

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DIALIGHT CORPORATION,

Plaintiff,

v

Case No. 14-144131-CK  
Hon. Wendy Potts

JOEL POTYK, et al,

Defendants.

---

OPINION AND ORDER RE: PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

At a session of Court  
Held in Pontiac, Michigan  
On

DEC 23 2014

Plaintiff Dialight Corporation claims its former employee, Defendant Joel Potyk, is revealing Dialight's confidential information and trade secrets to Potyk's new employer and Dialight's competitor, Defendant Rig-A-Lite Partnership Ltd. Dialight filed this action alleging various claims against Potyk including violation of Michigan's Uniform Trade Secrets Act (MUTSA), breach of fiduciary and other duties, and unfair competition. Dialight also filed a motion for an ex parte temporary restraining order, which the Court denied. However, the Court heard the parties' arguments regarding Dialight's request for a preliminary injunction and set the matter for an evidentiary hearing. Dialight amended its complaint to add claims against Defendants Rig-A-Lite and Casey Allen, a former Dialight employee who is also working for Rig-A-Lite.

After hearing the parties' testimony and reviewing the documentary evidence, the Court is now tasked with deciding whether to grant Dialight's request to enjoin Potyk from working for Rig-A-Lite, using or disclosing Dialight's confidential information and trade secrets, or altering or destroying any Dialight information on his personal computer, portable hard drive, or other devices. When deciding a motion for injunctive relief, the Court considers (1) whether the applicant will suffer irreparable injury if the injunction is not granted; (2) the likelihood that the applicant will succeed on the merits; (3) whether harm to the applicant in the absence of relief outweighs the harm to the opposing party if the injunction is granted; and (4) the harm to the public if the injunction issues. *Thermatool Corp v Borzym*, 227 Mich App 366, 376; 575 NW2d 334 (1998). The Court should also consider whether granting an injunction is necessary to preserve the status quo before a final hearing or whether it will grant one of the parties final relief before a decision on the merits. *Thermatool, supra*.

The essence of Dialight's claim against Potyk is that he has Dialight's confidential information and trade secrets on a portable hard drive, he has not returned the information as he agreed he would do, and Potyk has or is likely to use or disseminate that information to Rig-A-Lite. Although the parties dispute whether Potyk entered into a non-competition agreement, there is no dispute that he agreed in writing not to use or disclose Dialight's confidential information after his employment and that he would return any confidential information he copied or downloaded. Further, there is no dispute that Potyk has Dialight information on his portable hard drive, although he contests whether that information meets the test for protectable confidential information or trade secrets. Moreover, Dialight presented no admissible evidence that Potyk has used the information on his hard drive or disclosed it to anyone. Potyk denies using or disclosing

the information, and Dialight's only proffered evidence of this was a purported affidavit from a customer was not sworn under oath and was based on multiple levels of hearsay.

Thus, the questions the Court must consider in deciding whether to grant injunctive relief can be framed as follows: (1) is the information on Potyk's hard drive protectable confidential information or trade secrets; (2) is Potyk likely to use, disclose, or otherwise misappropriate the information; and (3) is Dialight entitled to injunctive relief to bar Potyk use or disclosure of the alleged protected information. As for the first question, Dialight presented some evidence that information on Potyk's personal hard drive is a trade secret. Dialight's Vice President of Marketing Michael Schratz testified that he reviewed files that Dialight's computer expert gleaned from the hard drive and that some files contained Dialight's confidential and proprietary information that he considered to be trade secrets. Ultimately, Dialight may not be able to prove that this information constitutes a trade secret as defined by Michigan's Uniform Trade Secrets Act (MUTSA). To be a trade secret under MUTSA, the information must have value because it is not generally known or readily ascertainable and Dialight took reasonable efforts to maintain its secrecy. MCL 445.1902(d). Based on the evidence presented, the Court will assume solely for the purpose of deciding this motion that the hard drive contains Dialight's protectable confidential information and trade secrets.

Despite this assumption, the Court cannot conclude that Dialight has shown a likelihood of success on the merits of its trade secrets claim against Potyk. To prove misappropriation under MUTSA, Dialight generally must show that Potyk acquired its trade secrets through improper means. MCL 445.1902(b). Although it appears that Potyk improperly retained the alleged trade secrets after his termination, there is no evidence that he acquired them improperly. According to Potyk, Dialight actively encouraged him to download its confidential information to his personal

devices. In fact, the parties signed an agreement that allowed him to do so. Further, Dialight must show not only that Potyk has Dialight's confidential and protectable information, but that Potyk improperly used or disclosed the information or is likely to do so. MCL 445.1902(b). As noted above, Dialight presented no evidence that Potyk has used or disclosed the information since his termination. There was evidence that he accessed the hard drive since his termination, which Potyk claims involved him transferring personal information from his own computer to the drive. However, Dialight has no evidence that information from the hard drive was copied or transferred to another device or disclosed to anyone other than Potyk.

Dialight attempts to assert that Potyk will disclose the information by relying on an "inevitable disclosure" theory developed in federal case law. However, Michigan courts have yet to embrace this trade secret misappropriation theory. Although MUTSA allows this Court to grant injunctive relief based on the threat of trade secret misappropriation, MCL 445.1903(1), to enjoin Potyk from working for Rig-A-Lite under a threatened misappropriation theory requires more than evidence that Potyk is in possession of Dialight's trade secrets and works for Dialight's competitor. *CMI Int'l v Intermet Int'l Corp*, 251 Mich App 125, 135; 649 NW2d 808 (2002). Dialight claims that an injunction is warranted because Potyk has been duplicitous, but there is little evidence to support this. Certainly, Potyk did not immediately return or destroy the information on his hard drive as required by his confidentiality agreement and he has been less than forthcoming about the information he possessed. Dialight's Vice President of Human Resources David Myler claims that he asked Potyk whether he had confidential information on his personal devices and Potyk denied having anything. However, Potyk denied that Myler asked him about confidential information and claims that Myler asked him only if he had any of Dialight's property. Moreover, there is no support for Dialight's assertion that Potyk lied in the

documents or affidavits presented to the Court. Potyk claimed in his affidavit he had no Dialight documents, but admitted that he had electronically stored Dialight information on a hard drive that he believed to be corrupted. These assertions turned out to be largely true. Thus, the Court cannot conclude that Potyk demonstrated patently dishonest or wrongful conduct that would warrant enjoining him from working for Rig-A-Lite, and the Court denies Dialight's request to do so.

Although the Court will not bar Potyk from working for Rig-A-Lite, the Court agrees with Dialight that Potyk should be restrained from accessing, using, or disclosing Dialight's information. Potyk agreed to return Dialight's confidential information on his termination, which he obviously did not do, and there is no evidence or argument showing that Potyk has a legitimate reason for using or retaining that information. Therefore, the Court will enter a limited injunction barring Potyk from using or disclosing Dialight information stored on his portable hard drive. To ensure enforcement of this injunction, the Court orders the hard drive be kept by a neutral party. The parties must confer on who should keep the hard drive and present a stipulated order appointing the neutral party. Until such time as the Court appoints a neutral party, the hard drive must be kept by Potyk's counsel, cannot be accessed by anyone without an order of the Court, and cannot be shared with Potyk or the other Defendants.

IT IS SO ORDERED.

Hon. Wendy Potts

Dated:

**DEC 23 2014**