

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.

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

At a session of Court  
Held in Pontiac, Michigan  
On

FEB 12 2016

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 on December 10, 2015, and Banfield filed his response on December 18, 2015. The Court dispensed with oral argument and issued an Opinion and Order on December 22, 2015 denying Citistaff's Motion Requesting Entry of a Preliminary Injunction without prejudice.

On January 15, 2016, Citistaff renewed its motion by filing a Supplemental Brief in Support of Entry of Preliminary Injunction; Defendant Banfield's Unclean Hands Defense is Unrelated to His Breach of Non-Competition Agreement and Therefore Does Not Bar Injunctive

Relief Against Him. The parties briefed the renewed motion and oral argument was held on February 10, 2016.

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. Banfield presently works for Gonzales Contract Services, Inc. Despite claims that Banfield does not work in a division that directly competes with Citistaff, Gonzales allegedly performs the same services as Citistaff and is a direct competitor of Citistaff. Thus, Citistaff has demonstrated a likelihood of success on the merits of its claim that Banfield is breaching his noncompetition agreement.

In its Order of December 22, 2015, the Court found 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). Furthermore, the Court

previously found on December 22, 2015 that the harm to Banfield does not outweigh the harm to Citistaff. The public has no apparent interest in this private dispute.

In defense of the motion for preliminary injunction, Banfield asserted 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 asserted in a counterclaim that Citistaff failed to pay him commissions he earned. “The misconduct which will move a court of equity to deny relief must bear a more or less direct relation to the transaction concerning which complaint is made. Relief is not denied merely because of the general morals, character or conduct of the party seeking relief.” *McFerren v B&B Investment Group*, 253 Mich App 517, 524; 655 NW2d 779, 784 (2003) citing *McKeighan v Citizens Commercial & Savings Bank of Flint*, 302 Mich 666, 671; 5 NW2d 524 (1942).

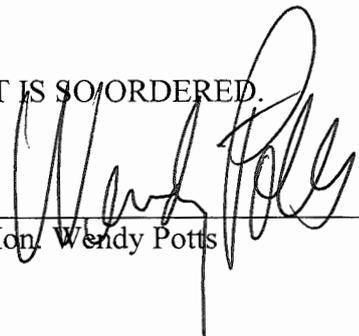
In the matter before the court, the transaction concerning which the Complaint is made is the violation of the non-competition agreement. Banfield cannot prevail on the unclean hands defense because he has been unable to show that the misconduct bears a relationship to the

transaction concerning which the complaint is made. *McFerren, supra*. Therefore, the Court concludes that Citistaff is entitled to injunctive relief and will enter an order prohibiting Banfield from violating his agreement with Citistaff. The parties must confer on the form of the order and attempt to come to an agreement within 7 days. If the parties cannot agree, Citistaff may efile a proposed order.

Dated:

FEB 12 2016

IT IS SO ORDERED.

  
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Hon. Wendy Potts