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Florida Federal Court Enjoins Enforcement of FTC's Non-Compete Rule Solely Against the Plaintiff

Law and the Workplace on **August 15, 2024**

On August 14, 2024, in *Properties of the Villages, Inc. v. Federal Trade Commission,* No. 5:24-cv-316-TJC-PRL, the United States District Court for the Middle District of Florida enjoined the Federal Trade Commission ("FTC") from enforcing its non-compete rule (the "Rule") against the plaintiff in the action. The court's decision does not prevent the Rule from taking effect on September 4, 2024 as to everyone else.

The court's decision, which it issued during oral argument, found that Properties of the Villages, Inc, ("POV") had established a substantial likelihood of success on the merits because the Rule violates the major questions doctrine. The court noted that the major questions doctrine requires that when an administrative agency "claims to have the power to issue rules of extraordinary economic and political significance, it must point to 'clear congressional authorization' for the power it claims." (Decis. at 15.) The court found that the doctrine applies where, as here, the Rule affects a significant portion of the American economy, regulates an area that has previously been the domain of state law, and is a significant expansion of the agency's regulatory authority. (*Id.* at 17-19.) The court thus held that Section 6 of the FTC Act, upon which the FTC relies, insufficiently demonstrated "clear Congressional permission" to issue the Rule, and therefore, plaintiff had shown a likelihood of success on the merits. (*Id.* at 20-21.) The court also found that the POV's compliance costs were sufficient to establish irreparable harm. Though the court did not directly address its reasons for limiting the preliminary injunction solely to the plaintiff, it is worth noting that POV did not request nationwide relief in its motion.

Although both courts reached the same conclusion, the court's reasoning notably differs from the reasoning in the July 3, 2024 preliminary injunction decision by the court in *Ryan LLC v. Federal Trade Commission,* No. 3:24-cv-00986-E (N.D. Tex.). The court in *Ryan* did not address the major questions doctrine—rather it found the plaintiff likely to succeed in establishing that the FTC exceeded its statutory authority (an argument which the Florida judge rejected) and that the Rule is arbitrary and capricious under the Administrative Procedures Act (which was not alleged by POV).

All eyes will now be on the *Ryan* court's upcoming summary judgment decision, which will issue on or before August 30, 2024. We will keep you apprised of the latest developments.

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