Georgia Gets Competitive

by Erika Birg, Michael Elkon and Erin McPhail Wetty

Imagine yourself sitting in your office one afternoon and a new, prospective client named Spectre Consulting calls. Spectre is relocating its headquarters to Georgia from Las Vegas, which means relocating the entire executive team, as well as all of the company's researchers and sales representatives. Because Spectre zealously guards its confidential information and its business relationships, it asks you to prepare employment agreements for its employees moving to Georgia. Spectre wants the agreements to be enforceable in Georgia and to include non-compete, non-solicitation and non-disclosure covenants.

The task seems simple enough at first. Although you have heard that Georgia is hostile to these sorts of restrictive covenants, certainly employment agreements of this nature cannot be that difficult. To survey the field, you first look for a statute on point. You find O.C.G.A. § 13-8-2.1 covering restrictive covenants, but you determine quickly that the Supreme Court of Georgia struck the statute down shortly after it was passed.[1]

So, you then decide to review applicable case law by using computer research. The results you find are daunting. Your search for the term "non-compet!" yields 250 results; "non-solicit! /p customer" yields 36; and "'confidential information' /p disclos!" yields 86. Your search further reveals that Georgia does not reform or blue-pencil agreements, so any flaw in a provision will render that provision unenforceable. To draft proper covenants for this demanding client, you will need to wade through a thicket of cases to glean the applicable rules. You realize that Georgia's current legal regime governing restrictive covenants can best be described as death by a thousand paper cuts.

The Georgia Legislature Acts

Your dilemma illustrates a primary rationale for the Georgia Legislature's passing of HB 173 to govern enforcement and interpretation of restrictive covenants in the commercial arena.[2] Currently, there are no clear rules governing restrictive covenants; this leaves employees,

employers and most practitioners in the dark as to what is permissible. The new statute sets forth ground rules for restrictive covenants. It addresses the classes of employees who can sign restrictive covenants, the types of agreements that are covered and, most significantly, the standards for evaluating such covenants. It empowers courts to modify covenants, so that employers can enforce provisions that protect their legitimate interests, but no more.

Gov. Sonny Perdue signed HB 173 after the House and Senate had passed it by large margins. By its own terms, however, the law will not go into effect until Georgia's voters ratify a proposed constitutional amendment in November 2010. The Legislature conditioned HB 173's effectiveness upon the constitutional amendment because of the Supreme Court of Georgia's previous rejection of O.C.G.A. § 13-8-2.1. Shortly after that statute became law, the Supreme Court ruled that the Legislature had exceeded its constitutional authority by "authoriz[ing] contracts and agreements which may have the effect of or which are intended to have the effect of defeating or lessening competition or encouraging monopoly."[3]

Because HB 173 contains language authorizing modification or partial enforcement of restrictive covenants, rather than subject HB 173 to constitutional uncertainty, the Legislature chose to condition its effectiveness upon clarifying the Legislature's authority in this arena. Accordingly, the Legislature will consider a resolution in the 2010 session that would put a constitutional amendment on the November 2010 ballot. The resolution and amendment, which are still under consideration, would, in effect, authorize the Legislature to enact legislation in this arena and authorize courts to enforce a covered agreement only to the extent that it is reasonable. If the amendment passes the Legislature and is ratified by the voters, then HB 173 will become effective.

The statute does not apply retroactively, so the existing law on restrictive covenants will remain relevant for agreements entered into prior to that date. Because HB 173 is intended to and does change the law to overcome certain judicially developed anomalies, however, many employers may wish to plan prospectively for the new law.

How Does HB 173 Change the Law?

Below are seven particular instances in which the current common law creates difficulties for unwary businesses and how the new statute will lead to a different result.

Problem 1: Should We Treat All Employees the Same?

Georgia courts apply strict scrutiny to restrictive covenants in employment agreements, which means that the court will not uphold the covenant unless it is unassailable in every way.[4] It also means that a trial court may not consider the level of an employee within an organization in deciding whether a particular covenant is reasonable—all employees must be treated alike. For example, if a CEO leaves her company and heads straight to a competitor, armed with all of the confidential and proprietary business information that makes the company tick, then Georgia courts will apply the same analysis and scrutiny to her non-competition agreement as they would to a non-competition agreement for a sales associate straight out of college with no experience in the field.[5]

