

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

PUREFLEX, INC., a Michigan corporation;
and NIL-COR, LLC, a Michigan limited
liability company,

Plaintiffs,

Case No. 14-05253-CKB

vs.

HON. CHRISTOPHER P. YATES

JAMES THOMAS, an individual,

Defendant.

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OPINION AND ORDER DISSOLVING TEMPORARY RESTRAINING ORDER

The opposing sides have surprisingly few disagreements in this battle over the enforcement of a confidentiality and noncompetition contract. The two sides agree that Defendant James Thomas signed a “Confidentiality and Non-Compete Agreement” on June 27, 2011, in conjunction with his employment by Plaintiffs Pureflex, Inc., and Nil-Cor, LLC (collectively “Andronaco”).¹ Both sides also agree that Thomas worked for Andronaco until he voluntarily quit in April 2014. Further, both sides agree that Thomas subsequently began working for Tri-Clor, Inc. (“Tri-Clor”) shortly after he left Andronaco. The only dispute between the two sides concerns the propriety of Thomas’s work at Tri-Clor. Specifically, Andronaco characterizes Tri-Clor as its competitor and, therefore, asserts that Thomas’s employment violates his noncompetition obligation to Andronaco, whereas Thomas contends that Tri-Clor does not compete with Andronaco, so his current employment does not run afoul of his contractual obligations to Andronaco.

¹ Pureflex and Nil-Cor both “do business under the assumed name of Andronaco Industries.” See Complaint, ¶ 3. Consequently, the Court shall follow the parties’ approach by identifying both of the plaintiffs collectively as “Andronaco.”

I. Factual Background

Plaintiff Andronaco recruited Defendant Thomas for several years because of his skill and experience in the custom-fiberglass industry. See Hearing Tr at 13, 49. In June of 2011, Andronaco and Thomas entered into an employment agreement that included comprehensive noncompetition and confidentiality provisions. See Hearing Exhibit 1. The noncompetition clause prevents Thomas from undertaking a variety of acts, including engaging “directly or indirectly or participat[ing] as a director, officer, employee, agent, [or] representative . . . in any form of business which is in any way directly or indirectly competitive with or similar to the business of” Andronaco. See id., § 2(D). As the clause itself makes clear, that ban runs “for a period of two (2) years following the termination of [Thomas]’s employment regardless of the reason for termination[.]” See id., § 2. Beyond that, a confidentiality clause prohibits the use and disclosure of proprietary and confidential information obtained by Thomas during his tenure with Andronaco. See id., § 1(A).

While Defendant Thomas worked for Plaintiff Andronaco, he developed a business plan for Nil-Cor Engineered Composites. See Hearing Exhibit 2. That business plan listed “Tri-clor – MI” among the companies identified as “The Competition.” See id. In addition, emails sent by Thomas during his tenure with Andronaco refer to Tri-Clor as the “competition.” See Hearing Exhibits 4-5. In contrast, Thomas testified that although he and Ronald Andronaco formulated a plan to “take over the composite industry,” see Hearing Tr at 39, and Thomas even wrote the business plan to achieve that goal, see id. at 40, Ronald Andronaco never implemented that plan, see id., so Andronaco never expanded into an industry in which Tri-Clor competes. See id. In the end, Thomas took the position that Tri-Clor’s market is “somewhat different than Andronaco’s,” id. at 39, because the companies merely make “some of” the same things. See id. at 39, 54.

As Defendant Thomas admitted, two weeks after he quit his job with Plaintiff Andronaco, he began working for Tri-Clor. See Hearing Tr at 82. That prompted an exchange of letters between the principals of Andronaco and Tri-Clor, see Hearing Exhibit 3, but Tri-Clor stood by Thomas and kept him on staff based upon the reasoning that the two companies do not compete. See id. As a result, on June 11, 2014, Andronaco filed this action alleging that Thomas breached his employment agreement and violated the Michigan Uniform Trade Secrets Act (“MUTSA”), MCL 445.1901, *et seq.* Then, on June 12, 2014, the Court entered an *ex parte* temporary restraining order (“TRO”) that permitted Thomas to keep working for Tri-Clor, but significantly restricted his activities on behalf of his new employer. Ultimately, the Court conducted an evidentiary hearing on June 25, 2014, at which both sides furnished the Court with exhibits and testimony in support of their positions.

II. Legal Analysis

In requesting an injunctive order, Plaintiff Andronaco bears “the burden of establishing that a preliminary injunction should be issued[.]” See 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.” 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.

A. Likelihood of Success on the Merits.

Although Plaintiff Andronaco has advanced claims against Defendant Thomas for violation of both his noncompetition agreement and the MUTSA, the record developed thus far contains no evidence of any trade-secret violations, see Hearing Tr at 55, so the Court must focus exclusively upon Andronaco’s claim that Thomas breached his noncompetition obligation. Thomas agreed to a broad noncompetition clause that prevents him from, *inter alia*, engaging “directly or indirectly or participat[ing] as a director, officer, employee, agent, [or] representative . . . of any business which is in any way directly or indirectly competitive with or similar to the business of” Andronaco. See Hearing Exhibit 2, § 2(D). That two-year, post-employment bar remains in effect today, and the law in Michigan permits enforcement of a noncompetition agreement to the extent it is reasonable, see Thermatool Corp v Borzym, 227 Mich App 366, 372; see also MCL 445.774a(1), so the Court must consider the reasonableness of enforcing Thomas’s noncompetition agreement according to its strict terms in order to assess Andronaco’s likelihood of success on the merits.

