

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

ARKO EXCHANGE, LLC,

Plaintiff,

vs.

ALADIN MEHMEDOVIC; ALEN  
MEHMEDOVIC; and ROCKET  
TRANSPORT, LLC,

Defendants.

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Case No. 15-01462-CKB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER GRANTING PRELIMINARY INJUNCTION

The breadth of a noncompetition obligation may be debatable under the Michigan Antitrust Reform Act, see MCL 445.774a, but Michigan law leaves no doubt that a former employee restricted by a noncompetition agreement cannot operate a business in competition with a former employer and staff that business with employees lured away from that former employer. Here, Defendant Aladin Mehmedovic left his job with Plaintiff Arko Exchange, LLC (“Arko”) and began operating his own freight-hauling company, Defendant Rocket Transport, LLC (“Rocket”), to compete with his former employer, Arko. In addition, Rocket hired drivers from Arko, leaving Arko unable to run five of the trucks in its 25-truck fleet. Not surprisingly, Arko filed suit against Rocket and its principal, Aladin Mehmedovic, demanding injunctive relief. Because Aladin Mehmedovic’s ownership and operation of Rocket flatly contravenes terms in his employment agreement with Arko, the Court shall enter an injunction affording Aladin Mehmedovic three options: (1) he can divest himself of Rocket; (2) he can move Rocket outside the geographic area in which he is forbidden to compete with Arko; or (3) he can shut down Rocket and work for another company in the freight-hauling industry.

## I. Factual Background

On January 2, 2014, Defendant Aladin Mehmedovic signed an employment agreement that governed his relationship with Plaintiff Arko. Specifically, Aladin Mehmedovic agreed to abstain “during the term of [his] employment and for a period of two (2) years, from the date of termination of employment,” from competing with Arko “within the geographic limits of the States of Michigan, Indiana, Illinois, and Ohio[.]” See Verified Complaint, Exhibit A (Employment Agreement, § 5). The employment agreement expressly forbids Aladin Mehmedovic to “own, manage, operate, join, control, or be employed in any manner with any business of the type or character of business” Arko runs, see id. (Employment Agreement, § 5(a)), or to “induce or influence, or seek thereto, any person who” works for Arko “to terminate his or her engagement or employment with Arko or to engage or otherwise participate in business activity directly or indirectly competitive with” Arko’s business. See id. (Employment Agreement, § 5(e)).

On October 14, 2013, before Defendant Aladin Mehmedovic signed his Arko employment agreement, he formed Defendant Rocket as a limited liability company in Michigan. See Verified Complaint, Exhibit C. In August of 2014, while Aladin Mehmedovic was still employed by Arko, Rocket began operating as a freight-hauling company in direct competition with Arko. When Aladin Mehmedovic left Arko on January 23, 2015, Rocket was up and running. And in the two-month period surrounding Aladin Mehmedovic’s departure from Arko, Rocket built its corps of drivers by recruiting as many as eight drivers from Arko in violation of Aladin Mehmedovic’s non-solicitation obligation. Arko responded on February 16, 2015, by filing this action against Aladin Mehmedovic, his brother Alen Mehmedovic, and Rocket. Arko not only demanded monetary damages, but also sought injunctive relief.

On March 10, 2015, the Court conducted a hearing at which Defendant Alen Mehmedovic and Plaintiff Arko's principal, Mujo Adanalic, testified. Based upon that testimony and the exhibits admitted at that hearing, Arko contends that the Court must issue a preliminary injunction that shuts down Defendant Rocket, and thereby prevents Rocket from competing with Arko. The Court shall address that request by considering the four well-established factors that govern the issuance of any preliminary injunction under MCR 3.310(A). In doing so, however, the Court must recognize that the record contains no evidence that Defendant Alen Mehmedovic has engaged in competition with Arko. In addition, the Court must acknowledge that Rocket owes no contractual duty to Arko. Thus, the Court must limit its analysis of the propriety of injunctive relief to Arko's claims against Aladin Mehmedovic.

## 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 Arko seeks an injunction, it must bear “the burden of establishing that a preliminary injunction should be issued.” MCR 3.310(A)(4). Our Court of Appeals has identified four factors that the Court must 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 harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and
- (4) the harm to the public interest if the injunction is issued.

Davis, 296 Mich App at 613. In analyzing these four considerations, the Court must 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.

A. Likelihood of Success on the Merits.

The evidence presented to the Court clearly establishes that Defendant Aladin Mehmedovic is operating Defendant Rocket in competition with Plaintiff Arko and in violation of the terms of his employment agreement with Arko. Aladin Mehmedovic has hired Arko’s drivers to haul loads for Rocket, and Arko is presently engaging in the freight-hauling business as a competitor of Arko. The Arko employment agreement signed by Aladin Mehmedovic prohibits such activities for two years “from the date of termination of employment,” which occurred on January 23, 2015. See Verified Complaint, Exhibit A (Employment Agreement, § 5). Therefore, Aladin Mehmedovic has engaged in impermissible activities within the period of restriction prescribed by his employment agreement with Arko.