Such an approach often yields inequitable outcomes, as was aptly illustrated in a recent case from the Court of Appeals, *BellSouth Corp. v. Forsee*.[6] The former employee was BellSouth's vice chairman of operations; he served as the chairman of the board of directors for Cingular Wireless; and there was no doubt that given his role, he was "intimately familiar with highly confidential and trade secret information" belonging to the company.[7] In connection with his employment, the executive signed a non-competition agreement forbidding him from providing services in competition with BellSouth or its affiliated entities to any "entity which provides products or services identical or similar to those provided by BellSouth" within the territory where the employee had provided services for an 18-month period after termination.[8] After announcing his resignation from BellSouth, the executive accepted a position as chairman of the board of directors and chief executive officer of Sprint Corporation, a primary competitor of BellSouth.[9]

The Court of Appeals held that BellSouth could not prevent the executive from working for Sprint because the non-compete provision was unenforceable. In particular, the Court held that, as the agreement was drafted, the geographic reach of the non-compete provision could not be known until the last date of the executive's employment.[10] As a result, the agreement violated Georgia law. The Court's decision seems inequitable because the Court applied rules designed to protect employees who have significantly less bargaining power than the employer. That same policy rationale does not translate well to a case in which a top executive negotiates a lucrative employment contract to lead a major corporation.

To avoid situations similar to those that occurred with BellSouth's senior executive, the new legislation allows employers to identify specific competitors as prohibited employers during the period of the non-compete.[11] Under the statute, BellSouth could have listed Sprint as a prohibited employer, and a court should have enforced this reasonable restriction. This provision also gives employers added flexibility for employees who move offices but are consistently competing against a few, known companies.

More significant, the statute allows courts to adjust overly broad covenants to make them reasonable and enforceable.[12] Thus, the courts will be able to account for the factual differences in each situation. For example, judges can take into account whether they are dealing with a senior executive or a mid-level programmer when determining what restriction is appropriate in a particular situation. Georgia can dispense with its one-size-fits-all approach to non-compete analysis.

Problem 2: Must an Employer be a Fortune Teller?

As noted above, under Georgia law, the exact geographic scope of a non-compete provision has to be determinable at the time that the agreement is signed.[13] An employer cannot use a provision along the lines of "employee Smith will not compete within a ten-mile radius of any office at which he is based during his employment," because Smith and the employer do not know the office(s) at which Smith ultimately will work during the course of his employment. Georgia law also requires that an employer define with precision the scope of activity covered by a non-compete. An employer cannot prevent an employee from working for a competitor "in any capacity."[14] Instead, the employer has to define what tasks the employee is going to perform and then prohibit the employee from performing those same tasks for a new employer after employment.

The rub is that the employer not only has to have a precise job description prepared, but that description has to be 100 percent accurate. Quite simply, there are no silver medals for coming close; witness *Beacon Security Technology, Inc. v. Beasley*.[15] In *Beacon*, the employee entered into a non-compete provision that forbade him from selling, leasing or servicing the following types of security systems in a seven-county area for a two-year period after termination: "burglar & fire alarms, Closed Circuit TV, Intercoms, Telephone & TV Hook ups, Central Vacs and Medical Alert, or other security systems . . . ."[16] When the employee resigned and immediately started competing in the restricted area, his former employer sued.[17] The Court of Appeals held that the non-compete was unenforceable under Georgia law. Its reasoning was that, although the employer had shown that the employee had worked in the seven-county area and that he had sold, leased or serviced the various types of security systems offered by the employer, *the employer had not shown that the employee had sold, leased and serviced each type of security system in each of the seven counties.*[18]

New Atlanta Ear, Nose & Throat Associates, P.C. v. Pratt[19] is another example. In *New Atlanta*, five physicians entered into non-com-

pete provisions with a medical practice that prevented them from practicing medicine for an 18-month period after termination within an eight-mile radius of the practice's offices in certain cities.[20] The Court of Appeals held the provision unenforceable because the practice's offices could move within the towns, and therefore, the geographic scope of the non-compete could shift, if ever so slightly.[21] For instance, the practice's Marietta office twice moved a half-mile over the course of the physicians' employment.[22] Because the medical practice used the term "Marietta [office]" as opposed to, for example, "123 Main Street, Marietta, Georgia," it lost the benefit of its bargain with its physicians.

