

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

MARS BUSINESS GROUP LLC d/b/a  
COMPUTING SOURCE,

Plaintiff/Counter-Defendant,

v

15-  
Case No. ~~XX~~145221-CK  
Hon. Wendy Potts

MATTHEW WEBER,

Defendant/Counter-Plaintiff.

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

At a session of Court  
Held in Pontiac, Michigan  
On

FEB 09 2015

This dispute arises from Defendant/Counter-Plaintiff Matthew Weber's alleged violation of his Confidentiality, Non-Solicitation, and Non-Compete agreement with Plaintiff/Counter-Defendant Mars Business Group, LLC d/b/a Computing Source. Computing Source claims it employed Weber as a salesperson from February 2013 until he quit on January 16, 2015. According to Computing Source, Weber's agreement bars him from (1) using or disclosing Computing Source's confidential information, (2) working for Computing Source's competitors within a ten mile radius for six months after termination, and (3) soliciting Computing Source's customers for a year after termination. Computing Source filed this action claiming that Weber is violating his agreement because on January 19, 2015, he began working for Xact, one of Computing Source's direct competitors, at an office in Troy less than ten miles from Computing

Source's Madison Heights office where Weber worked. Computing Source further claims that Weber is contacting clients whom he serviced while working for Computing Source.

Computing Source now moves the Court to enter a preliminary injunction barring Weber from violating the agreement. 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 (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*.

Computing Source asserts, and the Court agrees, that it is likely to prevail on the merits of its claim that Weber breached his agreement. Weber does not deny that he entered into the agreement or that he is employed by Computing Source's direct competitor within the prohibited 10-mile radius of Computing Source's offices. Although Weber claims that Computing Source cannot enforce its agreement because it was the first to breach, he fails to cite any material breach of the agreement at issue. Instead, Weber appears to be claiming that Computing Source breached oral promises regarding the terms and conditions of Weber's employment that are not part of this agreement. Weber does not explain how Computing Source's alleged breach of a separate alleged agreement would relieve Weber of his obligations under this agreement.

Weber also claims that he is not soliciting Computing Source's clients, but is servicing clients with whom he has had a relationship since before his employment with Computing Source. However, the agreement broadly identifies the term "Company Customer" to include any

“past, present, or prospective” customer whom Weber contacted during the last year he was employed by Computing Source or who were on his account list during that final year. The agreement does not exclude customers with whom Weber had a relationship before he worked for Computing Source. Although Weber may consider this agreement onerous given his substantial history with certain customers predating his employment with Computing Source, he signed the agreement and is now bound by it.

Weber further asserts that the agreement is unreasonable because it bars him from working in the industry. However, there is nothing inherently unreasonable about the geographic scope or duration of the agreement. Weber is barred from contacting Computing Source’s customers for only one year, and is barred from working for Computing Source’s competitors only within a ten-mile radius of its offices and for only six months. Based on the evidence presented, the Court concludes that Computing Source has a likelihood of success on its claim that Weber is breaching his noncompetition/nonsolicitation/confidentiality agreement.

Further, it appears that Computing Source will be irreparably harmed by Weber’s violation. An injury is irreparable if it is a “noncompensable injury for which there is no legal measurement of damages or for which damages cannot be determined with a sufficient degree of certainty.” *Thermatool, supra* at 377. Because Weber is working for Computing Source’s direct competitor within the prohibited geographic zone and soliciting its customers, Weber is likely to lose customers and goodwill, which constitutes an injury for which damages cannot be determined with a sufficient degree of certainty. *Basicomputer Corp v Scott*, 973 F2d 507, 512 (CA 6, 1992). Although Weber would suffer harm by losing his current employment, Computing Source will also be harmed if it loses customers to Weber and Xact. The harm to Weber does not

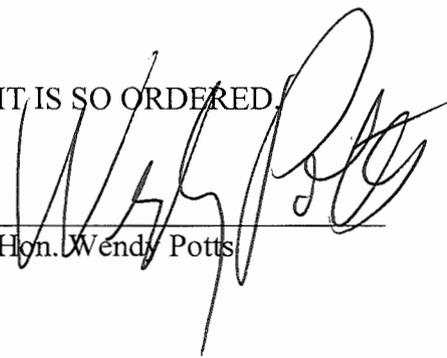
outweigh the harm to Computing Source. The public has no apparent interest in this private dispute.

For all of these reasons, the Court concludes that Computing Source is entitled to injunctive relief and will enter an order prohibiting Weber from violating his agreement with Computing Source. The parties must confer on the form of the order and attempt to come to an agreement within 7 days. If the parties cannot agree, Computing Source may efile a proposed order.

Dated:

FEB 09 2015

IT IS SO ORDERED.

  
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Hon. Wendy Potts