Unfortunately for Defendant Thomas, the record contains a wealth of information supporting Plaintiff Andronaco’s contention that Thomas’s new employer, Tri-Clor, competes with Andronaco in a manner contemplated by Thomas’s noncompetition agreement. To be sure, Tri-Clor primarily engages in fiberglass and dual-laminate fabrication, see Hearing Exhibit 6, whereas Andronaco has chosen to market a product called Durcor, which is not a dual laminate. See Hearing Exhibit A. But as Thomas himself conceded, Durcor competes with dual laminates. See Hearing Tr at 57. Indeed,

Thomas candidly explained that “it’s the same” in that “one’s a pipe and the other’s a pipe.” See id. Moreover, Thomas himself forthrightly acknowledged that Tri-Clor and Andronaco make and sell “some of” the same products. See id. at 39, 54. Thus, there exists competition between Tri-Clor and Andronaco today. Beyond that, Thomas testified that he went to Andronaco for the express purpose of starting a dual-laminate program, see id. at 58, which would compete directly with Tri-Clor. See id. at 66-67. In fact, Thomas made a visit on behalf of Andronaco on a project for DTE Energy that involved dual-laminate, see id. at 62, 64, and Andronaco placed bids on other dual-laminate jobs while Thomas worked there. Id. at 70; see also Hearing Exhibits 10 & 11. In sum, the Court readily concludes that Thomas’s employment with Tri-Clor runs afoul of his noncompetition obligation to Andronaco because Tri-Clor constitutes “any form of any business which is in any way directly or indirectly competitive with or similar to the business of” Andronaco. See Hearing Exhibit 2, § 1(D). Hence, Andronaco has established a likelihood of success on the merits of its claim against Thomas for breach of his employment agreement.

B. Irreparable Harm.

Under settled Michigan law, “a party need[s] to make a particularized showing of concrete irreparable harm or injury in order to obtain a preliminary injunction.” Michigan Coalition of State Employee Unions v Civil Service Comm’n, 465 Mich 212, 225 (2001). “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, Ronald Andronaco could not identify any business that his company has lost to Tri-

Clor since Defendant Thomas made the move from Plaintiff Andronaco to Tri-Clor. See Hearing Tr at 36. Moreover, Andronaco’s dual-laminate work remains in the embryonic stage. See id. at 35-36. Although the threat of competition from Tri-Clor cannot be gainsaid, that competition will more likely result from Andronaco entering Tri-Clor’s market than from Tri-Clor entering Andronaco’s market.²

C. Balance of Harms to the Opposing Parties.

In balancing the harms to the opposing sides in the presence or absence of injunctive relief, the Court recognizes that Defendant Thomas presents a potential threat to Plaintiff Andronaco so long as he works in the industry. By all accounts, Thomas has significant talent and vast experience working with dual laminates. See Hearing Tr at 38-39. But at this point, the record is bereft of any evidence that Thomas has compromised the confidential information of Andronaco, see id. at 55, or taken any customers from Andronaco for his new employer, Tri-Clor. Id. at 36. In comparison, injunctive relief preventing Thomas from working in the industry where he has spent his entire adult life may very well render him effectively unemployable. See id. at 56. As our Supreme Court has cautioned in trade-secret litigation, an injunction that “effectively prevents defendants from earning a living in the field in which they have expertise” almost certainly sweeps too broadly.³ See Hayes-Albion Corp v Kuberski, 421 Mich 170, 189 (1984). Thus, the Court concludes that the balance of harms militates against broad injunctive relief in this case.

² As Defendant Thomas testified, Tri-Clor does not intend to expand its “business into new products like Durcor[.]” See Hearing Tr at 50-51.

³ The Court understands that that decision antedates our Legislature’s statutory approval of noncompetition agreements in MCL 445.774a(1), but our Supreme Court’s analysis provides useful guidance with respect to the nature and scope of appropriate injunctive relief.

D. Potential Harm to the Public Interest.

The Court's consideration of harm to the public interest flowing from injunctive relief must take into account the needs of customers in the industry. In this regard, an injunction not only affects the parties to this lawsuit, but "also affects customers by denying them the opportunity to deal with" Defendant Thomas. See Hayes-Albion, 421 Mich at 189. Although Plaintiff Andronaco's business interests most assuredly must be protected, "innocent third parties, to the extent possible, should be left unaffected by the dispute between the former employer and the former employee." Id. at 190. Accordingly, in contemplating injunctive relief, the Court must attempt to avoid a result that leaves Defendant Thomas – with his vast knowledge and experience – on the sidelines of the industry.

III. Conclusion

This case presents an uncommon situation in which Plaintiff Andronaco has demonstrated a strong likelihood of success on the merits of its claim for breach of the governing noncompetition agreement, but virtually no likelihood of irreparable harm in the absence of injunctive relief. Under Michigan law, this situation calls for money damages – as opposed to an injunctive order – as the appropriate remedy for Defendant Thomas's breach of his contractual obligations. See Pontiac Fire Fighters, 482 Mich at 9. Therefore, IT IS ORDERED that the temporary restraining order issued on June 12, 2014, is dissolved, and the plaintiffs' request for a preliminary injunction must be denied.

IT IS SO ORDERED.

Dated: July 8, 2014



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