Beacon and *New Atlanta* demonstrate that an employer sometimes has to be a fortune teller to enforce a non-compete provision in Georgia. An employer has to outline the exact geographic boundaries to be encompassed before the employee ever starts. Moreover, it is not enough to define the counties in which an employee will work and the tasks that an employee will perform; the employer also has to ensure that the employee will perform each act in each specified county during his employment. This is not a concern for employees who perform one task in one area, such as an accountant whose clients are all in Bibb County. It is a concern for an employee who will be performing multiple tasks in a larger area, such as an accountant who will be performing accounting, tax and audit services for clients in Bibb, Monroe, Houston and Jones counties. With every change in an employee's activities or assigned area of responsibility, the employer must update its agreements. For example, if the home office moves a half-mile down the street, then those employees may have to sign new non-compete agreements, increasing the business's administrative burdens.

The new statute addresses the *Beacon* and *New Atlanta* problems by providing that a post-employment restriction is enforceable if it gives "fair notice of the maximum reasonable scope of the restraint . . . even if the description is generalized or could possibly be stated more narrowly to exclude extraneous matters."[23] The statute also creates a safe harbor for "any good faith estimate of the activities, products, and services, or geographic areas, that may be applicable at the time of termination."[24] This language changes the approach that an employer may take when preparing a non-compete provision. The use of "fair notice" and "good faith" put the onus on the employer to do its best in estimating the employee's duties in the coming months and years, but the employer will not be penalized if it did not predict the future perfectly.

The new statute also defines the legitimate business interests that an employer can use to support the enforcement of a restrictive covenant to include trade secrets and other confidential information, "[s]ubstantial relationships with specific prospective or existing customers," goodwill and "[e]xtraordinary or specialized training."[25] Thus, courts will be able to pay more attention to whether a restriction goes too far in protecting an employer's actual interests and less to the question of whether the geographic scope of a non-compete shifted slightly.

Problem 3: The Pitfalls of Restricting Employees During Their Term of Employment

Most Georgia employers and attorneys have a general understanding that the courts of this state will apply strict scrutiny to restrictive covenants that cover an employee's activities after the end of the employment relationship. They do not, however, pay similar attention to common in-term covenants. Such covenants include basic provisions that set forth that an employee may not work for a competitor or perform competitive acts during the course of employment.

This past summer, in *Atlanta Bread Co. v. Lupton-Smith*,[26] the Supreme Court of Georgia held that in-term covenants are subject to the same strict scrutiny as post-term covenants.[27] The Court's decision effectively invalidated a host of existing agreements that contain such provisions, as most employers and attorneys do not think to add precise limits on geography and scope of activity when drafting paragraphs that forbid in-term competition. The presence of an unenforceable in-term covenant also will invalidate any other non-compete or non-solicitation covenants contained in the same agreement.[28] Thus, an unwary employer could pay great attention to drafting non-compete and non-solicitation covenants that comply with the various requirements under Georgia law, only to have all of its careful work undone by a simple "you will not compete during the term of employment" paragraph. This rule appears to be unique to Georgia and presents a special danger to practitioners who are not familiar with Georgia common law on restrictive covenants.

HB 173 removes this element of surprise by explicitly eliminating the trap embodied by *Atlanta Bread Co.* HB 173 provides that a restriction on competition that operates during the term of a contract "shall not be considered unreasonable because it lacks any specific limitation upon scope of activity, duration, or geographic area as long as it promotes or protects the purpose or subject matter of the agreement or relationship or deters any potential conflict of interest."[29] Accordingly, under HB 173, employers can ensure by contract that their employees are not serving two masters.

Problem 4: What Do You Mean by Contact?

Given the challenges in drafting and enforcing a restrictive covenant based on a geographic

area, many lawyers advise clients to choose instead a client-based restriction to prevent the former employees from soliciting customers. Georgia law currently requires that employers limit their customer non-solicitation provisions to customers with whom the signing employee had actual contact or a relationship (unless the provision is limited in territory).[30] The problem arises in the courts' judicially created definition of "contact," which often does not sufficiently protect an employer's customer relationships.

For example, an employer lost a case when the Court of Appeals applied the bright-line rule that a customer non-solicitation covenant is invalid if it does not contain a geographic limitation and it includes any customers with whom the employee did not have actual and direct contact.[31] A prohibition against "contacting any customers about whom [the former employee] at any point had confidential or proprietary information" was deemed overbroad because the former employee had not necessarily had actual and direct contact with each customer about whom she had learned such confidential information.[32] The Court reached this holding even though the former employee received on-the-job training from the employer's president, worked with lists of the employer's customers, and was introduced to many of the company's customers and suppliers.[33] The opinion does not reveal that either side alleged that there were customers about whom the employee learned confidential information, but with whom she did not have actual contact; the mere fact that such customers could exist was enough to invalidate the provision. In the end, the former employee was allowed to compete against her former employer immediately after resigning, despite her prior promise not to do so.[34]

The new statute cures this problem by defining "material contact." The definition of "material contact" now expressly includes knowledge of confidential information as a valid basis for a customer non-solicitation provision.[35] The statute also expands the definition of "material contact" to include customers: (1) whose dealings with the employer were supervised by the signing employee; or (2) who received products or services, upon whose sale the signing employee received compensation.[36] As a result, employers can better protect the business relationships to which they expose their employees.

