STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

UNITED SHORE FINANCIAL SERVICES, LLC,

Plaintiff,

v

Case No. 15-145976-CK
Hon. Wendy Potts

URBAN FULFILLMENT SERVICES, LLC, et al

Defendants.
_____/

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

At a session of Court
Held in Pontiac, Michigan
On

MAR 26 2015

Plaintiff United Shore Financial Services, LLC claims that its former employee Defendant Latice Booker is violating her employment agreement by working for United's direct competitor Defendant Urban Fulfillment Services, LLC. In June 2012, Booker signed a lengthy contract in which she agreed that for one year after her employment with United terminated, she would not work for person or entity that engages in "Conflicting Business Activities" within a 100-mile radius of United's office. The definitions section of the agreement broadly defined "conflicting business activities" as "the same or similar line of business" as United. On October 14, 2014, Booker voluntarily terminated her position with United and has since accepted employment with Urban. United's complaint alleges that Booker breached her employment agreement and Urban tortiously interfered with that agreement. United also claims that Booker is violating non-solicitation and confidentiality provisions of the agreement.

United now moves the Court to enter a preliminary injunction barring Booker from violating the agreement. 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.*

United asserts that it is likely to prevail on the merits of its claim that Booker breached the noncompetition provision of her employment agreement by working for Urban. The Michigan Antitrust Reform Act (MARA) allows an employment noncompetition agreement 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 determines reasonableness if the relevant facts are undisputed. *Coates v Bastian Bros, Inc.*, 276 Mich App 498, 506; 741 NW2d 539 (2007)

On its face, the agreement appears to be reasonable. It only bars competition for one year, which our courts have held is a reasonable duration. *Coates*, *supra* at 508. As for geographic scope, the agreement bars Booker from working for a competing company within 100 miles of the United office where she worked or in the "geographic area within which Employee was paid to solicit business for and on behalf of Company [United]", whichever is greater. Although the second category is of questionable reasonableness, the Court of Appeals in *Coates* endorsed a 100-mile limitation. *Id* at 508. Regarding the type of employment or line of business, the

agreement bars Booker from working for companies in the same or similar line of business, which also appears reasonable. Although Booker contends that Urban is not in the same line of business, the nature of the two businesses is sufficiently similar that they appear to provide similar if not identical services.

Booker also asserts that the noncompete provision is unenforceable because it does not protect a business interest because Booker was not a high-level employee and had no customer contact. However, United asserts that it has an interest in preventing its competitors from using former employees to access its confidential information and engage in unfair competition. Based on the evidence presented, United is likely to prevail on its claim that the noncompetition protects a reasonable competitive business interest. Thus, United is likely to prevail on its claim that the restriction barring Booker from working for a company in a same or similar line of business within 100 miles of United office's for one year is reasonable and enforceable. Because the undisputed facts appear to show that Booker is working for a company in a similar line of business within 100 miles of United's office less than a year after she terminated her employment, United is likely to prevail on its claim that Booker is breaching the noncompetition provision of her agreement.

Although United has an apparent viable claim that Booker is breaching her agreement not to compete, United fails to demonstrate that it is likely to prevail on is claim that Booker is violating the confidentiality or non-solicitation provisions. United claims that Booker solicited its current or former employees, however, it presents no evidence of this fact. The fact that Urban recruited several current or former United employees does not demonstrate that Booker was involved in the solicitation. Further, United presents no evidence that Booker possessed

confidential information or failed to protect the confidentiality of United's information. Thus, United fails to demonstrate it is likely to prevail on this claim.

As for the tortious interference claim against Urban, United has not shown that it is likely to prevail on that claim. It appears that Urban instigated Booker to breach her employment agreement by offering her employment, which would satisfy part of the elements of a tortious interference claim. *Badiee v Brighton Area Schools*, 265 Mich App 343, 366; 695 NW2d 521 (2005). However, to prevail on its claim, United must show that Urban engaged in "the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another." *Badiee*, *supra* at 367. Recruiting a competitor's employees is neither a per se wrongful act nor a malicious and unjustified act. Thus, United cannot show that it is likely to prevail on its tortious interference claim against Urban.

Regarding the irreparable injury element, 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. Because Booker is working for a company that United claims is a direct competitor within the prohibited geographic zone and duration, United is likely to lose customers and goodwill, 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). Although Booker would suffer harm by losing her employment with Urban, the harm to Booker does not outweigh the harm to United. The public has no apparent interest in this private dispute.

Considering all of these factors, the Court concludes that United is entitled to injunctive relief against Booker, but only as to the noncompete provision of her agreement. The Court

enjoins Booker from working for Urban until October 14, 2015. United's request for injunctive relief against Urban is denied.

IT IS SO ORDERED.

Dated: MAR 26 2015

Hon. Wendy Potts

JH