

STATE OF MICHIGAN  
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

REC'D & FILED  
JUL 11 2016  
JUDGE YATES

NICHOLAS RITZEMA, D.D.S.,

Plaintiff,

Case No. 16-05878-CKB

vs.

HON. CHRISTOPHER P. YATES

INFINITY DENTAL MANAGEMENT  
SERVICES, L.L.C.,

Defendant.

OPINION AND ORDER DENYING MOTIONS FOR TEMPORARY  
RESTRAINING ORDER AND SCHEDULING EVIDENTIARY HEARING

No two noncompetition disputes are identical, so the parties to such disagreements routinely seek prompt guidance and protection from the Specialized Business Docket by moving for either a temporary restraining order (“TRO”) or a preliminary injunction and arguing that their dispute falls within the ambit of a prior ruling from the Court. Injunctive relief, however, requires a showing of irreparable harm, so the Court occasionally cannot furnish meaningful relief except through the entry of a declaratory judgment. This is such a case. Plaintiff Nicholas Ritzema, D.D.S, intends to leave his position with Defendant Infinity Dental Management Services, L.L.C. (“Infinity”) to buy a dental practice for himself, but a noncompetition clause in his employment agreement with Infinity serves as an impediment to his desired venture. Thus, he filed this action seeking declaratory relief as well as a TRO. Infinity responded with its own motion for a TRO to block Dr. Ritzema’s planned move. After reviewing extraordinarily comprehensive briefs and hearing three hours of oral arguments, the Court concludes that neither party can show the likelihood of irreparable harm necessary for a TRO, but this case presents an important dispute that must be resolved as promptly as possible.

Plaintiff Ritzema is a highly skilled dentist who has worked for Defendant Infinity since the summer of 2012. At the inception of his employment, Dr. Ritzema signed an associate employment agreement that included two provisions germane to the parties' dispute. First, section 7 contains a noncompetition provision that prohibits Dr. Ritzema throughout his employment and for two years thereafter from: (1) owning or working for a dental practice within 25 miles of the Infinity office in Grandville where he now practices; (2) soliciting patients of Infinity; and (3) soliciting employees of Infinity. Second, section 9 sets forth language consenting to injunctive relief as well as liquidated damages in the event that Dr. Ritzema violates any of the prohibitions in section 7. Although Dr. Ritzema has assented to refrain from soliciting patients and employees of Infinity, Dr. Ritzema has asked the Court to invalidate the 25-mile ban on practice as unenforceable pursuant to the Michigan Antitrust Reform Act, MCL 445.774a(1), under the circumstances of this case.

In his three-count complaint filed on June 27, 2016, Dr. Ritzema requested declaratory relief in the form of an order "that the two-year, 25-mile noncompetition agreement is overly broad and unduly restrictive, and does not forbid Dr. Ritzema from buying the new practice located 13 miles away from and serving different clients than those served by Infinity."<sup>1</sup> Such a declaratory judgment can be awarded under Michigan law if that aspect of the noncompetition agreement is unenforceable, see MCR 2.605(A), but Defendant Infinity insists that that aspect of the employment agreement is perfectly permissible when applied to medical and dental professionals. See St Clair Medical, PC v Borgiel, 270 Mich App 260 (2006). Prior to contesting the main event about declaratory relief, however, both sides moved for the entry of a TRO.

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<sup>1</sup> The parties seemed to agree at oral argument that the new practice Plaintiff Ritzema plans to buy is actually approximately ten miles from Infinity's office in Grandville. Nobody disputes that the new practice is well within the 25-mile zone prescribed by the employment agreement.

Under Michigan law, issuance of a TRO or a preliminary injunction requires consideration of four factors: (1) likelihood of success on the merits; (2) danger of irreparable harm in the absence of injunctive relief; (3) the balance of harms to the competing parties if injunctive relief is granted; and (4) “the harm to the public interest if the injunction is issued.” See Davis v City of Detroit Fin Review Team, 296 Mich App 568, 613 (2012). Significantly, “injunctive relief “is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury.”” Id. at 613-614. Moreover, declaratory relief is preferable to injunctive relief if a declaratory judgment will produce the result ordered by the Court. See id. at 614. In this case, because neither side can establish the type of irreparable harm necessary to warrant injunctive relief, and also because a declaratory judgment will plainly address the dispute in a satisfactory fashion, the Court shall deny the parties’ competing claims for a TRO and schedule the matter for a prompt hearing on Plaintiff Ritzema’s request for declaratory relief.

