

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

CITISTAFF, INC,

Plaintiff/Counter-Defendant,

Case No. 15-149820-CB

v

Hon. Wendy Potts

NIC BANFIELD, et al

Defendant/Counter-Plaintiff.

OPINION AND ORDER RE: PLAINTIFF'S MOTION REQUESTING ENTRY OF A
PRELIMINARY INJUNCTION

At a session of Court
Held in Pontiac, Michigan
On

DEC 22 2015

Plaintiff Citistaff, Inc. moves the Court to enjoin its former employee Defendant Nic Banfield from breaching his Noncompetition/Nonsolicitation/Confidentiality agreement. The motion came before the Court on December 2, 2015, and the Court denied the motion without prejudice and allowed Citistaff to renew its motion if it provided evidence of irreparable harm. Citistaff filed a supplemental brief and renoticed the motion for hearing, however, the Court is exercising its discretion to decide the motion without a hearing. MCR 2.119(E)(3).

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*.

In the noncompetition agreement, Banfield agreed that for 18 months after his termination from Citistaff he would not work for another company performing the same services he did for Citistaff during the last two years of his employment within 50 miles of the office where Banfield worked. Citistaff presents evidence that Banfield's current employer, Gonzales Contract Services, Inc. performs the same services as Citistaff, is located within the 50 mile range, and hired Banfield shortly after Citistaff terminated. Thus, Citistaff established a likelihood of success on the merits of its claim that Banfield is breaching the agreement.

Although Citistaff's evidence of irreparable injury is thin, the Court finds that Citistaff presented sufficient evidence to support its claim that it is likely to lose business 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 Banfield would suffer harm by losing his employment with Gonzales, the harm to Banfield does not outweigh the harm to Citistaff. The public has no apparent interest in this private dispute.

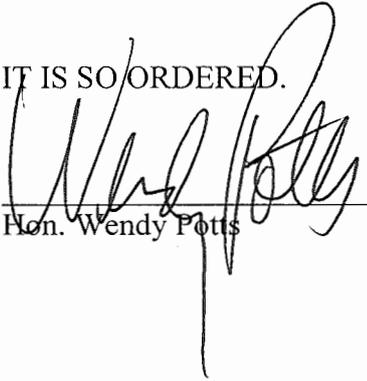
Although the injunction factors weigh in favor of granting Citistaff a preliminary injunction, Banfield asserts that Citistaff is barred from seeking an injunction by the clean hands doctrine. "The clean hands maxim is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant." *McFerren v B&B Investment Group*, 253 Mich App 517; 655 NW2d 779 (2003). Because an injunction seeks equitable relief, *Jeffrey v Clinton Twp*, 195 Mich App 260, 263; 489 NW2d 211, 213 (1992),

Citistaff is not entitled to the equitable relief of a preliminary injunction if it engaged in inequitable conduct. *McFerren, supra*.

Banfield asserted in his response to the injunction motion that Citistaff acted inequitably by improperly firing him for complaining about alleged discriminatory statements and conduct of Citistaff's principal Michael Gabos. Banfield also asserts in a counterclaim that Citistaff failed to pay him commissions he earned. Review of Citistaff's briefs shows no response to Banfield's unclean hands arguments or evidence. Therefore, the Court again denies the motion without prejudice. Citistaff may renotice and repropose its motion for hearing after filing a supplemental brief addressing Banfield's claims of inequitable conduct and whether those claims would bar Citistaff from seeking equitable relief.

Dated: DEC 22 2015

IT IS SO ORDERED.



Hon. Wendy Potts