STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MPI PRODUCTS LLC,

Plaintiff,

v

Case No. 14-139004-CK
Hon. Wendy Potts

R. SCOTT DINGER,

Defendant.
_____/

OPINION AND ORDER RE: PLAINTIFF MPI PRODUCTS LLC'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

At a session of Court
Held in Pontiac, Michigan
On
MAR 06 2014

Plaintiff MPI Products LLC brought this action claiming that its former manager Defendant R. Scott Dinger breached noncompetition and nondisclosure agreements he signed with MPI International, LLC. The agreements bar Dinger from competing with MPI International or soliciting its clients for one year after his employment is terminated and from disclosing or using MPI International's confidential information. MPI Products claims to be the successor to MPI International and maintains that MPI International assigned Dinger's agreements to MPI Products. MPI Products alleges that Dinger is breaching the agreements by supplying metal stamping parts to MPI Products's customer Parker-Hannifin Corporation and by using MPI Products's confidential information. Dinger admits signing the agreements with MPI International and that he has a supplier relationship with Parker-Hannifin. However, he disputes

whether his agreements were assigned to MPI Products. He further contends that MPI International terminated his employment in November 2012, he did not sign a new agreement with MPI Products, and the one year period ended in November 2013.

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.*

To the extent that MPI Products' request for injunctive relief is premised on Dinger's acquisition of the Parker-Hannifin business, it fails to show an irreparable injury that an injunction could prevent. Preliminary injunctive relief is designed to preserve the status quo and meet the threat of a future wrong. *Mich Coalition of State Employee Unions v Mich Civil Service Comm'n*, 465 Mich 212, 237; 634 NW2d 692 (2001). MPI Products's claim is primarily based on the loss of its customer Parker-Hannifin, and there is no dispute that loss already occurred when Parker-Hannifin announced earlier this month that it would end its relationship with MPI Products. Further, MPI Products admits that preventing Dinger from supplying parts to Parker-Hannifin will not necessarily result in Parker-Hannifin restoring MPI Products's business. If MPI Products can show that Dinger's conduct regarding Parker-Hannifin constitutes a breach of his agreements and it was injured by that alleged breach, MPI Products can seek monetary damages. However, it cannot use prospective injunctive relief to remedy a past wrong.

MPI Products also asserts that Dinger is continuing to breach his agreements by using MPI Products's confidential information, and Dinger could engage in further competitive activity. This question requires the Court to determine whether MPI Products has a substantial likelihood of prevailing on the merits of its claim that Dinger breached his agreements. Based on the evidence presented, the Court is unable to reach that conclusion. MPI Products is not a party to Dinger's agreements and there appears to be a dispute whether MPI International assigned the agreements to MPI Products. Even if the agreements were assigned, Dinger may be correct that his November 2012 termination from MPI International triggered the one-year noncompetition period. Thus, MPI Products may have difficulty demonstrating that Dinger breached the noncompetition agreement. Although MPI Products also alleges that Dinger is using its confidential information in violation of the nondisclosure agreement, it presents no evidence of this claim.

Even if MPI Products had demonstrated a likelihood of success on its claims, there is little evidence of an imminent irreparable injury. 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. MPI Products's claims primarily allege the loss of a past customer relationship, and the injury from the loss of that relationship could be calculated in terms of lost profits. MPI has not presented evidence that it is threatened with an injury that is not readily calculable.

Although MPI Products has not yet made a showing of a likelihood of success on its claims or that it is threatened with an irreparable injury, the Court recognizes that this is a very new case and further factual development may provide support for MPI Products's claims. Therefore, the Court sets the matter for an evidentiary hearing on April 18, 2014 at 8:30 a.m.

The Court further orders the parties into facilitation to be completed by April 11, 2014. The parties must notify the Court's staff by Monday, March 10, 2014 whether they can agree on a facilitator.

IT IS SO ORDERED.

Dated: MAR 06 2014

Hon. Wendy Potts