

The Appellate Advocate:

A Recap of Recent Decisions by NJ's Appellate Courts



Ondik v. Princeton Eye & Ear, LLC **No. A-2654-23**

Cases involving restrictive covenants can be quite cinematic, especially when there is a reversal on appeal. The employee might be enjoined from competing after an unfavorable outcome in the trial court. But every so often, the Appellate Division might arrive on the scene to declare, “Nobody puts Baby in the corner (or at least, you need a more detailed fact-finding before you do).”

This case centered upon Dr. Michael P. Ondik, an ear, nose and throat specialist who left Princeton Eye & Ear at the end of 2023. His contract barred him from practicing within 20 miles of the group’s offices or hospitals where its doctors had privileges—for five years. Ondik sought to join Hunterdon Otolaryngology & Allergy Associates in Flemington, just under that line. The practice objected, warning Hunterdon in writing it would enforce the contract.

Ondik went to court, arguing the restriction was unreasonable and effectively cut him off from continuing to work locally. Ondik sought to enjoin Princeton Eye & Ear from enforcing the non-compete. A Mercer County judge dismissed his suit, ruling no breach had occurred yet because Ondik remained employed and no enforcement action had been filed.

The appellate panel disagreed, noting that Princeton Eye & Ear’s warning letter to Hunterdon was an action with real consequences. To wit, the prospective employer temporarily pulled its job offer.

The judges ordered the case back to the trial court to sort out disputed facts, including whether Hunterdon’s offer remains viable and whether Ondik has since taken a job elsewhere. The appellate court made a specific point of noting that, during the appellate argument, the attorneys “vigorously dispute” seemingly straightforward facts, such as “whether plaintiff has taken another job and whether he still has an offer of employment.”

About Thomas Cotton

Thomas Cotton is a litigation partner at Schenck Price, representing clients in trial and appellate courts throughout the United States. In addition to his practice, he authors *The Appellate Advocate*, a semi-weekly blog offering thoughtful yet accessible commentary on recent appellate rulings.



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