

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

QUAD ELECTRONICS, INC.,

Plaintiff,

Case No. 2015-145508-CK

v.

Hon. Wendy Potts

STACEY SABOL,

Defendant.

OPINION AND ORDER RE: PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION
PURSUANT TO MCR 2.116(C)(10)

At a session of Court
Held in Pontiac, Michigan
On

MAR 10 2016

This matter is before the Court on Plaintiff Quad Electronics, Inc.'s Motion for Summary Disposition pursuant to MCR 2.116(C)(10). The parties appeared for oral argument on March 9, 2016. For purposes of background information, Plaintiff Quad Electronics, Inc. hired Defendant Stacey Sabol as a sales representative in 2007. Sabol claims she ran Plaintiff's California sales office from July 2011 until Quad terminated her on August 20, 2014. Quad claims that Sabol signed a noncompetition agreement that barred her from working for its competitors for one year after her termination. In January 2015, Sabol accepted employment with Great Lakes Wire and Cable, which Quad claims is a direct competitor. On January 15, 2015, Quad wrote Sabol warning her that her employment with Great Lakes would violate her agreement. On January 26, Sabol filed an action in the U.S. Federal District Court, the Eastern District of California, seeking

a declaratory judgment that the non-competition agreement is unenforceable and asserting that Quad breached her employment agreement by failing to compensate her. On February 12, Quad filed this action asserting that Sabol violated her noncompetition agreement, breached a fiduciary and loyalty duties, and seeking injunctive relief.

Quad moves for summary disposition under MCR 2.116(C)(10), which provides that “[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” MCR 2.116(C)(10). A motion under (C)(10) tests the factual support for Plaintiff’s claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Under (C)(10), “In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.” *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

The dispute in the present case involves a noncompetition agreement. Under the Michigan Antitrust Reform Act (MARA), a noncompetition agreement is enforceable if it “protects an employer’s reasonable competitive business interests” and “is reasonable as to its duration, geographical area, and the type of employment or line of business.” MCL 445.774a. The Court has the discretion under MARA to “limit the agreement to render it reasonable in light of the circumstances in which it was made and specifically enforce the agreement as limited.” *Id.*

The construction and interpretation of a contract is a question of law. *Bandit Industries, Inc v Hobbs International, Inc*, 463 Mich 504, 511 (2001). The goal of contract construction is

to determine and enforce the parties' intent on the basis of the plain language of the contract itself. *Old Kent Bank v. Sobczak*, 243 Mich.App. 57, 63, 620 N.W.2d 663 (2000).

Plaintiff argues that it is undisputed that Sabol worked for a direct competitor of Plaintiff's and blatantly violated Plaintiff's enforceable noncompetition agreement. Sabol alleges that there are questions as to the enforceability of the noncompetition agreement and that the Court must determine the reasonableness of the agreement.

"A court must assess the reasonableness of the noncompetition clause if a party has challenged its enforceability. See MCL 445.774a(1); *Woodward v. Cadillac Overall Supply Co.*, 396 Mich. 379, 389–391, 240 N.W.2d 710 (1976). The burden of demonstrating the validity of the agreement is on the party seeking enforcement. *Id.* at 391, 240 N.W.2d 710." *Coates v Bastian Brothers, Inc.*, 276 Mich App 498, 507-508; 741 NW2d 539 (2007). In arguing that the agreement is valid, Quad repeatedly states that the Court, in deciding its motion for preliminary injunction, has already determined that the agreement is valid.

"[B]y definition, a decision on a *preliminary* injunction is made before there is even a determination on the merits of a case." *Michigan Coalition of State Employee Unions v Michigan Civil Service Com'n*, 465 Mich 212, 227; 634 NW2d 692 (2001), (emphasis provided). Thus, Quad's arguments that the Court has already made a determination that the agreement is reasonable and enforceable are without merit.

The reasonableness of a noncompetition agreement is a question of law when the relevant facts are undisputed. *Coates v Bastian Brothers, Inc.*, 276 Mich App 498, 506; 741 NW2d 539 (2007). Here, it is undisputed that the noncompetition agreement prohibits Sabol from working for nineteen companies in the industry. Plaintiff claims the undefined geographic scope is reasonable because "the prohibition is restricted to a narrow and focused industry. In fact,

Plaintiff specifically enumerated who its direct competitors were. The Agreement only lists nineteen specific competitors nationwide. Defendant, therefore, has many more opportunities to work for a plethora of other industries and is not unduly restricted from gaining a livelihood because of the Agreement.” Plaintiff’s brief in Support of motion, p 9, (emphasis provided).

