

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

THERMAL TEC/MICHIGAN, INC.,
a Michigan corporation,

Plaintiff,

vs.

Case No. 13-08339-CKB

HON. CHRISTOPHER P. YATES

JOSEPH McINNIS; JOHN BLAIN DAYTON;
TIMOTHY DeVRIES; and COMMERCIAL &
INDUSTRIAL BUILDING MAINTENANCE,
LLC, a Michigan limited liability company,

Defendants.

ORDER MODIFYING PRELIMINARY INJUNCTION

On October 9, 2013, the Court issued a preliminary injunction prohibiting Defendants Joseph McInnis, John Blain Dayton, and Timothy DeVries from soliciting the clients of Plaintiff Thermal Tec/Michigan, Inc. (“Thermal Tec”) so long as Defendants McInnis, DeVries, and Dayton continued to work together for the benefit of Defendant Commercial & Industrial Building Maintenance, LLC (“CIBM”). The Court noted, however, that it would “lift the injunction against Defendant McInnis and DeVries if, but only if,” they discontinued their business relationship with Defendant Dayton. “[A]n injunction is always subject to modification or dissolution if the facts merit it.” Michigan AFSCME Council 25 v Woodhaven-Brownstone School Dist, 293 Mich App 143, 146 n 2 (2011). Because the Court concludes that Defendants McInnis and DeVries no longer maintain a business relationship with Defendant Dayton, the Court shall lift the injunction of October 9, 2013, insofar as it prohibits Defendants McInnis, DeVries, and CIBM from soliciting Thermal Tec clients. In all other respects, the injunction entered on October 9, 2013, shall remain in full force and effect.

Defendants McInnis and DeVries both worked for Plaintiff Thermal Tec for years, but the Court concluded in its opinion and order of October 9, 2013, that McInnis had no noncompetition obligation to Thermal Tec and the noncompetition agreement signed by DeVries could no longer be enforced by Thermal Tec. Nevertheless, because McInnis and DeVries were engaged in a business relationship with Defendant Dayton – who was bound by a noncompetition agreement with Thermal Tec, all three men were barred from soliciting Thermal Tec’s clients through their business, CIBM. See Owens v Hatler, 373 Mich 289, 292 (1964). But the Court noted that no basis would exist for such a restraint upon McInnis and DeVries if those two defendants discontinued their association with Dayton. In the wake of the Court’s ruling, Dayton divested himself of his interest in CIBM, and then McInnis and DeVries moved to modify the injunction to lift the noncompetition restriction imposed upon them.

At oral argument on the motion to modify the injunction, the Court directed the attorney for Defendants McInnis and DeVries to submit materials for *in camera* review. In response, the attorney for McInnis and DeVries furnished the Court with the operating agreement for Defendant CIBM as well as four single-page documents memorializing Defendant Dayton’s withdrawal from CIBM and the terms of his departure. Section 3.8 of the CIBM operating agreement prescribes the process for withdrawal of a member, and the other documents establish that Dayton did, in fact, withdraw from CIBM on April 7, 2014, pursuant to the terms of section 3.8 of the operating agreement. Moreover, the documents demonstrate that McInnis and DeVries repurchased Dayton’s membership interest in CIBM on April 8, 2014. Finally, a document memorializes the assignment of Dayton’s interest on April 8, 2014. Nothing in any of the documents suggests that Dayton has retained the ability or the right to buy back his membership interest in CIBM at any point in the future.

Because the Court is satisfied that Defendant Dayton has properly withdrawn from Defendant CIBM, the Court concludes that the rationale for imposing a noncompetititon obligation upon CIBM and its remaining members, *i.e.*, Defendants McInnis and DeVries, no longer exists. Accordingly, IT IS ORDERED that the portion of the October 9, 2013, Opinion and Order Granting Preliminary Injunction that prevents McInnis, DeVries, and CIBM from soliciting Thermal Tec clients is hereby dissolved. IT IS FURTHER ORDERED that all other provisions of the Court's injunctive order of October 9, 2013, shall remain in full force and effect, including the provision that precludes Dayton from soliciting the clients of Thermal Tec.

IT IS SO ORDERED.

Dated: May 8, 2014



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