

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

MICHAEL COOPER,)
)
 Appellant,)
)
 v.) Case No. 2D05-839
)
 THOMAS CRAIG & COMPANY, LLP,)
)
 Appellee.)
 _____)

Opinion filed July 22, 2005.

Appeal from the Circuit Court for
Hillsborough County; Vivian C. Maye,
Judge.

Michael C. Addison of Addison & Delano,
P.A., Tampa, for Appellant.

Christopher L. Griffin and Adam R. Alae of
Foley & Lardner LLP, Tampa, for Appellee.

LaROSE, Judge.

Michael Cooper appeals the trial court's order denying his motion to
dissolve or modify a temporary injunction that, essentially, prohibited him from
competing with his former employer. We affirm. We note, however, that the parties

assumed that the 1990 version of section 542.33, Florida Statutes, applied to this dispute. We write solely to correct that misconception.

The enforceability of a covenant not to compete is controlled by the law at the time the agreement took effect. Gupton v. Village Key & Saw Shop, Inc., 656 So. 2d 475 (Fla. 1995). The parties entered into a noncompetition agreement on March 6, 1990.¹ The legislature amended section 542.33(2)(a), effective June 28, 1990. Because the parties' noncompetition agreement predates the statutory amendment, the pre-1990 version of section 542.33(2)(a) applies.

For injunction purposes, the 1990 amendment provided a presumption of irreparable harm in instances involving use of trade secrets, customer lists, or direct solicitation of existing customers. § 542.33(2)(a), Fla. Stat. (Supp. 1990). The pre-1990 version was silent on this issue, but case law established that irreparable harm was presumed in such circumstances. Gupton, 656 So. 2d at 477.

Although the 1990 amendment to section 542.33(2)(a) did not apply to Mr. Cooper's case, the trial court did not err in denying the motion to modify or dissolve a temporary injunction. Accordingly, the order on appeal is affirmed.

WHATLEY and VILLANTI, JJ., Concur.

¹ The parties correctly recognize that section 542.335, Florida Statutes, does not apply. That section applies only to actions determining the enforceability of restrictive covenants entered into after July 1, 1996. § 542.335(3), Fla. Stat. (Supp. 1996).