

### Sheppard Mullin Obtains Appellate Win for Excel Sports Management

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Sheppard, Mullin, Richter and Hampton LLP obtained an appellate victory for Excel Sports Management, an industry-leading sports management and marketing agency that represents top-tier talent, blue-chip brands and marquee properties, by securing a preliminary injunction from the New York Appellate Division, First Department, that prevents Klutch Sports Group from unfairly competing with Excel by employing Eric Eways, a former Excel executive, in violation of Eways' non-compete agreement.

#### Background on the Case

Eways joined Excel as its Vice President of Basketball Partnerships in February 2018. In that role, he was responsible for securing off-court marketing opportunities for the professional basketball players Excel represents. He signed an Employment Agreement, which contained an eight-month non-compete, non-solicitation, and confidentiality agreement, in recognition of the relationships with corporate brand partners he was expected to develop on behalf of Excel and the NBA players Excel represents.

In February 2022, Eways resigned from Excel and took a position as Head of Marketing for Klutch. Excel sought a temporary restraining order and preliminary injunction before the New York State Supreme Court, New York County. Excel's request was denied by the trial court without an evidentiary hearing on the grounds that Excel's concerns about improper solicitation of corporate brand partners could not serve as a protectable interest to support a non-compete agreement, but instead, could support only a non-solicitation agreement.

Excel initiated an appeal and sought injunctive relief in the First Department pursuant to CPLR § 5518. Among other arguments, Excel pressed: (i) the trial court's improper creation of a new standard that would require employers to use particular types of restrictive covenants depending on the business interest for which protection is sought; (ii) the trial court's determination that Excel's efforts to narrowly tailor the restrictive covenant to a finite list of competitors reflected a punitive approach that could be used to invalidate the agreement; and (iii) the trial court's refusal to allow Excel to present any evidence at the preliminary injunction hearing beyond that which it presented in connection with its earlier request for a temporary restraining order.

The Sheppard Mullin team was led by partners Jonathan Stoler and Brian Murphy, and included special counsel Kevin Smith.

[Click here to read the court order.](#)

#### Attorneys

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## Practice Areas

Appellate

Labor and Employment

Litigation