Problem 5: What if There is a Mistake?

Under current case law, Georgia courts have adopted a peculiar and unforgiving rule: if one part of a non-competition or a customer non-solicitation of employees covenant is unenforceable, then not only does that covenant become unenforceable in its entirety, but *all other* non-competition and customer non-solicitation covenants in that agreement become unenforceable, *even if* they would have been independently reasonable.[37]

This creates special risks for employers in drafting non-compete provisions. On the one hand, a non-compete often makes sense in light of an employee's duties, training and exposure to relationships. On the other hand, non-compete provisions are hard to enforce because they require a leap of faith by employers that the employee's job is going to play out as predicted. If events do not occur as planned, then not only is the non-compete provision going to be unenforceable, but the customer non-solicitation provision will go with it. Thus, employers take major risks by even attempting to include non-compete provisions in their agreements with Georgia employees. The statute removes this unusual disincentive by permitting courts to enforce otherwise problematic restrictions to the extent that the agreement is reasonable.[38]

Problem 6: Confidential Information Has an Expiration Date

For many classes of employees, non-disclosure of confidential information provisions are the most important means for an employer to protect its business. For instance, technical employees such as computer programmers or laboratory researchers are important to employers because of their knowledge of ongoing projects. High-level executives may bring value to the company because of their ability to prepare and execute long-term business plans. Under existing law, non-compete provisions do not work for these employees because they can do their work anywhere in the world and because there is often no geographic limit to their jobs. Non-solicitation of customers provisions do not work because these employees' roles frequently do not involve management of specific customer relationships. Thus, an employer can best protect itself with a non-disclosure provision that states that the employee will not use or disclose the employer's confidential information, as that term is defined in the employment agreement.

There is one quirk of Georgia law that creates difficulty in using non-disclosure covenants. Under current law, a non-disclosure covenant has to contain a time limit (except as to trade secrets).[39] Georgia is one of only two states with such a requirement.[40] Most other states permit non-disclosure provisions that prevent the use or disclosure of confidential information for as long as the information remains confidential.

This requirement creates two issues. First, the fact that the requirement is so uncommon is problematic for out-of-state employers and attorneys. Second, and more important, the requirement leaves employers unable to protect their confidential information even when they retain a legitimate interest in doing so. Consider, for instance, a high-level

executive for a major corporation who prepared and implemented a detailed, highly confidential, five-year business plan. The plan lays out the direction of the company, new markets and products to be developed and potential targets for strategic acquisitions. The corporation might not be able to protect the executive's knowledge of the company's plan as a trade secret,[41] so a non-disclosure agreement provision would be critical. If, however, the executive has a two-to-three year time limit in her non-disclosure provision (as is customary in Georgia), then the organization cannot protect its confidential business plan for the life of the plan. The company's only alternative would be to include a five-year time limit in its non-disclosure provision and then hope that Georgia courts would uphold it in the absence of case law sustaining anything longer than a two-year time limit.

The new statute addresses this dilemma by stating that "[n]othing in this article shall be construed to limit the period of time for which a party may agree to maintain information as confidential . . . for so long as the information or material remains confidential . . . ."[42] In other words, Georgia employers, like employers in 48 other states, will be able to protect their confidential information "for so long as that information remains confidential." The relevant question will be whether the information is truly confidential, not whether the agreement contains an oft-arbitrary time limit.

Problem 7: Is it Really All or Nothing?