Plaintiff argues that Sabol has opportunities to work in other industries. Sabol claims that she has worked in the industry in which Plaintiff seeks to prohibit her from working for the last eight years. To be reasonable in relation to an employer's competitive business interest, a restrictive covenant must protect against the employee's gaining some unfair advantage in competition with the employer, but not prohibit the employee from using general knowledge or skill. *Coates*, 276 Mich.App. at 507, 741 N.W.2d 539.

It is undisputed that Sabol worked for Great Lakes Wire and Cable, which is headquartered in Madison Heights, Michigan. Great Lakes is also one of the companies expressly mentioned in the noncompetition agreement as a competitor of Cablcon and for which Sabol was restricted from working. In direct contravention to Sabol’s noncompetition agreement, she began employment with Great Lakes during the prohibited period. The noncompetition agreement does not distinguish between whether Sabol merely worked at a competitor or whether she actually competed while working at the competitor. The noncompetition agreement provides: “The UNDERSIGNED agrees that, upon termination of this agreement and for a period of twelve (12) calendar months after the termination of this agreement, he or she will not accept employment with the following companies” The noncompetition agreement does not distinguish between positions at the listed companies, thus Sabol’s arguments that she worked for a Great Lakes but did not actually compete with Plaintiff is unpersuasive.

The Court is mindful of the fact that the subject noncompete provision within the agreement does not identify a clear geographical scope as required by statute. MCL 445.774a(1) provides that “an employer may obtain from an employee an agreement or covenant which protects an employer's reasonable competitive business interests and expressly prohibits an employee from engaging in employment or a line of business after termination of employment if the agreement or covenant is reasonable as to its duration, geographical area, and the type of employment or line of business. To the extent any such agreement or covenant is found to be unreasonable in any respect, a court may limit the agreement to render it reasonable in light of the circumstances in which it was made and specifically enforce the agreement as limited.”

Since Plaintiff has its principal place of business in Troy, Michigan and Great Lakes is located in Madison Heights, Michigan, in this instance the noncompetition agreement is reasonable with respect to the geographic restriction. By accepting employment with Great Lakes during the prohibited period, Sabol breached the noncompetition agreement. Thus, Plaintiff's motion for summary disposition as to breach of contract and noncompetition agreement is granted.

Plaintiff also moves for summary disposition on its claim that Sabol breached her duty of loyalty to Plaintiff. Plaintiff alleges that Sabol was an agent of Plaintiff's because she had express authority to conduct sales on its behalf and interacted with its customers on a daily basis. Plaintiff alleges that Sabol used knowledge acquired while working for Plaintiff to target Plaintiff's customers when Sabol commenced work for one of Plaintiff's direct competitors. Plaintiff further claims that Sabol's work for Great Lakes caused her to breach her duty of loyalty to Plaintiff. Sabol responds that summary disposition is not appropriate as to the breach

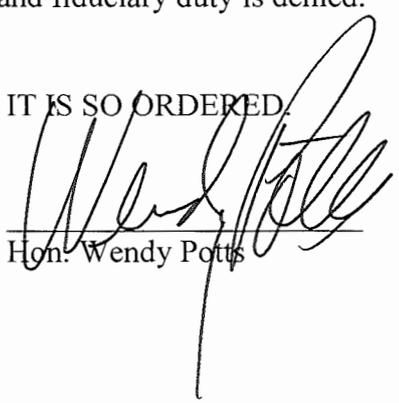
of the fiduciary duty because any fiduciary duty terminated when Plaintiff wrongfully terminated Sabol.

Plaintiff alleges that Sabol signed the agreement wherein she agreed to be bound by her duty of loyalty for an additional year after her employment was terminated and that she agreed not to work for a competitor or solicit customers. Plaintiff's argument regarding the duty of loyalty is unpersuasive. Plaintiff further argues that Sabol was an agent and in that capacity owed her principal the duty of good faith and loyalty. "An agent is a person having express or implied authority to represent or act on behalf of another person, who is called his principal." *Burton v Buton*, 332 Mich 326, 337; 51NW2d 297 (1952). Thus, Sabol could no longer have been an agent when her employment was terminated by Plaintiff because she no longer had any express or implied authority to represent or act on behalf of Plaintiff. Accordingly, Plaintiff's motion for summary disposition as to the breach of loyalty and fiduciary duty is denied.

Dated:

MAR 10 2016

IT IS SO ORDERED.


Hon. Wendy Potts