

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

BURR AND COMPANY, INC.,

Plaintiff/Counter-Defendant,

vs.

DANIEL L. BONNELL,

Defendant/Counter-Plaintiff.

Case No. 15-00849-CZB

HON. CHRISTOPHER P. YATES

_____ /

CAPSURE INSURANCE GROUP, INC.,

Third-Party Plaintiff,

vs.

BURR AND COMPANY, INC.,

Third-Party Defendant.

_____ /

ROBERT J. TERHORST,

Plaintiff,

vs.

BURR AND COMPANY, INC.,

Defendant.

_____ /

AMENDMENT OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND VERDICT

On July 19, 2016, the Court rendered findings of fact, conclusions of law, and a verdict that addressed nearly all of the issues raised by the parties at a bench trial. But in the wake of the Court's

ruling, counsel requested that the Court resolve one outstanding issue. In furtherance of that request, Plaintiff Burr and Company, Inc. (“Burr”) filed a motion for clarification of the Court’s verdict, and both sides furnished briefs addressing the impact of Defendant Robert TerHorst’s three-year period of restriction upon Defendant Daniel Bonnell, who is subject to restrictive covenants for a two-year period. Based on MCR 2.517(B), the Court shall amend its findings of fact, conclusions of law, and verdict to make clear that Bonnell shall be bound by TerHorst’s restrictive covenants as long as the two men remain in business together.

As the Court’s findings of fact make clear, Defendants Bonnell and TerHorst both worked for Plaintiff Burr under employment contracts with restrictive covenants. Bonnell negotiated with Burr to reduce his post-employment restriction period to two years, but TerHorst agreed to be bound by restrictive covenants for three years following his departure from Burr. In January 2015, Bonnell and TerHorst left Burr to work for their new company, CapSure Insurance Group, Inc. (“CapSure”). The Court’s verdict rendered on July 19, 2016, included “an injunctive order that subjects Bonnell and TerHorst to the restrictive covenants in their employment agreements for two years and three years, respectively, from the dates of their resignations from Burr.” That verdict, however, offered no guidance about the impact of TerHorst’s restrictive covenants upon Bonnell if the two men chose to remain in business together.

The Court’s verdict leaves no doubt that if Defendant Bonnell operates on his own, he must honor his restrictive covenants for a period of only two years after his departure from Plaintiff Burr. But his business relationship with TerHorst renders Bonnell subject to all of the restrictive covenants in TerHorst’s employment agreement so long as Bonnell and TerHorst conduct business together. When business partners act in conjunction with a restricted person to violate a restrictive covenant,

“they are equally liable with him to plaintiff and may be restrained from doing so.” Owens v Hatler, 373 Mich 289, 292 (1964). But if Bonnell operates a business independent of TerHorst, Bonnell is only restricted for a two-year period because, in running his own independent business, Bonnell need not comply with the restrictive covenants in TerHorst’s employment agreement with Burr.

The parties’ briefs suggest that Defendant Bonnell may have entered into a relationship that will enable him to operate independent of Defendant TerHorst. The Court cannot issue an advisory opinion about the propriety of such an arrangement based upon the current record. All the Court can do at this juncture is permit Plaintiff Burr to submit a proposed injunctive order that conforms to the Court’s findings, conclusions, and verdict and then retain jurisdiction to enforce the terms set forth in that injunctive order. If Bonnell structures a business venture in a manner that separates him from TerHorst, the Court will be powerless to enjoin Bonnell’s conduct beyond the two-year restriction period in his employment agreement with Burr. But if Bonnell maintains any business relationship with TerHorst, the Court will be able to hold Bonnell to the restrictive covenants that bind TerHorst for a three-year period. With this understanding, the Court invites Burr to submit a proposed final judgment memorializing the entirety of the Court’s verdict under the so-called seven-day rule. See MCR 2.602(B)(3).

IT IS SO ORDERED.

Dated: October 24, 2016



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