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Ex-Tech Executive Wants Out Of Digital Realty's Noncompete

By **Charlie Innis**

Law360 (January 25, 2023, 7:47 PM EST) -- A former executive at a cloud company acquired by Digital Realty Trust has urged North Carolina's highest court to discard an injunction barring him from the network automation industry for three years, saying a lower court incorrectly evaluated a noncompete clause.

Peter Sprygada told the North Carolina Supreme Court on Tuesday that the state's business court applied the wrong standard of scrutiny to a covenant within the employment contract he signed with Digital Realty Trust Inc. after the real estate investment trust bought his former place of work, Pureport.

In an **appellant brief**, he said the lower court erroneously assessed the clause as if it were within an agreement for the sale of a business. Judge Julianna Theall Earp evaluated the clause that way on the grounds that evidence appeared to show Sprygada, a former chief technology officer at Pureport, owned 2.37% of the cloud company's stock, Sprygada said.

"The trial court's decision conflicts with decades of this court's long-standing precedent holding that only the seller of a business may be bound to a noncompetition covenant in a business sale," according to the brief. "If allowed to stand, the trial court's reasoning would bring about a sea change in North Carolina law that conflicts with the law of other states and recently announced **federal policy**."

The former executive added that the lower court's decision could deprive working North Carolinians of "decades of jurisprudence protecting employees from overreaching non-competition covenants."

"Employees holding stock options or stock in their former employer who retained their jobs after that company was acquired would suddenly be deemed business sellers by the mere occurrence of the acquisition," he said.

Digital Realty, an owner and operator of data centers, sued Sprygada in November 2021 after he left the REIT to work for Iteential, a network automation software firm.

The REIT previously bought Pureport and took on the company's engineering team, including Sprygada, in early 2021 to begin developing network automation services, according to Digital Realty's complaint. The realty trust alleged Sprygada had left to join a rival firm, and accused him of breaking the covenant agreement he signed with Digital Realty by taking on that job and disclosing confidential information to his new employer.

Months later, Digital Realty motioned for a preliminary injunction to enforce the contract's noncompete covenants — essentially forcing Sprygada to resign from Iteential — and Judge Earp partially granted the motion in July 2022. Sprygada then stopped working for Iteential, according to his brief.

Digital Realty's suit also alleged the ex-employee received an equity payout as part of the Pureport acquisition. Sprygada denied that in Tuesday's brief, saying he hasn't received any compensation from the sale and was not a seller of the business.

Sprygada further argued that Digital Realty didn't enter competent evidence showing that he owned

2.37% of Pureport's stock, saying the REIT had relied on hearsay and inadmissible testimony. Even if he owned that share, the amount of interest alleged by Digital Realty is too small to transform Sprygada into a "business seller" for the purpose of evaluating a noncompetition agreement, he told the high court.

He also maintained that Pureport and Itential aren't competitors.

"Pureport's CEO, Rich Lee, did not even know of Itential's existence," Sprygada said, referring to the former executive's deposition.

Jonathan Sasser, an attorney for Sprygada, told Law360 he and his client's primary concern is that the lower court's decision provides a basis to allow employers to treat employees who have any potential stock ownership, whether vested or not, the same as a sole proprietor who sold 100% of a business.

"Their covenants not to compete, which they signed as employees, would suddenly be subject to evaluation by the more lenient standard appropriate for covenants entered into by sellers of businesses," Sasser wrote in an email on Wednesday. "Such an outcome hurts thousands of working North Carolinians and is inconsistent with decades of North Carolina and national jurisprudence applying increased scrutiny to non-competition agreements."

Counsel for Digital Realty and a representative for the REIT didn't immediately respond to requests for comment.

Sprygada is represented by Jonathan Sasser and Steven Scoggan of Ellis & Winters LLP.

Digital Realty is represented by J. Allen Thomas and Vanessa Garrido of Ogletree Deakins Nash Smoak & Stewart PC.

The case is Digital Realty Trust Inc. et al. v Sprygada, case number 333A22, in the Supreme Court of North Carolina.

--Editing by Covey Son.