As a threshold matter, the Court acknowledges that both sides have made a compelling case for success on the merits. Plaintiff Ritzema argues persuasively that his new practice will not take any patients from Defendant Infinity for a whole host of reasons,<sup>2</sup> so the 25-mile ban on competition in his employment agreement with Infinity does not protect his “employer’s reasonable competitive business interests[.]” See St Clair Medical, 270 Mich App at 266. Beyond that, Dr. Ritzema makes a compelling argument that the 25-mile radius is too expansive in geographical scope to pass muster as reasonable in a large metropolitan area like Grand Rapids, where hundreds of dentists practice in closer proximity to Infinity than Dr. Ritzema would in the practice he wishes to purchase. For its

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<sup>2</sup> Plaintiff Ritzema has not only promised to honor his two-year ban on soliciting patients of Defendant Infinity, but also presented evidence that his new practice will provide dental services to an existing population of patients who are not currently served by Infinity.

part, Infinity contends that our Court of Appeals approved a pair of seven-mile no-practice zones for a doctor in St Clair Medical, 270 Mich App at 269, so Dr. Ritzema should similarly be prohibited from practicing dentistry within at least 15 miles of the Infinity office in Grandville. Additionally, Infinity insists that it invested substantial sums in training Dr. Ritzema, who ought not be permitted to take that “investment in specialized training” and use it to Infinity’s detriment. St Clair Medical, 270 Mich App at 266.

Despite the strength of each side’s showing on the merits, however, neither side can establish that the Court’s refusal to issue a TRO will likely cause irreparable harm. Plaintiff Ritzema has two options at his disposal even in the absence of injunctive relief. First, he can buy the new practice and pay the liquidated-damages figure of \$2,000 per day of operations until his two-year noncompetition obligation expires. Second, he can purchase a practice outside the 25-mile zone of prohibition and run that practice without any interference from, or obligation to, Defendant Infinity. Neither of those two options constitutes a perfect solution from Dr. Ritzema’s perspective because of family issues and other concerns, but denial of injunctive relief certainly will not cause him irreparable harm. See St Clair Medical, 270 Mich App at 270 (referring to the same two options available to Dr. Ritzema). With respect to Infinity, the Court need only note that Dr. Ritzema’s employment agreement contains a liquidated-damages provision that ensures substantial remuneration even if Dr. Ritzema purchases and operates his practice within the 25-mile zone of prohibition.<sup>3</sup> Given this legal remedy available to Infinity, coupled with Dr. Ritzema’s contractual obligation and his promise not to recruit or accept Infinity’s patients, Infinity cannot show irreparable harm in the absence of injunctive relief.

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<sup>3</sup> The Court’s discussion of the significance of the liquidated-damages clause does not mean that the Court has already found the clause enforceable. Either side can challenge that provision, but such agreements ordinarily must be enforced. See St Clair Medical, 270 Mich App at 270-271.

The Court's refusal to provide injunctive relief to either side merely postpones resolution of the parties' dispute until the Court can hear from the witnesses that each side intends to present. The Court stands ready to rule upon Plaintiff Ritzema's request for declaratory relief as soon as possible. After all, the Court recognizes that time is of the essence, so the Court hereby orders that the hearing on Dr. Ritzema's request for a declaratory judgment shall take place on **Tuesday, July 19, 2016, at 8:30 A.M.** See MCR 2.605(D). Each side may (but need not) submit an additional brief prior to the hearing, and the Court shall render a final decision on declaratory relief as soon as possible after the hearing concludes.<sup>4</sup>

IT IS SO ORDERED.

Dated: July 11, 2016



HON. CHRISTOPHER P. YATES (P41017)  
Kent County Circuit Court Judge

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<sup>4</sup> To prepare for the evidentiary hearing on July 19, 2016, the Court plans to review all of the briefs submitted in connection with the competing motions for a TRO. Thus, the parties need not resubmit those briefs or augment those submissions in any way unless the parties believe that further briefing is necessary to address issues that came up during the oral arguments. The Court intends to limit the evidence presented at the hearing on July 19, 2016, to matters concerning the nature and impact of the new practice that Plaintiff Ritzema wishes to purchase. Evidence supporting claims for any money damages arising from Dr. Ritzema's tenure with Defendant Infinity should be left for another day.