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**TOLLING RESTRICTIVE COVENANTS:**

**FLORIDA DIGESTIVE HEALTH SPECIALISTS, LLP v. COLINA**

In *Florida Digestive Health Specialists, LLP v. Colina*<sup>1</sup> (“*Colina I*”), Dr. Colina joined Florida Digestive Health Specialists (“FDHS”) and executed a services contract that included a restrictive covenant, which prohibited him from practicing gastroenterology for two years following termination of the services contract. Less than a week after terminating the services contract, Dr. Colina joined another large medical group practice in violation of the restrictive covenant. FDHS filed a motion for temporary injunction, and the trial court found that Dr. Colina was permitted to work for the new medical group practice. On appeal, the District Court of Appeal in *Colina I* instructed the trial court to grant the temporary injunction and prohibit Dr. Colina from violating the restrictive covenant.

The trial court did not prohibit Dr. Colina from violating the restrictive covenant despite the mandate in *Colina I*, which led to *Florida Digestive Health Specialists, LLP v. Colina*<sup>2</sup> (“*Colina II*”). On remand from *Colina I*, Dr. Colina and the new medical group practice argued that the mandate was moot because the two-year restrictive period had passed prior to the issuance of *Colina I*. FDHS argued that the restrictive covenant period was tolled during any period in which Dr. Colina violated it. The trial court accepted Dr. Colina’s “mootness” argument and did not comply with the *Colina I* mandate.

The District Court of Appeal in *Colina II* acknowledged that the issue of the effective date of the injunction was not before the court. However, it held in *Colina II* that the restrictive covenant period (two years) was to begin to run from the date the of the order entered on remand. In support, it relied on, among other cases, *Anakarli Boutique, Inc. v. Ortiz*,<sup>3</sup> which issued the same holding under the same set of facts.

*Colina II* and *Anakarli* provide practitioners and trial courts guidance in interpreting when a restrictive covenant begins to run. A party enforcing a restrictive covenant is entitled to the full, continuous period set forth in the agreement. A party cannot circumvent its obligations under a restrictive covenant by simply letting time pass or lengthening litigation.

~ Carlo D. Marichal, Banker Lopez Gassler, PA

**Endnotes**

- 1 192 So. 3d 491 (Fla. 2d DCA 2015).
- 2 -- So. 3d --, 2016 WL 4649231 (Fla. 2d DCA 2016).
- 3 152 So. 3d 107 (Fla. 4th DCA 2014).

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