Although Georgia courts review employment agreements under an all-or-nothing approach, courts may "blue-pencil" restrictive covenants contained in sale-of-business agreements.[43] In other words, courts are authorized to mark through certain provisions in a sale-of-business agreement, but they may not otherwise reform the provisions. As the Supreme Court has stated, "The 'blue pencil' marks, but it does not write."[44]

In the end, Georgia law ends up reaching some harsh results when applied to agreements involving the sale of businesses for large sums. For instance, in *Harmrick v. Kelley*, the Court of Appeals deemed a non-compete provision executed in connection with the sale of a business unenforceable because it sought to prevent competitive acts "in a seventy-five (75) mile radius of the Metro Atlanta, Georgia area."[45] The Court concluded that "Metro Atlanta" was impermissibly vague.[46] Rather than use any one of a number of specific definitions for "Metro Atlanta," such as the Standard Metropolitan Statistical Area designated by the U.S. Census Bureau or the counties included in the Atlanta Regional Commission (both of which were referenced in the opinion), the Court found that it could not save the provision because it could not add terms; it could only strike them.[47]

The new statute permits courts to enforce restrictive covenants in commercial and employment agreements to the extent that they are reasonable, thus preventing odd results from Georgia's present, limited version of blue-penciling.[48] Moreover, the new statute specifically instructs courts to give effect to the intent of the parties when enforcing a restrictive covenant.[49] This is an especially useful mandate for instances such as the one discussed above, where the intent of the parties was clear when they used the term "Metro Atlanta." Thus, the court can give effect to the parties' intent, as is the cardinal rule of contractual interpretation.[50]

Conclusion

Georgia's new restrictive covenant statute updates how non-compete, non-solicitation and non-disclosure covenants will be interpreted. At present, restrictive covenant cases rise and fall on common law rules that, upon closer examination, are often unusual and arbitrary. Non-compete clauses fail because the center-point of the restricted territory could hypothetically move 2,600 feet. Non-solicitation clauses fail because an employer did not want its former employee soliciting customers about whom she learned sensitive information. Multiple clauses fail because an employer required an employee not to compete during the term of employment. Non-disclosure covenants fail because they do not contain time limits, even when the information that they seek to protect may be confidential for years.

The new regime shifts the focus of non-compete litigation from legal issues to factual ones. In this respect, litigating restrictive covenant matters has the possibility of becoming more expensive, but courts and the parties will be more likely to reach a just result based on the circumstances. More important, attorneys who are not specialists in this area will be able to learn and apply the rules that govern a dispute, as they are laid out in the statute. So, when Spectre calls, you will be able to draft the requested employment agreements without having to take a machete to the underbrush shaped by a forest of hundreds of cases and without worrying that you missed a rule in one of them. GBJ

