

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 1562

WEATHERALL RADIATION ONCOLOGY,
A LOUISIANA MEDICAL CORPORATION

VERSUS

DAVID CALETRI, M.D.

Judgment Rendered: June 8, 2007.

On Appeal from the
Thirty-Second Judicial District Court
in and for the Parish of Terrebonne,
State of Louisiana
Trial Court No. 138,488

The Honorable Randall L. Bethancourt, Judge Presiding

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BEFORE: CARTER, C.J., WHIPPLE AND McDONALD, JJ.

CARTER, C.J.

Plaintiff, Weatherall Radiation Oncology (WRO), appeals a trial court judgment granting partial summary judgment in favor of defendant, Dr. David Caletri, and dismissing WRO's claim for injunctive relief. WRO alleged it was entitled to such relief pursuant to a non-competition clause contained in an agreement executed by Dr. Caletri, its former employee.¹

Absent written notice, Dr. Caletri's yearly employment contract with WRO would have renewed automatically on July 1, 2003; however, in January 2003, Dr. Caletri advised WRO in writing that he was terminating his employment effective January 1, 2003. On April 25, 2003, WRO filed suit against Dr. Caletri seeking both damages and injunctive relief. On November 30, 2005, Dr. Caletri filed a motion for partial summary judgment asserting that WRO was not entitled to injunctive relief with regard to the non-competition clause because more than two years had elapsed from the termination of his employment and/or because WRO could not enforce the non-competition clause because it had not conducted a like business within the pertinent locale. Following a hearing, the trial court granted partial summary judgment in favor of Dr. Caletri, dismissing WRO's claim for injunctive relief. This appeal by WRO followed.

The relevant dates are undisputed by the parties, and this appeal can be resolved based solely on the passage of time without any need for determining the validity of the non-competition clause or whether it was, in fact, violated. Regardless of whether January 1, 2003, or June 30, 2003, the last day under the contract, is the date utilized for purposes of determining

¹ Both Dr. Caletri's motion for partial summary judgment and the trial court's judgment addressed only WRO's claim for injunctive relief. Accordingly, the issue of whether WRO has a viable claim for damages, pursuant to the non-competition clause or otherwise, has not been adjudicated and, thus, is not presently before us.

the end of Dr. Caletri's employment, it is patent that more than two years transpired between the end of his employment and the date on which he filed his motion for partial summary judgment. Therefore, based on LSA-R.S. 23:921C and this court's opinion in **Allied Bruce Terminix Companies, Inc. v. Ferrier**, 93-0561 (La. App. 1 Cir. 3/11/94), 634 So.2d 44, we affirm the partial summary judgment granted in favor of Dr. Caletri, dismissing WRO's claim for injunctive relief. All costs of this appeal are assessed to Weatherall Radiation Oncology. This memorandum opinion is issued in compliance with Uniform Rules-Courts of Appeal Rule 2-16.1.B.

AFFIRMED.