

STATE OF MICHIGAN  
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

INFORMATION SYSTEMS INTELLIGENCE,  
L.L.C., a Michigan limited liability company,

Plaintiff,

Case No. 14-08328-CKB

vs.

HON. CHRISTOPHER P. YATES

MARK SLAGLE, an individual,

Defendant.

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ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

This case presents an odd twist on the familiar subject of noncompetition agreements. Here, Defendant Mark Slagle's former employer, Plaintiff Information Systems Intelligence, LLC ("ISI"), has filed this action to prevent Slagle from working for one of the plaintiff's customers, as opposed to one of its competitors. In the plaintiff's view, Slagle's decision to work in-house for its customer has cost ISI business because Slagle's in-house services have rendered ISI's contract-based services unnecessary for the customer. To be sure, Slagle was bound by a noncompetition agreement at the time he left ISI, but the Court concludes that that agreement does not justify dispossessing Slagle of his job with ISI's customer. Thus, the Court shall deny ISI's request for injunctive relief because the traditional remedy of monetary damages will provide sufficient redress for ISI.

I. Factual Background

Plaintiff ISI, which furnishes information technology ("IT") support for companies in West Michigan, hired Defendant Slagle as a support engineer in July of 2012. At the inception of Slagle's employment with ISI, he signed a standard noncompetition agreement that barred him from working

for any ISI competitor or client for one year following his departure from ISI. Almost immediately, ISI directed Slagle to focus most of his time on servicing an ISI client known as Comfort Research, LLC (“Comfort Research”), see Supplemental Brief in Support of Plaintiff’s Motion for Preliminary Injunction, Exhibit C (Affidavit of Kelly Aardema, ¶ 12), which manufactures bean-bag chairs. Slagle continued to primarily service Comfort Research throughout 2013 and the first half of 2014. Id., ¶¶ 13-14.

In July 2014, Defendant Slagle began looking for other employment opportunities. He asked Michael Zeilstra, the chief financial officer of Comfort Research, if Zeilstra would provide him with a reference. See Supplemental Response in Opposition to Motion for Preliminary Injunctive Relief, Exhibit 2 (Affidavit of Michael Zeilstra, ¶ 5). Zeilstra contends that the Comfort Research contract with ISI was due to expire on July 31, 2014, see id., ¶ 4, and Comfort Research had informed ISI that Comfort Research “intended to hire an ‘in-house’ IT person” when the ISI contract expired in order to deal with recent growth.<sup>1</sup> Id., ¶ 4. As a result, Zeilstra expressed interest in hiring Slagle and met with Ryan Leestma, ISI’s owner, on August 6 and 21, 2014, to discuss Comfort Research’s plans. Id., ¶ 7. Leestma insists that, at those meetings, he informed Zeilstra that Slagle could not work in-house for Comfort Research because Slagle was bound by a one-year noncompetition agreement, see Supplemental Brief in Support of Plaintiff’s Motion for Preliminary Injunction, Exhibit A (Affidavit of Ryan Leestma, ¶ 19), but Zeilstra claims that Leestma never told him about a restrictive covenant. See Supplemental Response in Opposition to Motion for Preliminary Injunctive Relief, Exhibit 2 (Affidavit of Michael Zeilstra, ¶ 7).

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<sup>1</sup> Plaintiff ISI contends that the Comfort Research contract could be interpreted as extending until February 11, 2015, and including a one-year automatic renewal period. See Supplemental Brief in Support of Plaintiff’s Motion for Preliminary Injunction, Exhibit A (Affidavit of Ryan Leestma, ¶ 13).

In any event, Defendant Slagle terminated his employment with Plaintiff ISI on August 29, 2014, and began working for Comfort Research on September 1, 2014. Then, on September 8, 2014, Plaintiff ISI initiated this action against Defendant Slagle, contending that Slagle had breached his noncompetition agreement and violated the Michigan Uniform Trade Secrets Act, MCL 445.1901, *et seq.* On September 9, 2014, the Court issued a temporary restraining order (“TRO”) prohibiting Slagle from using or disclosing ISI’s confidential information and soliciting any of ISI’s customers. The parties subsequently incorporated the terms of that TRO into a stipulated preliminary injunction entered on October 3, 2014. The parties also agreed that Slagle should be prohibited from discussing his move with other ISI customers, but the parties asked the Court to determine whether Slagle must be enjoined from working for Comfort Research. The parties agreed to forgo an evidentiary hearing and allow the Court to rely on the evidence submitted in their briefs. After considering the evidence, the Court concludes it should not deprive Slagle of his sole source of income by enjoining him from working for Comfort Research.