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Endnotes

1. Jackson & Coker, Inc. v. Hart, 261 Ga. 371, 405 S.E.2d 253 (1991).
2. Codified at O.C.G.A. §§ 13-8-2, 13-8-2.1, 13-8-50 to -59 (Supp. 2009).
3. *Jackson & Coker*, 261 Ga. at 372, 405 S.E.2d at 254. Specifically, the Supreme Court took issue with O.C.G.A. § 13-8-2.1(g)(1) (Supp. 1990). That section provided that "[e]very court of competent jurisdiction shall enforce through any appropriate remedy every contract in partial restraint of trade that is not against the policy of the law or otherwise unlawful." The Court rejected this effort as one to "breathe life into contracts otherwise plainly void," 261 Ga. at 372, 405 S.E.2d at 255, and therefore barred by GA. CONST. art. III, § 6, ¶ V(c) (1983), which states, "The General Assembly shall not have the power to authorize any contract or agreement which may have the effect of defeating or lessening competition, or encouraging a monopoly, which are hereby declared to be unlawful and void." HB 173 keeps the language in § 13-8-2.1(g)(1) that the Supreme Court found unconstitutional in *Jackson & Coker*.
4. White v. Fletcher Mayo Assocs., Inc., 251 Ga. 203, 204, 303 S.E.2d 746, 748 (1983).
5. *But see* Malice v. Coloplast Corp., 278 Ga. App. 395, 400, 629 S.E.2d 95, 99-100 (2006) (referencing bargaining power of high-level executive when upholding arbitration decision enforcing nationwide non-compete provision).
6. 265 Ga. App. 589, 595 S.E.2d 99 (2004).
7. *Id.* at 589, 595 S.E.2d at 101.
8. *Id.* at 594, 595 S.E.2d at 104.
9. *Id.* at 589, 595 S.E.2d at 101.
10. *Id.* at 596, 595 S.E.2d at 105.
11. O.C.G.A. § 13-8-56(2)(B) (Supp. 2009).
12. *Id.* §§ 13-8-53(d), 13-8-54.
13. AGA, LLC v. Rubin, 243 Ga. App. 772, 774, 533 S.E.2d 804, 806 (2000).
14. Stultz v. Safety & Compliance Mgmt., Inc., 285 Ga. App. 799, 802, 648 S.E.2d 129, 132 (2007).
15. 286 Ga. App. 11, 648 S.E.2d 440 (2007).
16. *Id.* at 11-12, 648 S.E.2d at 441.
17. *Id.* at 12, 648 S.E.2d at 441.
18. *Id.* at 13, 648 S.E.2d at 441.
19. 253 Ga. App. 681, 560 S.E.2d 268 (2002).
20. *Id.* at 682-83, 560 S.E.2d at 270.
21. *Id.* at 686, 560 S.E.2d at 272.
22. *Id.* at 686, 560 S.E.2d at 272.
23. O.C.G.A. § 13-8-53(c)(1) (Supp. 2009).
24. *Id.*
25. *Id.* § 13-8-51(9). This definition is virtually identical to the definition of legitimate business interests found in Florida's restrictive covenant statute. FLA. STAT. § 542.335(1)(b) (2009).
26. 285 Ga. 587, 679 S.E.2d 722 (2009).
27. A strange effect of *Atlanta Bread Co.* is that a contractual recitation of the common law duty of loyalty, which requires that an agent not solicit customers or perform other similar acts, *see, e.g.*, E. D. Lacey Mills, Inc. v. Keith, 183 Ga. App. 357, 362-63, 359 S.E.2d 148, 155 (1987), would itself be unenforceable as an impermissible restraint on trade.
28. Atlanta Bread Co. v. Lupton-Smith, 292 Ga. App. 14, 19-20, 663 S.E.2d 743, 748 (2008), *aff'd*, 285 Ga. 587, 679 S.E.2d 722 (2009).
29. O.C.G.A. § 13-8-56(4) (Supp. 2009).
30. Dougherty, McKinnon & Luby, P.C. v. Greenwald, Denzik & Davis, P.C., 213 Ga. App. 891, 894, 447 S.E.2d 94, 96 (1994).
31. Trujillo v. Great S. Equip. Sales, LLC, 289 Ga. App. 474, 477-78, 657 S.E.2d 581, 583-84 (2008).
32. *Id.* at 477-78, 657 S.E.2d at 584.
33. *Id.* at 475, 657 S.E.2d at 582.
34. *Id.* at 478-79, 657 S.E.2d at 584-85.
35. O.C.G.A. § 13-8-51(10)(C) (Supp. 2009).
36. *Id.* § 13-8-51(10)(B), (D).
37. Advance Tech. Consultants, Inc. v. Roadtrac, 250 Ga. App. 317, 320, 551 S.E.2d 735, 737 (2001).
38. O.C.G.A. § 13-8-53(d) (Supp. 2009).
39. Pregler v. C&Z, Inc., 259 Ga. App. 149, 152, 575 S.E.2d 915, 917 (2003).
40. Wisconsin is the other state with such a requirement. *See* Gary Van Zeeland Talent, Inc. v. Sandas, 267 N.W.2d 242, 250 (Wis. 1978).
41. *Compare* Stone v. Williams Gen. Corp., 266 Ga. App. 608, 611-12, 597 S.E.2d 456, 459-60 (2004) (holding that a trial court properly instructed a jury by stating that a trade secret must be in tangible form), *rev'd on other grounds*, 279 Ga. 428, 614 S.E.2d 758 (2005), *with* Essex Group, Inc. v. Southwire Co., 269 Ga. 553, 556-57, 501 S.E.2d 501, 504 (1998) (holding that former employee's knowledge of a logistics system constituted a trade secret and therefore upholding an injunction against the former employee preventing him from working on such a system for competitor).
42. O.C.G.A. § 13-8-53(e) (Supp. 2009).
43. Hudgins v. Amerimax Fabricated Prods., Inc., 250 Ga. App. 283, 285, 551 S.E.2d 393, 395-96 (2001).
44. *Hamrick v. Kelley*, 260 Ga. 307, 308, 392 S.E.2d 518, 519 (1990).
45. *Id.* at 307, 392 S.E.2d at 518.
46. *Id.* at 308, 392 S.E.2d at 519.
47. *Id.* at 308, 392 S.E.2d at 519.
48. O.C.G.A. § 13-8-53(d) (Supp. 2009).
49. *Id.* § 13-8-54(b).
50. Rushing v. Gold Kist, Inc., 256 Ga. App. 115, 117, 567 S.E.2d 384, 387 (2002).