

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

THOMAS FRANCIS,

Plaintiff/Counter-Defendant,

vs.

Case No. 15-07129-CBB

JOHN TRIMBERGER,

Defendant/Counter-Plaintiff
and Third-Party Plaintiff,

vs.

HON. CHRISTOPHER P. YATES

WEST MICHIGAN GARAGE INTERIORS
LLC,

Third-Party Defendant.

ORDER ON DEFENDANT TRIMBERGER'S
MOTION FOR PRELIMINARY INJUNCTION

Like many corporate divorces, this contest between the two members of Slide-Lok of Grand Rapids LLC ("Slide-Lok") is rife with mistrust and allegations of improper conduct. Fortunately, after the parties aired their discontentment at an evidentiary hearing on September 18, 2015, a ready solution to the parties' contentions regarding injunctive relief emerged. That is, the Court shall grant Defendant John Trimberger full control of Slide-Lok and permit Plaintiff Thomas Francis to operate his new company, Third-Party Defendant West Michigan Garage Interiors LLC ("WMG"), to offer products and services in competition with Slide-Lok. Ultimately, the Court shall enable Francis and Trimberger to pursue their claims for damages, but for now the Court shall simply allow each man to engage in the business he knows well.

Slide-Lok Garage Interiors & Closet Systems (“Slide-Lok of Phoenix”) sells high-quality garage interiors through a collection of local dealers across the country. In 2010, Plaintiff Francis and Defendant Trimberger formed a Slide-Lok dealership in Grand Rapids and began a profitable endeavor together. Francis primarily handled sales and marketing for Slide-Lok, while Trimberger primarily dealt with production issues. Although their company increased its revenue and profit each year, the two men increasingly clashed because Francis paid himself more money than Trimberger based upon his investment of more time and effort in the company.

In November of 2014, Plaintiff Francis offered to buy out Defendant Trimberger’s interest in Slide-Lok, but the two men were never able to reach a final agreement. In the meantime, both of the Slide-Lok members took actions to protect their interests in Slide-Lok’s burgeoning business. Francis monopolized the prospects who called Slide-Lok’s telephone number, which was tied to the cellular telephone Francis carried. Trimberger accused Francis of embezzlement and insisted that Francis sign amended corporate tax returns to account for Francis’s use of company money for his personal expenses.

On July 30, 2015, Plaintiff Francis formed a new company, Third-Party Defendant WMG, as a single-member limited liability company to compete with Slide-Lok. Then, on August 4, 2015, Francis filed this action against Trimberger seeking dissolution of Slide-Lok and alleging willfully unfair and oppressive conduct by Trimberger. On September 2, 2015, Trimberger responded with a counterclaim that included a whole host of allegations against Francis. Trimberger also requested injunctive relief prohibiting Francis from operating WMG in competition with Slide-Lok. Based on an in-chambers discussion with counsel for both sides, the Court issued a temporary restraining order on September 9, 2015, and scheduled a hearing on the demand for a preliminary injunction.

At the conclusion of the evidentiary hearing on September 18, 2015, the Court invited both sides to present a list of demands. In simple terms, Plaintiff Francis merely asked for permission to operate Third-Party Defendant WMG as a Slide-Lok dealer in competition with the company that he and Defendant Trimberger created. Trimberger requested complete control of Slide-Lok and an injunctive order drastically restricting Francis's ability to operate in the garage-interiors market. But as the Court explained to Trimberger, Francis owes no obligation under any type of noncompetition agreement, so he can only be restrained from competing with Slide-Lok under a fiduciary-duty theory so long as he participates in Slide-Lok's business affairs. See Production Finishing Corp v Shields, 158 Mich App 479, 485-488 (1987). If Francis disassociates himself from Slide-Lok, he no longer remains bound by a fiduciary duty to Slide-Lok, so the business he obtains through his new company cannot be treated as the product of a breach of any fiduciary duty owed to Slide-Lok. See Rapistan Corp v Michaels, 203 Mich App 301, 306-313 (1994). Because Francis took up the invitation from the Court to formally renounce his involvement in Slide-Lok by giving up the business's telephone number, access to its bank accounts and records, and all control of its operations, the Court finds that Francis no longer owes a fiduciary duty to Slide-Lok.

Based upon the representations made by Plaintiff Francis and his counsel at the evidentiary hearing on September 18, 2015, IT IS ORDERED that Francis may operate Third-Party Defendant WMG in competition with Slide-Lok if, but only if, Francis first completes all of the following steps: (1) Francis must reassign the business telephone number for Slide-Lok from his personal telephone to Defendant Trimberger; (2) Francis must cede all control of the books and records of Slide-Lok to Trimberger; (3) Francis must cease using any marketing materials bearing the name of Slide-Lok of Grand Rapids LLC (as opposed to Slide-Lok of Phoenix, for which Francis may operate WMG

as a dealer); and (4) Francis must never hold himself out as a representative of Slide-Lok of Grand Rapids LLC in his business dealings. After the discovery process runs its course, the Court shall take up the parties' competing claims for money damages. But at this point, consideration of those claims would be premature, so the Court shall simply allow Francis and Trimberger to compete against each other in the marketplace for garage interiors as Slide-Lok dealers.* IT IS FURTHER ORDERED that the temporary restraining order issued on September 9, 2015, is dissolved, so Trimberger may now operate Slide-Lok of Grand Rapids LLC entirely in his own discretion.

IT IS SO ORDERED.

Dated: September 21, 2015



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

* The evidence and arguments presented on September 18, 2015, led the Court to believe that Slide-Lok of Phoenix will allow Plaintiff Francis and Defendant Trimberger to simultaneously serve as Slide-Lok dealers in West Michigan. If the Court's belief in that regard turns out to be incorrect, the Court shall revisit its order allowing Francis and Trimberger to operate competing businesses as Slide-Lok dealers.