’s salary and continued employment provided enough consideration. § 28-2801, MCA says that “any benefit in discussion or agreed to be discussed upon the promisor by any other person, to which the promisor is not legally entitled, or any unreasonable feeling suffered or agreed to be suffered by this person, other than such as he, is at the time of agreement legally bound to suffer as persuasion to the promisor is a good consideration for a promise”
4. Consideration is present if the employee promises to agree to not to compete against his employer’s business during or after his employment (non-compete agreement) at the time of hiring during the negotiations prior to being hired, the employee and the employer get involved in an exchange of bargains or offers: The employer obtains the desired non-compete agreement, and in return, the employee gets hired.
5. However, Hernandez agreed to sign more than four months after accepting his first employment offer from Access Organics. The record clearly shows that Hernandez did not sign the agreement as part of Access Organic’s initial negotiations with him before employment.
6. A not to engage in any contest or competence (also known as non-compete) agreement submitted after employment, will be enforced if it is supported by independent thought or consideration. Independent, additional consideration is required for the valid formation of an amendment or a subsequent agreement.
7. We conclude that the District Court erred by finding the continuation of Andy Hernandez’s (Defendant) employment, and therefore, income” was enough to include as consideration. We hold that Access Organics failed to meet its obligation to show proof by demonstrating that the agreement was upheld by good consideration.

8. Andy Hernandez won the case. Court also erred in granting preliminary injunction against Hernandez “thus we reverse and remand for further proceedings consistent with this opinion. We concur”