## II. Legal Analysis

An injunction “represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity.” Davis v Detroit Financial Review Team, 296 Mich App 568, 613 (2012). Because Plaintiff ISI has requested injunctive relief, it must bear “the burden of establishing that a preliminary injunction should be issued.” See MCR 3.310(A)(4). Our Court of Appeals “has identified four factors to consider in determining whether to grant a preliminary injunction.” Davis, 296 Mich App at 613. Those four factors are as follows:

- (1) the likelihood that the party seeking the injunction will prevail on the merits,
- (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued,
- (3) the risk that the party seeking the injunction would be

harméd more by the absence of an injunction that the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued.

Id. In analyzing these four considerations, the Court should bear in mind that injunctive relief is only appropriate if “there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury.” Id. at 614 (internal quotations omitted).

A. Likelihood of Success on the Merits.

Plaintiff ISI seems likely to succeed only in part on the merits of its breach-of-contract claim against Defendant Slagle. Slagle signed an “Employment and Confidentiality Agreement” with ISI on June 29, 2012, see Complaint, Exhibit A, which not only bars Slagle from working for a business that competes with ISI, but also prohibits him from “becom[ing] employed by any former or current customer or client” of ISI for one year after his termination from ISI. See id., ¶ 2. “Agreements not to compete are permissible under Michigan law,” see Thermatool Corp v Borzým, 227 Mich App 366, 372 (1998); MCL 445.774a(1), but “noncompetition agreements are disfavored as restraints on commerce and are only enforceable to the extent they are reasonable.” Coats v Bastian Brothers, Inc., 276 Mich App 498, 507 (2007). Consequently, a “restrictive covenant must protect an employer’s reasonable competitive business interests, but its protection in terms of duration, geographical scope, and the type of employment or line of business must be reasonable.” Id. at 506-507. If a restrictive covenant is unreasonable in any of those regards, the Court has the authority to limit the scope of the agreement. See MCL 445.774a(1).

Our Court of Appeals routinely enforces noncompetition agreements to prohibit employees from exploiting their good will by taking clients from their former employer to their new employer, e.g., Rooyakker & Sitz, PLLC v Plante & Moran, 276 Mich App 146, 158 (2007); St Clair Medical,

PC v Borgiel, 270 Mich App 260, 266 (2006), but our Court of Appeals has recently explained that it will not enforce any noncompetition agreement that prohibits a “defendant from working for any business that is in remote competition with plaintiff” because a “reasonable prohibition would have simply limited defendant from working with a competitor in plaintiff’s field of business.” See Huron Technology Corp v Sparling, No 316133, slip op at 4 (Mich App Sept 11, 2014) (unpublished). In the instant case, Plaintiff ISI seeks to invoke Defendant Slagle’s noncompetition agreement to bar him from “taking” a client merely by accepting an in-house position at Comfort Research, but Slagle insists he is doing much more now for Comfort Research than the IT work that he performed while he worked at ISI. See Supplemental Response in Opposition to Motion for Preliminary Injunctive Relief, Exhibit 1 (Affidavit of Mark Slagle, ¶ 6). Slagle spent an average of 30 hours per month on IT work for Comfort Research in 2014 while employed by ISI, see Supplemental Brief in Support of Plaintiff’s Motion for Preliminary Injunction, Exhibit C (Affidavit of Kelly Aardema, ¶ 14), so Comfort Research must be assigning additional tasks to Slagle now that he works as a full-time, in-house employee. Because Slagle is almost certainly performing tasks beyond the scope of ISI’s line of business, the Court is not likely to flatly prohibit Slagle’s in-house work at Comfort Research.