Defendant Aladin Mehmedovic contends that the Court should not hold him accountable for any violations of his employment agreement with Defendant Arko because the Court should treat that agreement as unenforceable. To be sure, Michigan law affords the Court discretion to limit the requirements of a noncompetition agreement that are “unreasonable,” see MCL 445.774a(1), but the Court finds nothing unreasonable in prohibiting someone with a noncompetition obligation who has just left an employer from building a business with employees of that former employer and operating that business in direct competition with that former employer. Michigan law manifestly provides for the enforcement of terms in an employment agreement that preclude involvement in a competing business, see Coates v Bastian Bros, Inc, 276 Mich App 498, 506-511 (2007), or bar the solicitation

of employees or customers of a former employer. See Rooyakker & Sitz, PLLC v Plante & Moran, PLLC, 276 Mich App 146, 157-159 (2007). Defendant Aladin Mehmedovic insists that Michigan law does not prohibit a former employee “from using general knowledge or skill” in a new business venture, see St Clair Medical, PC v Borgiel, 270 Mich App 260, 266 (2006), but that proposition has no application when the new venture involves operating a competing business, as opposed to simply hauling loads for a new employer. In sum, the Court readily concludes that Arko is likely to succeed on its claim that Aladin Mehmedovic has breached the terms of his Arko employment agreement by operating Rocket in direct competition with Arko.

B. Irreparable Harm.

In weighing potential irreparable harm in the absence of injunctive relief, the Court proceeds from the propositions that “[a] relative deterioration of competitive position does not in itself suffice to establish irreparable injury[,]” Thermatool Corp v Borzym, 227 Mich App 366, 377 (1998), but “[t]he impending loss or financial ruin of [a] business constitutes irreparable injury.” Performance Unlimited, Inc v Questar Publishers, Inc, 52 F3d 1373, 1382 (6th Cir 1995). Here, Arko’s principal testified that the loss of drivers to Defendant Rocket has idled five of his company’s 25 trucks and that additional erosion of his driver corps would imperil Arko’s very existence. That testimony finds support not only in the Arko balance sheet, see Hearing Exhibit 2, but also in the substantial expense of maintaining trucks that do not have drivers to haul freight. Although the Court ordinarily regards with suspicion blithe claims that businesses will fail in the absence of injunctive protection, Arko has made a compelling presentation that it may, indeed, go under if the Court refuses to bar Rocket from siphoning drivers and other resources from Arko’s operations. Accordingly, the Court finds

that Arko has established a substantial likelihood of irreparable harm if the Court refuses to impose an injunction curtailing Rocket's recruiting practices undertaken by Defendant Aladin Mehmedovic.

C. Balance of Harms to the Opposing Parties.

In assessing the relative harm to the opposing parties in the presence or absence of injunctive relief, see Davis, 296 Mich App at 613, the Court must bear in mind that a decision in favor of either side may result in the demise of a company operating in the freight-hauling industry. On one hand, the Court's failure to grant injunctive relief may cause Plaintiff Arko to go out of business. On the other hand, an injunction barring Defendant Rocket from operating will necessarily put that company out of business. Because Rocket itself bears no contractual obligation to Arko, the Court shall tailor its injunctive order to restrict the activities of Defendant Aladin Mehmedovic – who does owe duties to Arko under his employment contract – in connection with Rocket. That approach strikes the most logical (and legally defensible) balance between the risk of harm to the competing parties.

D. Potential Harm to the Public Interest.

As a general matter, noncompetition agreements constitute "restraints on commerce," Coates, 276 Mich App at 507, and the Court recognizes that freight-hauling companies with no contractual ties to Plaintiff Arko have a nearly unfettered right to compete against Arko.<sup>1</sup> But Defendant Aladin Mehmedovic entered into an employment agreement with Arko that contains both a noncompetition provision and a non-solicitation term, yet he has chosen to operate a company in direct competition

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<sup>1</sup> In making this assertion, the Court acknowledges that any competitor of Plaintiff Arko that actively recruits Arko employees bound by noncompetition agreements could be subject to suit for tortious interference with contractual relationships. But competitors have every right to compete in the freight-hauling market on the bases of price and efficiency. If Arko cannot withstand that type of competition, the Court has no authority to provide for its continued existence *via* injunctive relief.

with Arko and staff that company by recruiting Arko employees. In doing so, Aladin Mehmedovic has put at risk the jobs of all remaining employees at Arko, forcing them to choose between honoring their contractual obligations to Arko and jumping ship to work for the upstart competitor that Aladin Mehmedovic has built by taking knowledge, experience, and resources from Arko. In this situation, the Court concludes that the public interest is best served by restricting Aladin Mehmedovic from imposing that choice upon Arko's current workforce.

### III. Conclusion

For all of the reasons set forth in this opinion, and pursuant to the obligations imposed by the agreement entered between Plaintiff Arko and Defendant Aladin Mehmedovic, **IT IS ORDERED that, within 21 days of entry of this order, Aladin Mehmedovic must terminate his managerial involvement and his ownership interest in Defendant Rocket so long as Rocket operates in the States of Michigan, Indiana, Illinois, and Ohio.** Aladin Mehmedovic may choose any of three options to comply with the Court's injunctive order: (1) he may divest himself of Rocket; (2) he may move Rocket outside the geographic area in which he is forbidden to compete with Arko; or (3) he may close Rocket and work as an employee for another company in the freight-hauling industry.<sup>2</sup>

IT IS SO ORDERED.

Dated: March 18, 2015



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

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<sup>2</sup> In choosing among these options, Defendant Aladin Mehmedovic must bear in mind that his brother, Defendant Alen Mehmedovic, remains bound by his employment agreement with Arko, so Alen Mehmedovic is subject to the same contractual restrictions as Aladin Mehmedovic.