

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

EXCEL ELECTROCIRCUIT, INC,

Plaintiff,

v

Case No. 14-142443-CK  
Hon. Wendy Potts

BROOKE B. WILLIAMS, et al,

Defendants.

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

At a session of Court  
Held in Pontiac, Michigan  
On

**AUG 22 2014**

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Plaintiff Excel Electrocircuit, Inc. manufactures printed circuit boards (PCB), and Defendant Brooke Williams was a sales representative for Excel from April 2012 to August 2014. When she began her employment with Excel, Williams signed a Non-Compete & Non-Disclosure Agreement and an Employee Confidentiality and Property Agreement. Under the terms of the non-compete/non-disclosure agreement, Williams agreed that for two years after her employment with Excels ends she would not “own, manage, be employed by, render consulting services to, or be connected in any manner with the ownership, management, operation, promotion, control, purchases, or sales of any business that competes in any manner with the Corporation’s business.” She also agreed that for five years after her employment ends she would not disclose Excel’s confidential or proprietary information or its customer names or

addresses. Williams further agreed that she would not “disparage, discredit, or otherwise adversely criticize” Excel. Under the confidentiality agreement, Williams agreed that she would not disclose or use Excel’s trade secrets or work product. Excel also claims that in January 2013 it entered into a Vendor Non-Disclosure, Non-Solicitation, and Confidentiality agreement with Defendant BBW Holdings, Inc, a company owned by Williams’s ex-husband. The agreement barred BBW from soliciting Excel’s customers during the agreement term and for three years after the agreement ended.

On August 1, 2014, Excel notified Williams that it was terminating her employment. Excel claims that the same day Williams began contacting Excel’s customers and vendors to tell them she was leaving Excel and to solicit them to do business with BBW. On August 14, Excel sent Williams a cease-and-desist letter stating that she was breaching her non-compete and confidentiality agreements and demanding that she stop soliciting Excel’s customers. Williams responded to Excel’s letter by sending an email on August 15 claiming that Excel was involved in illegal activity and threatening to reveal the alleged illegal activity to Excel’s customers and government regulators. Williams also stated in the email that she believes her agreements with Excel are not enforceable and she intends to continue doing “volunteer” work for BBW.

Excel moves the Court to enjoin Defendants from violating their agreements. 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 Excel is asking the Court to enjoin Williams from speaking to governmental agencies or others about Excel's alleged illegal activities, the Court denies that request. An injunctive order that forbids speech activities is a prior restraint. *Charter Twp of Van Buren v Garter Belt, Inc*, 258 Mich App 594, 623; 673 NW2d 111 (2003). Prior restraints are presumed unconstitutional, *Van Buren Twp, supra* at 622, and Excel has not cited any evidence or authority to overcome that presumption.

However, the Court agrees with Excel that temporary injunctive relief is warranted as to Williams and BBW's apparent violation of their non-compete, non-disclosure, and confidentiality agreements. Williams does not deny that she signed the agreements or that she is contacting Excel's customers or vendors to solicit business for BBW. Although she claims that she is "volunteering" her work for BBW, the restrictions in the agreement are not solely applicable to paid employment. Because Williams and BBW are violating her agreements by soliciting Excel's customers, it is irrelevant whether BBW is employing or paying Williams. BBW's counsel claimed at the hearing that BBW did not execute its agreement with Excel, however, BBW provided no evidence of this claim. Thus, Excel demonstrated that it is likely to prevail on its claims that the agreements are enforceable and that Defendants are violating their agreements.

Excel also demonstrated that it would suffer irreparable harm if Williams and BBW are allowed to continue soliciting Excel's customers and vendors. 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.

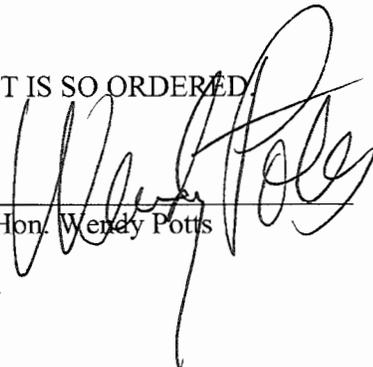
Excel stands to lose goodwill, customers, and vendors, which would constitute an injury for which damages cannot be determined with a sufficient degree of certainty. *Basicomputer Corp v Scott*, 973 F2d 507, 512 (CA 6, 1992). Because neither Williams nor BBW demonstrated how they would be harmed if the Court barred them from soliciting Excel's customers and vendors, the balance of harms favors Excel. Further, the public has no apparent interest in this private dispute and would not be adversely affected by an injunctive order.

For all of these reasons, the Court grants Excel's request for entry of a temporary injunctive order prohibiting Williams and BBW from soliciting Excel's customers and vendors or from disclosing Excel's information that Williams and BBW agreed to keep confidential. The Court sets the matter for an evidentiary hearing on October 10, 2014 at 1:30 p.m. to determine if the injunctive order should be continued.

Dated:

**AUG 22 2014**

IT IS SO ORDERED.

  
Hon. Wendy Potts