B. Irreparable Harm.

The most obvious shortcoming in Defendant ISI’s demand for injunctive relief concerns the absence of irreparable harm. ISI must “make a particularized showing of concrete irreparable harm or injury in order to obtain a preliminary injunction.” Michigan Coalition of State Employee Unions v Civil Service Commission, 465 Mich 212, 225 (2001). Injunctive relief can only be awarded if “there is no adequate remedy at law[.]” See Davis, 296 Mich App at 613. ISI has a readily available remedy at law, *i.e.*, an award of damages in the amount of its contract services for Comfort Research

for the one-year noncompetition period after Defendant Slagle’s departure from ISI. In this regard, the instant case differs from the much more common situation when an employee leaves an employer to work for the employer’s competitor. In that situation, the employee’s departure often puts at risk the former employer’s entire client base. See, e.g., Performance Unlimited, Inc v Questar Publishers, Inc, 52 F3d 1373, 1382 (6th Cir 1995). Here, in contrast, Slagle’s move to Comfort Research from ISI simply means that ISI will no longer supply IT services to a single customer, Comfort Research. As a result, ISI does not face the prospect of substantial erosion of its client base. Instead, ISI faces at most a one-year loss of revenue from a single customer, and that loss of revenue can be quantified by referring to ISI’s contract for services with Comfort Research. See Supplemental Brief in Support of Plaintiff’s Motion for Preliminary Injunction, Exhibit C (Affidavit of Kelly Aardema, ¶¶ 15-17). Thus, because ISI has an “adequate remedy at law,” see Davis, 296 Mich App at 614, ISI has made no showing of irreparable harm.<sup>2</sup> See id.

### C. Balance of Harms.

The balance of harms militates decidedly against injunctive relief in this action. Plaintiff ISI describes itself as “a premier IT service provider[,]” see Supplemental Brief in Support of Plaintiff’s Motion for Preliminary Injunction, Exhibit A (Affidavit of Ryan Leestma, ¶ 6), that services clients such as Ludington Area Schools, Meijer, and Muskegon County. See Stipulated Order Modifying, Continuing and Supplementing September 9, 2014, Temporary Restraining Order, ¶ 2. In contrast, Defendant Slagle merely earns \$80,000 each year. See Supplemental Brief in Support of Plaintiff’s

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<sup>2</sup> Plaintiff ISI argues it will be irreparably harmed if other customers follow suit and hire ISI employees as in-house IT workers. This reasoning is not only speculative, but also flawed because – regardless of the outcome of this suit – any ISI customer could elect to hire an in-house IT worker based upon a simple cost-benefit analysis. In fact, ISI would be naive to think that its customers do not already weigh such options before entering into IT service contracts with ISI.

Motion for Preliminary Injunction, Exhibit A (Affidavit of Ryan Leestma, ¶ 18). To bar Slagle from his job with Comfort Research will put his family at risk, whereas ISI's financial stability will almost certainly suffer no appreciable risk based on the loss of its service contract with Comfort Research. Therefore, the balance of harms weighs against injunctive relief.

D. Harm to the Public Interest.

Finally, potential harm to the public interest has virtually no impact upon the Court's analysis of the propriety of injunctive relief. Indeed, Defendant Slagle's alleged breach of his noncompetition agreement affects exactly three actors: Slagle himself; Plaintiff ISI; and Comfort Research. Slagle has not attempted to take any other clients from ISI, and his acts giving rise to this lawsuit have no significant impact upon the community at large. Therefore, the Court need not devote a substantial amount of analysis to the fourth factor in the calculus of injunctive relief.

III. Conclusion

Standing alone, the absence of irreparable harm forecloses the injunctive relief that Plaintiff ISI seeks. Beyond that, ISI has not shown an overwhelming likelihood of success on the merits, and the balance of harms tips decidedly against injunctive relief. Accordingly, the Court must deny ISI's request for an injunction barring Defendant Slagle from working at Comfort Research. ISI's remedy for any breach of Slagle's noncompetition agreement must take the form of monetary damages.

IT IS SO ORDERED.

Dated: December 8, 2014



HON. CHRISTOPHER P. YATES (P41017)  
Kent County Circuit Court Judge