

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

MICHAEL DEMIL, an individual,

Plaintiff/Counter-Defendant,

vs.

Case No. 2012-889-CK

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

Defendants/Counter-Plaintiffs.

OPINION AND ORDER

Plaintiff has filed a "motion for production of documents to effectuate auction remedy and pursuant to common law and MCL 450.1487." Defendants have filed a response and request that the motion be denied. Plaintiff has also filed a reply brief in support of his motion.

I. Factual and Procedural History

In its June 1, 2015 Opinion and Order, the Court ordered that an auction of RMD be held, and that the auction be limited to allow only Plaintiff and Defendant Robert Demil to bid. On September 21, 2015, Plaintiff filed its instant motion for the production of certain documents. On September 24, 2015, Defendants filed their response to the motion and request that it be denied. On September 25, 2015, Plaintiff filed his reply brief in support of his motion.

On September 28, 2015, the Court held a hearing in connection with the motion. During the hearing, the parties stipulated as to all of the items at issue in the instant motion except for the following: Subsections (a) and (g) of Plaintiff's September 1, 2015

requests for production, and Plaintiff's September 3, 2015 request for production ("collectively, "Disputed Items"). After holding a hearing in connection with the Disputed Items, the Court took the matter under advisement.

II. Arguments and Analysis

The first requested item in dispute is RMD's most recent work in progress/percentage completion report for 2015 ("Report"). While Defendants have agreed to produce the portions of the Report related to RMD's public customers/projects, it argues that Plaintiff does not need the names of RMD's private customers/projects in order to prepare for the future auction and that Plaintiff is likely to utilize such information to aid his competitive business efforts against RMD. While the Court recognizes that Plaintiff is engaged in a business that competes with RMD, it is satisfied that Defendants concerns are adequately addressed by the confidentiality and anti-solicitation orders in place in this case. Moreover, a fair auction can only be conducted if the parties are allowed access to the same information. Knowledge of RMD's current customers and projects is certainly relevant and vital to the parties' ability to determine how much they believe RMD is worth, and by extension how much they will be willing to bid. For these reasons, the Court is convinced that Defendants must produce this information.

The second category in dispute is a list of RMD's current employees, including the positions that they hold and their pay rates. While Defendants have agreed to provide the total payroll, they oppose producing the individuals' names and pay rates. Specifically, Defendants are concerned that Plaintiff will try to lure its employees away to Plaintiff's competing business. However, for the same reasons discussed in

connection with the Report, the Court is convinced that Defendants must produce the list of RMD's employees and their pay rates.

The final item in dispute is Plaintiff's request for "read only" access to RMD's "Foundations Systems" database ("Database"). Defendants oppose Plaintiff's request based on, *inter alia*, their concern that the request is too broad as to time as the Database concerns information for decades. However, Defendants concede that there is no way to limit the access to only a certain window of time. While the information concerning the period of time since Plaintiff has been terminated seems to be most relevant, it is not persuaded that Defendants' inability to limit the access to information prior to his termination is a basis for denying Plaintiff's request.

Defendants also assert that Plaintiff should not be given access to RMD's employees' private information such as addresses and social security information. However, once again Defendants do not believe there is a way to limit access to the Database in a manner that would allow Plaintiff to view all of the information except RMD's employees' sensitive information. Although the Court agrees that the access can be limited if Defendants are able to figure out a way to limit access to RMD's employees' sensitive information, the Court is not persuaded that this issue is a basis for denying Plaintiff access to the database. The Court is also satisfied that Defendants concerns are adequately addressed by the confidentiality and anti-solicitation orders in place in this case.

Upon reviewing the parties' pleadings, as well as the arguments at the hearing, the Court is convinced that the Database must be produced.

III. Conclusion

For the reasons discussed above, Defendants shall produce the items requested in subsections (a) and (g) of Plaintiff's September 1, 2015 request for production, as well as the Database requested by Plaintiff in his September 3, 2015 request for production. These items shall be produced by Defendants within twenty-one (21) days of the date of this Opinion and Order. If Defendants are able to develop a way to provide Plaintiff access to the Database in a manner that could omit only RMD's employees' private information and/or limit the information within the database to information concerning the period of time since Plaintiff has been terminated, they may do so. Further, the Database need only be produced in a "read-only" format, and Plaintiff shall return the database once the auction has been conducted.

Pursuant to MCR 2.602(A)(3), the Court states this matter remains OPEN.

IT IS SO ORDERED.

Date: OCT 06 2015

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