STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

COVERWRAP COMMUNICATIONS LLC,
a Florida limited liability company,

Plaintiff,

v

Case No. 15-145624-CK
Hon. Wendy Potts

BARBARA DICKINSON, an individual,
ALAN DICKINSON, an individual, and
DICKINSON MEDIA LLC, a Michigan
limited liability company, Jointly and
Severally,

Defendants.
_____/

OPINION AND ORDER RE: SUMMARY DISPOSITION SUPPLEMENTAL BRIEFING

At a session of Court
Held in Pontiac, Michigan
On MAR 14 2016

On October 21, 2015, the parties appeared before the Court for oral argument on Defendants' Motion for Summary Disposition pursuant to MCR 2.116(C)(8). At that time the Court denied the motion for summary disposition without prejudice but allowed the parties to file supplemental briefs regarding Florida law governing noncompetition agreements.

In their motion, Defendants cite Florida law for various propositions, apparently because the now-expired agreement between Plaintiff and Defendant Barbara Dickinson states that it is governed by Florida law. Florida law only applies to the claims arising from the contract. The Court will now address the parties' supplemental briefing.

Coverwrap argues that it sufficiently pled in its Complaint that an implied contract existed between the parties in 2013 and 2014 pursuant to Florida law. Coverwrap's position is that regardless of whether the one-year non-compete provision in the appendix remained in force after 2014, Defendants are liable to Coverwrap for selling the magazine cover-wrap subscription in 2014 to Ram on behalf of Audience Innovation. Coverwrap argues that it is unnecessary to find that the one year noncompetition provision in the appendix to the Agreement remained in force past 2014 in order for Coverwrap to prevail in this case.

Defendants argue that the Appendix's non-competition obligations did not extend beyond December 31, 2013. Defendants allege that Florida courts have held that noncompetition agreements will not be construed to extend beyond their proper import or further than the language of the contract absolutely requires. Defendants cite to *Gray v Prime Management Group, Inc.*, 912 So2d 711 (2005) for the proposition that where a written employment contract has expired and the employee continues working under an oral contract, a covenant not to compete contained in the original contract cannot always be enforced, and when a non-compete clause is independent of other covenants in the agreement it does not mean that they survive the expiration of the contract in the absence of an express provision to that effect. *Id* at 713.

Additionally, Defendants argue that FS 542.335(1)(a) provides that: "Notwithstanding s. 542.18 and subsection (2), enforcement of contracts that restrict or prohibit competition during or after the term of restrictive covenants, so long as such contracts are reasonable in time, area, and line of business, is not prohibited. In any action concerning enforcement of a restrictive covenant: (a) A court shall not enforce a restrictive covenant unless it is set forth in a writing signed by the person against whom enforcement is sought." FS 542.335(1)(a). Defendants

allege that Ms. Dickinson's noncompetition obligation could not have been lengthened by an oral extension of her employment.

The court recognizes that additional oral argument is necessary to determine whether the noncompetition provision agreement extended beyond the termination date of December 31, 2013. Accordingly, Defendants may praecipe this matter for oral argument on the parties' supplemental briefing on Florida law. Any responses to the supplemental briefing shall be limited to five pages and shall be filed by noon on the Friday prior to the date of the hearing.

IT IS SO ORDERED.

Dated: MAR 14 2016

Hon. Wendy Potts