

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

MICHAEL DEMIL, an individual,

Plaintiff/Counter-Defendant,

vs.

Case No. 2012-889-CB

RMD HOLDINGS, LTD, a Michigan corporation
and ROBERT E. DEMIL, an individual,

Defendants/Counter-Plaintiffs.

OPINION AND ORDER

Before the Court is Plaintiff's proposed rule #43 to the Order Establishing Auction Rules & Safeguards approved by the parties ("Auction Rules"). Specifically, Plaintiff requests that the Court include the following in the Auction Rule:

Rule #43. Upon Closing or Default Closing the Default Losing Bidder will sign a non-solicitation for a period of two (2) years of agreed upon RMD employees who are retained on the date of Closing.

The upcoming auction in this matter was ordered as a remedy to Defendant Robert E. Demil's oppressive conduct against Plaintiff Michael Demil pursuant to MCL 450.1489. Specifically, MCL 450.1489 provides, in part:

If the shareholder establishes grounds for relief, the circuit court may make an order or grant relief as it considers appropriate....

The statute's grant of broad discretion to the courts in fashioning a remedy is consistent with the nature of equitable relief. *Madagula v Taub*, 496 Mich 685, 702-703; 853 NW2d 75 (2014). After reviewing the history of this matter, as well as the goals of the auction remedy, i.e. providing a remedy by which the parties can obtain a clean separation of their ownership interests in RMD by having one shareholder buy-out the

other shareholder at a fair price, the Court is convinced that Michael Demil's proposed rule should be rejected.

Regardless of which brother prevails at the auction and becomes the sole owner of RMD, the other brother will retain the right to attempt to make a living in the industry he has worked in for years. Included within that right is the ability to recruit the employees that he wishes. While the Court recognizes that Michael Demil is concerned about winning the auction and then potentially having many of RMD's current employees leave the company to go and work for his brother if his brother starts a new business, the Court is convinced that such a risk is inherent in business. If Michael Demil wishes to retain RMD's current employees then he will need to convince those employees that they should stay because it is in their best interest, not because they are not able to work under the former president of their employer. While it may be more difficult to retain RMD's employees without the non-solicitation rule, the Court is convinced that including the rule is inappropriate and not necessary in order to provide an appropriate remedy. As such Michael Demil's proposed rule #43 will be rejected.

Conclusion

For the reasons set forth above, Plaintiff Michael Demil's request to include his proposed rule #43 in the Auction Rules is DENIED. Pursuant to MCR 2.602(A)(3), the Court states this matter remains OPEN.

IT IS SO ORDERED.

Date: DEC 02 2015

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge