

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

CET PHARMACY GRAND RAPIDS, LLC,
a Michigan limited liability company;
LIVE LIFE HOME HEALTHCARE, LLC,
a Michigan limited liability company; and
LIVE LIFE SERVICES, LLC, a Michigan
limited liability company,

Plaintiffs,

vs.

JOSEPH YOUNG a/k/a Luke Young, an
individual,

Defendant.

Case No. 14-04477-CKB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER DISSOLVING TEMPORARY RESTRAINING ORDER
AND DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Breaking up is hard to do, especially for members of a limited liability company. Here, the plaintiffs – a collection of LLCs in which Defendant Joseph Young holds a minority interest – have obtained a temporary restraining order (“TRO”) and now seek a preliminary injunction prohibiting Young from competing with them in the pharmacy, durable medical equipment (“DME”), and home health care (“HHC”) markets. Because the plaintiffs have not shown a likelihood of success on the merits or a danger of irreparable harm in the absence of injunctive relief, the Court shall dissolve the TRO and deny the plaintiffs’ motion for a preliminary injunction.

Defendant Young has been active in the DME and HHC industries for a substantial period of time. In early 2012, Tarek Mazloun, Chadi Azzi, and Eddy Aoun began working with Young to enhance their business operations in West Michigan. In short order, Young became a member with

a 25-percent interest in Plaintiffs CET Pharmacy Grand Rapids, LLC (“CET Pharmacy”), Live Life Home Healthcare, LLC, and Live Life Services, LLC. By all accounts, CET Pharmacy has enjoyed a substantial stream of revenue throughout Young’s tenure, but the other two entities are still getting off the ground.

In the Spring of 2014, Defendant Young and Eddy Aoun took some initial steps in opening a pharmacy in Walker. Although that project never came to fruition, it touched off a disagreement between Young and his fellow members, who perceived that undertaking as an attempt to compete with the CET Pharmacy in Kentwood. On May 15, 2014, that disagreement culminated in Young’s discharge from his employment with the plaintiffs. On the day before his termination, Young went to Belleville for a meeting at which he was presented with a capital call and a document that would have imposed strict noncompetition and non-solicitation requirements upon him, but he refused to sign that document or meet the capital call. Soon thereafter, Young and one of his fellow members, Eddy Aoun, apparently drove separately to the plaintiffs’ office in Reed City, where Aoun observed that Young had computers, binders, and other materials in his vehicle. That prompted the firing of Young on May 15, 2014, the filing of this action on May 19, 2014, and the issuance of the TRO on that same date.

The parties appeared for an evidentiary hearing on May 29, 2014, but they were not able to complete the presentation of evidence on that date, so they agreed to return for oral argument on the controlling legal issues on June 6, 2014. As a result, the Court now understands the issues and can render a decision on the propriety of ongoing injunctive relief. The plaintiffs must bear “the burden of establishing that a preliminary injunction should be issued[.]” MCR 3.310(A)(4). 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.” See Davis v Detroit Financial Review Team, 296 Mich App 568, 613 (2012). Our Court of Appeals “has identified four factors to consider in determining whether to grant a preliminary injunction.” Id. 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.

The plaintiffs’ complaint includes a passel of claims, and the Court’s analysis is complicated by the fact that Defendant Young remains a member of the plaintiffs, but the parties’ dispute at this stage essentially boils down to whether the plaintiffs’ operating agreements preclude Young from competing with the plaintiffs in the pharmacy, DME, and HHC industries. Under the CET Pharmacy operating agreement, the “Independent Activities” of the members are regulated as follows:

Each Member shall be required to devote only such time to the affairs of the Company as the Members determine may be necessary to manage and operate the Company. It is recognized that the Members have other interests and businesses, and the Members shall be permitted to continue and participate in them and enter into new ventures, notwithstanding their membership in the Company, as long as there is no conflict of interest between such independent activity and the activities of the Company and further so long as such independent activities do not compete with the activities of the Company (i.e., pharmacies or dollar stores or drug stores, etc.). Each Member shall be free to serve any other Person or enterprise in any capacity the Member deems appropriate in the Member=s [sic] discretion.

See Complaint, Exhibit A (Operating Agreement of CET Pharmacy, § 5.5). Thus, the members of CET Pharmacy envisioned that they would engage in commercial activities beyond the business of

that enterprise, and they prohibited only those outside activities that “compete with the activities of the Company (i.e., pharmacies or dollar stores or drug stores[.]” Id. The plaintiffs insist that, at the very least, this language precludes Young from engaging in DME and HHC endeavors in the Reed City area and pharmacy operations in the Grand Rapids area. Young contends that nothing in that language supports any injunctive relief whatsoever.

Under the Michigan Limited Liability Company Act, MCL 450.4101, *et seq*, an “[o]perating agreement’ means a written agreement by the members of a limited liability company” that governs their activities as a contract. See MCL 450.4102(2)(r). Consequently, a noncompetition provision in an operating agreement must be interpreted by using ordinary principles of contract construction. Of course, Michigan law permits contracting parties to enter into noncompetition pacts “as long as they are reasonable.” Thermatool Corp v Borzym, 227 Mich App 366, 372 (1998); see also MCL 445.774a(1). To the extent that the language of the operating agreement prohibits competition, its permissive terms plainly must be regarded as reasonable. Therefore, the Court simply must decide whether the language allows Defendant Young to engage in pharmacy, DME, and HHC activities in the wake of his termination by the plaintiffs.

The “Independent Activities” clause in the operating agreement generally grants freedoms to, rather than restricts, the members. See Complaint, Exhibit A (Operating Agreement, § 5.5). To the extent that the operating agreement imposes any restrictions whatsoever upon the members, it frames those restrictions in terms of “compet[ing] with the activities of the Company[.]” See id. Although a casual observer might infer that any pharmacy run by Defendant Young would compete with the plaintiffs, other members of the plaintiffs apparently operate such businesses in spite of the language of the operating agreement. Beyond that, the DME and HHC operations of the plaintiffs

remain in the embryonic stages, so the Court cannot readily conclude that Young's activities in those two areas would compete with the plaintiffs' activities. Finally, the plaintiffs' efforts to persuade Young to sign a noncompetition agreement immediately prior to his discharge strongly suggest that even the plaintiffs do not believe that the language of the operating agreement prevents Young from participating in the pharmacy, DME, and HHC fields in West Michigan. In sum, the Court cannot conclude that the operating agreement unambiguously imposes a strict noncompetition obligation upon Young, and the available evidence thus far suggests that ambiguity in the operating agreement must be read in a manner that does not constrain the members in any significant respect. Therefore, the Court must find that the plaintiffs have not shown a likelihood of success on the merits.

The absence of any danger of irreparable harm constitutes an even more fundamental flaw in the plaintiffs' request for injunctive relief. "The mere apprehension of future injury or damage cannot be the basis for injunctive relief." Pontiac Fire Fighters Union Local 376 v City of Pontiac, 482 Mich 1, 9 (2008). Moreover, "relative deterioration of competitive position does not in itself suffice to establish irreparable injury." Thermatool Corp., 227 Mich App at 377. Here, the plaintiffs have not lost a single customer or client to Defendant Young. Indeed, Young has not even set up any type of competing business. The plaintiffs simply have summarily discharged Young and then surmised that he will inevitably attempt to compete with them in some form or fashion. This falls far short of the demonstration that must be made in order to justify injunctive relief. See Davis, 296 Mich App at 613-614, quoting Pontiac Fire Fighters, 482 Mich at 8.

Although the Court granted a TRO at the outset of this case, the presentation of arguments and the development of evidence have subsequently led to the ineluctable conclusion that no order for injunctive relief can be justified in this case. The parties ultimately will have to work out their

differences either informally or through litigation, but they must do so without the benefit of either a TRO or a preliminary injunction. Thus, IT IS ORDERED that the TRO issued on May 19, 2014, is hereby dissolved and the plaintiffs' motion for a preliminary injunction must be denied.

IT IS SO ORDERED.

Dated: June 12, 2014



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