

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

MARS BUSINESS GROUP, LLC, et al

Plaintiffs,

v

Case No. 2015-145221-CK  
Hon. Wendy Potts

MATTHEW R. WEBER, et al

Defendants.

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OPINION AND ORDER RE: DEFENDANT XACT DATA DISCOVERY'S MOTION  
TO DISSOLVE OR MODIFY PRELIMINARY INJUNCTION

At a session of Court  
Held in Pontiac, Michigan  
On

**APR 27 2015**

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Defendant XACT Data Discovery moves the Court to dissolve or modify its preliminary injunction order. Although XACT's motion is not framed as a motion for reconsideration, because XACT is seeking to set aside or modify an order, it is in the nature of a request for reconsideration and the Court will treat it as such. The Court has discretion to grant or deny reconsideration. MCR 2.119(F)(3); *Charbeneau v Wayne County General Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). Reconsideration is warranted if a party identifies a palpable error by which the Court and the parties have been misled and shows that a different disposition must result from correction of that error. MCR 2.119(F)(3).

XACT first asserts that the Court deprived it of its due process rights because it did not have an opportunity to be heard on the motion for preliminary injunction before the Court granted it. XACT correctly notes that it is entitled to notice of the nature of a proceeding that

impacts its rights and an opportunity to be heard. *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). However, as XACT concedes, Computing Source did not name it as a Defendant until after the Court issued its opinion on the preliminary injunction motion. Further, the motion did not ask the Court to take any action against XACT or impede its fundamental rights. XACT presents no authority holding that procedural due process requires the Court to seek out nonparties who may be indirectly affected by its decisions and give them notice before making a ruling. The decision XACT relies on, *Qureshi v US*, 600 F3d 523, 536 (CA 5, 2010), is readily distinguishable because that injunction was issued against a party sua sponte and without notice to the enjoined party. Because the Court's order here did not enjoin XACT, *Qureshi* is inapposite and XACT fails to demonstrate any due process violation.

XACT also contests the injunction order because it bars Weber from working for XACT. However, this argument was mooted by the Court's decision on Weber's objections to the order that modified the injunction order's language. The order now enjoins Weber from directly or indirectly engage in the EDD and Litigation Support Business as an officer, director, employee, contractor, agent or otherwise within a ten mile radius of the Computer Source offices where he worked for one year before his January 16, 2015 termination date. As the Court noted in, whether the injunction bars Weber from being employed by XACT cannot be determined based on the evidence presented to date.

XACT next argues that Computing Source is not entitled to equitable injunctive relief because it comes to the Court with unclean hands. This argument is based in part on the assertion that Computing Source encouraged Weber to violate his noncompete/nonsolicitation agreement with a former employer, C2 Legal. However, this alleged inequitable conduct has no direct relationship to the issues in this case. The clean hands doctrine bars a party from obtaining

equitable relief if it engages in misconduct that bears “a more or less direct relation to the transaction concerning which complaint is made.” *McFerren v B & B Inv. Group*, 253 Mich App 517, 524; 655 NW2d 779 (2002). XACT does not explain how Computing Source’s conduct with respect to matters that are not at issue in this case and entities that are not parties to this case would bar it from seeking equitable relief.

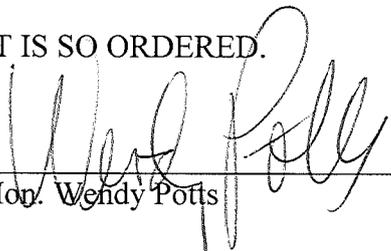
XACT also alleges Computing Source fraudulently induced Weber into signing the agreement at issue by materially misrepresenting the terms of his employment. However, as the Court noted in its preliminary injunction opinion, these alleged misrepresentations and breaches arise from Weber’s claim that Computing Source made oral promises regarding compensation and other terms of his employment that it did not fulfill. Nowhere in the noncompete/nonsolicitation agreement does Computing Source promise any specific type or amount of compensation. It states only that as consideration for signing the agreement, Weber will be “eligible to participate in the Company’s bonus program and/or Performance Participation Plan.” This recitation of consideration does not promise any specific compensation, and XACT presents no evidence that Weber was not “eligible to participate” in these programs. This argument appears to be a reiteration of Weber’s claim that the noncompete/nonsolicitation agreement was unenforceable because Computing Source was the first to materially breach the agreement. The Court properly rejected this argument in its preliminary injunction opinion, and XACT provides no basis for reconsidering it.

Finally, XACT contends that Computing Source’s noncompete and nonsolicitation provisions are invalid because they do not protect its legitimate business interest, and unreasonably prohibit Weber from working for XACT in any capacity and from soliciting clients that Weber developed during his 17 years in the industry prior to employment with Computing

Source. A noncompetition agreement is enforceable if it “protects an employer’s reasonable competitive business interests” MCL 445.774a. However, XACT fails to explain why Computing Source does not have a legitimate business interest in barring Weber from competing against it or soliciting its customers. The fact that Weber had a pre-existing relationship with a customer or that Weber did not solicit business from a particular customer while employed by Computing Source does not eliminate its legitimate interest in protecting its relationships and goodwill.

For all of these reasons, XACT fails to show palpable error in the Court’s injunction order and its motion to dissolve or modify that order is denied.

IT IS SO ORDERED.



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Hon. Wendy Potts

Dated:

**APR 27 2015**