

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

**APPLIED MANUFACTURING
TECHNOLIGIES, LLC, ET AL,
Plaintiffs,**

v.

**Case No. 13-138043-CK
Hon. James M. Alexander**

**4D SYSTEMS, LLC, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant Keith Coleman’s Motion for Relief from January 17, 2014 Order and for Dismissal from Case. This suit arose after Mr. Coleman left his employment with Plaintiff Applied Manufacturing and joined another former employee, Co-Defendant Jean-Pierre Rasaiah, working for a competing company founded by Mr. Rasaiah.

Plaintiffs filed this Complaint, in relevant part, on allegations that Mr. Coleman violated the terms of certain provisions contained in a 2006 Non-Disclosure and Non-Competition Agreement.

On January 17, 2014, the parties appeared for a hearing on Plaintiffs’ request for a preliminary injunction. On that date, the Court entered an Order prohibiting Mr. Coleman from, among other things, disclosing Plaintiffs’ confidential information, competing in the restricted territory, or soliciting any Applied Manufacturing customers. The Court did so, in part, because Mr. Coleman did not respond to the injunction request – despite appearing for the hearing.

Mr. Coleman now seeks relief from that order under MCR 2.612(1)(c) or (1)(f) and seeks dismissal from this lawsuit. Because Mr. Coleman seeks his dismissal from this suit, the motion is really a dispositive motion, and the Court will treat it as such. Further, the Court will consider his request as one brought under MCR 2.116(C)(10), which tests the factual support for a plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).¹

In such a motion, the moving party must specifically identify the issues that he believes present no genuine issue of material fact. *Id.* at 120. The opposing party may not rest on mere allegations or denials in his pleadings, but must, by affidavits or as otherwise provided in the rule, set forth specific facts showing a genuine issue for trial. *Id.* at 120-121. Where the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* at 120.

Under the Agreement, Mr. Coleman was prohibited from “attempt[ing] to adversely influence [Applied Manufacturing’s] business relationships with any of its current vendors, suppliers, customers, employees or agents” for two years. Additionally, for that same time, Mr. Coleman agreed to “not engage in any solicitation of business from or attempt to influence any of [Applied Manufacturing’s] current vendors, suppliers, customers, employees or agents.”

In their Complaint, Plaintiffs allege that Mr. Coleman contacted an existing customer, Arpac Group, with respect to a certain project. This contact, Plaintiffs claim, was prohibited under the terms of the 2006 Agreement.

In his Motion, Defendant argues Plaintiffs failed to present any evidence at the injunction hearing supporting the subsequent order. Defendant further claims that, had any evidence been provided, it would show that Mr. Coleman “poses no threat of harm to AMT at all because he has not violated the Agreement.”

¹ The Court does so because Defendant supports his request with reference to evidence outside of the pleadings.

In support, Defendant attaches two Affidavits: his own and that of Paul Moore – an employee of Arpac Group – the Applied Manufacturing client that Mr. Coleman allegedly solicited.

In their answer, Plaintiffs argue that Mr. Coleman: (1) never responded to the injunction request, and (2) signed the order. As a result, Plaintiffs argue that he essentially consented to entry of the injunction. Although not entirely dispositive, the Court tends to agree with Plaintiffs.

A bigger problem for Mr. Coleman, however, is that he merely attaches competing affidavits – whereby he claims that he has not violated the 2006 Agreement. In other words, the parties simply present competing evidence that precludes summary disposition.

Further, to the extent that Mr. Coleman questions Plaintiffs’ affiants’ credibility, the same is not properly an issue decided on summary. *White v Taylor Distributing Company, Inc*, 275 Mich App 615; 739 NW2d 132 (2007).

Additionally, in *Vanguard Ins Co v Bolt*, 204 Mich. App. 271; 514 N.W.2d 525 (1994), the Court of Appeals held:

The granting of a motion for summary disposition is especially suspect where motive and intent are at issue or where a witness or deponent’s credibility is crucial. Accordingly, where the truth of a material factual assertion of a moving party depends upon a deponent’s credibility, there exists a genuine issue for the trier of fact and a motion for summary disposition should not be granted. *Vanguard Ins, supra* at 276 (internal citations omitted).

Whether or not Mr. Coleman violated the terms of the parties’ Agreement is so substantially intertwined with fact-finding and credibility determinations as to render summary disposition wholly inappropriate.

For the foregoing reasons and viewing the evidence in the light most favorable to Plaintiffs, this Court cannot conclude that there are no material facts in dispute to warrant judgment in favor of Defendant Coleman as a matter of law. As a result, Defendant's Motion is DENIED.

IT IS SO ORDERED.

June 18, 2014
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge