

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

BAKER AEROSPACE TOOLING &  
MACHINING, INC. d/b/a BAKER  
MACHINING & MOLD TECHNOLOGIES,  
INC., a Michigan Corporation,

Plaintiff/Counter-Defendant,

vs.

Case No. 2014-1261-CK

RAYMOND A. WISNIEWSKI, an  
Individual, and ONYX MANUFACTURING,  
INC., a Michigan Corporation, Jointly and  
Severally,

Defendants/Counter-Plaintiffs,

and

CHERYL L. WISNIEWSKI, an individual,

Defendant.

\_\_\_\_\_ /

OPINION AND ORDER

Defendants/Counter-Plaintiffs Ray Wisniewski and Onyx Manufacturing, Inc., and Defendant Cheryl L. Wisniewski (collectively, “Movants”) have moved for partial summary disposition pursuant to MCR 2.116(C)(8). Plaintiff/Counter-Defendant Baker Aerospace Tooling & Machining, Inc., d/b/a Baker Machining & Mold Technologies, Inc. (“Plaintiff”) has filed a response and requests that the motion be denied.

*Facts and Procedural History*

Plaintiff is a large tooling supplier. In October 2009, Defendant Ray Wisniewski (“R. Wisniewski”) joined Plaintiff as a Technical Lead/R&D. In February 2010, R. Wisniewski executed a “Non-Compete Agreement”, with an effective date of February 2, 2010 (the “Non-Compete”).

In January 2012, Plaintiff hired Defendant Cheryl Wisniewski (“C. Wisniewski”) as an office assistant. In the same month, Plaintiff provided C. Wisniewski with an employee handbook, which she acknowledged she received.

On April 17, 2013, R. Wisniewski and C. Wisniewski resigned from Plaintiff. On April 18, 2013, R. Wisniewski formed Defendant Onyx Manufacturing, Inc. (“Onyx”), an entity which allegedly competes with Plaintiff.

On March 31, 2014, Plaintiff filed its complaint in this matter, asserting the following claims: Count I- Breach of Contract against all defendants, Count II- Breach of Fiduciary Duty against the Wisniewskis, Count III- Unfair Competition against all defendants, Count IV- Misappropriation of Trade Secrets against all defendants, Count V- Tortious Interference with Contractual Relations against all defendants, Count VI- Tortious Interference with Business Expectancy against all defendants, Count VII- Fraud/Fraudulent Concealment against the Wisniewskis, Count VIII- Unjust Enrichment against all defendants, Count IX- Conversion against all defendants, Count X- Conspiracy/Concert of Action against all defendants, and Count XI- Declaratory and/or Injunctive relief against all defendants.

On July 3, 2014, Movants filed their instant motion for partial summary disposition pursuant to MCR 2.116(C)(8). On July 17, 2014, Plaintiff filed its response. On July 24, 2014, the Court held a hearing in connection with the motion and took the matter under advisement.

The Court has reviewed the materials submitted by the parties and is now prepared to make its decision.

### *Standard of Review*

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtko v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Cork v Applebee's Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

### *Arguments and Analysis*

In support of his motion, Movants contend that Plaintiff's breach of contract claim fails to establish any valid breach of contract claim. Specifically, Movants first contend that Plaintiff's breach of contract claim must fail to the extent that it is based on the Non-Compete. The Non-Compete contains the following non-compete clause:

For a period of one (1) year after the effective date of this Agreement, Raymond Wisniewski and related entities will not directly or indirectly engage in any business, work, contracts, tooling programs, etc., that Baker Machining & Mold Technologies Inc. and their related companies do for their customers. (See Movants's Exhibit B.)

While it appears that Plaintiff concedes that the plain language of the Non-Compete only restricts R. Wisniewski's ability to compete for 1 year from the effective date of the Non-Compete, i.e. February 2010, Plaintiff contends that the parties intended the Non-Compete to

expire 1 year after Ray's employment ended rather than 1 year after the Non-Compete became effective.

While Plaintiff is correct that it is the Court's obligation to determine the intent of the contracting parties, if the language of the contract is unambiguous the Court must construe and enforce the contract as written. *Quality Prods & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). Therefore, an unambiguous contractual provision is reflective of the parties' intent as a matter of law, and that intent will be enforced unless it is contrary to public policy. *Id.* Indeed, "[t]he goal of contract interpretation is to read the document as a whole and apply the plain language used in order to honor the intent of the parties. [The Court] must enforce the clear and unambiguous language of a contract as it is written." *Greenville Lafayette, LLC v Elgin State Bank*, 296 Mich App 284, 291; 818 NW2d 460 (2012).

In this case, the Court is convinced that the plain language of the Non-Compete provides that it was to expire in February 2011, well before the Wisniewskis left Plaintiff and started Onyx. While Plaintiff may have intended to limit R. Wisniewski's ability to compete with it for 1 year after his employment ended, the plain language of the contract it drafted provides otherwise. Even if the Court were to find the language of the Non-Compete ambiguous, which it clearly is not, the language would be construed against Plaintiff as the drafting party. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 474; 663 NW2d 447 (2003). Based on the clear language of the Non-Compete and the fact that it is undisputed that the Movants did not compete with Plaintiff within 1 year of R. Wisniewski executing the Non-Compete, the Court is satisfied that Plaintiff's breach of contract claim must be dismissed to the extent it is based on the Non-Compete.

Plaintiff's breach of contract claim against C. Wisniewski is based on the employee handbook it provided to her. However, the handbook clearly provides that it "does not create a

binding agreement or contract between [Plaintiff] and [C. Wisniewski].” (See Movants’ Exhibit C.) As such, the handbook did not create a contract between Plaintiff and C. Wisniewski. Accordingly, Plaintiff’s breach of contract claim against C. Wisniewski fails as a matter of law.

Lastly, to the extent that Plaintiff pleads a breach of contract claim against Onyx, its claims were derivative of its breach of contract claims against the remaining Defendants. However, for the reasons discussed above those claims fail as a matter of law. Consequently, Plaintiff’s breach of contract claims against Onyx must also be dismissed.

#### *Conclusion*

Based upon the reasons set forth above, Defendants’ motion for summary disposition of Plaintiff’s breach of contract claims is GRANTED. Count I of Plaintiff’s complaint is DISMISSED to the extent that said claims are based on any “non-competition” agreements. Defendants are hereby granted leave to move for summary disposition of one or more of Plaintiff’s remaining claims if they believe there are grounds for such relief. Defendants’ request for attorney fees and costs in connection with the instant motion is DENIED. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

/s/ John C. Foster  
JOHN C. FOSTER, Circuit Judge

Dated: September 15, 2014

JCF/sr

Cc: Jonathan H. Schwartz, Attorney at Law, [jschwartz@seyburn.com](mailto:jschwartz@seyburn.com)  
Jennifer J. Schafer, Attorney at Law, [jschafer@molosky.com](mailto:jschafer@molosky.com)