

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

COTTONWOOD FINANCIAL MICHIGAN,  
LLC, d/b/a The Cash Store,

Plaintiff,

vs.

JODI RODRIGUEZ,

Defendant.

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Case No. 16-10926-CBB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER GRANTING IN PART, AND DENYING IN  
PART, PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Defendant Jodi Rodriguez worked for Plaintiff Cottonwood Financial Michigan, LLC (“The Cash Store”) for approximately three months in a low-level job that paid \$10 per hour. After three months, The Cash Store summarily terminated Rodriguez for ineffectiveness, forcing her out of the workplace with no prior notice. Rodriguez was unemployed (and then homeless) until she obtained a new entry-level job four months later with Approved Cash Advance Corporation (“ACAC”), which The Cash Store regards as a competitor. The Cash Store promptly filed this lawsuit and demanded a preliminary injunction that would force Rodriguez out of her new job. The Cash Store predicated its request upon two remarkably one-sided employment agreements that Rodriguez signed at the time she began working for The Cash Store. Because the Court concludes that leaky roofs, termites, and halitosis present greater economic threats to The Cash Store than does Rodriguez in her new job, the Court shall afford The Cash Store only limited injunctive relief. The Court shall bar Rodriguez from soliciting The Cash Store’s customers and using its trade secrets and proprietary information, but the Court shall not prohibit Rodriguez from working for ACAC.

## I. Factual Background

On November 18, 2015, Plaintiff The Cash Store hired Defendant Rodriguez, gave her the title of “assistant store manager,” and assigned her to work at its facility located at 1833 Marketplace Drive in Caledonia, Michigan. At that point, The Cash Store had Rodriguez sign two employment agreements. See Plaintiff’s Brief in Support of Motion for Preliminary Injunction, Exhibits D & E. The first contract, entitled “Agreement of Employment,” not only includes stringent noncompetition and non-solicitation clauses, but also provides for “the sum of \$5,000 as liquidated damages for each event of breach hereof.” See id., Exhibit D. The second contract, which is called a “Confidentiality and Nonsolicitation Agreement,” not only prescribes restrictive covenants and limitations on the use and disclosure of trade secrets and proprietary information, but also obligates Rodriguez “to pay to the Company the sum of \$10,000 as liquidated damages for each event of breach hereof.” See id., Exhibit E. Beyond that, the second contract includes a forum-selection and choice-of-law clause that states as follows:

It is the intention of the parties that the laws of Texas shall govern the validity and interpretation of the rights and duties of the parties to this Agreement. The parties agree that exclusive venue for any dispute concerning this Agreement shall be in Dallas County, Texas and that the appropriate state or federal court in Dallas County, Texas shall have jurisdiction over the parties for purposes of adjudicating any such dispute.

See id., Exhibit E (Confidentiality and Nonsolicitation Agreement, § 9). When the Court pointed out this clause to counsel for the plaintiff, counsel responded that the first contract contains no such provision, so The Cash Store can litigate in either Michigan or Texas as it sees fit.

During her three-month tenure with The Cash Store, Plaintiff Rodriguez reported to the store manager at The Cash Store in Caledonia, see Hearing Tr at 4, where Rodriguez received ten dollars

per hour, id. at 5-6, and dealt primarily with repeat customers seeking payday loans. Id. at 11-12. Rodriguez used customer lists that The Cash Store provided to her, id. at 11, she received training from The Cash Store, id. at 4-5, and she was given access to courtesy-call reports that identified the customers who had “advance loans coming due the following day.” See Plaintiff’s Brief in Support of Motion for Preliminary Injunction, Exhibit A (Affidavit of Travis Crooks, ¶ 8).

On January 25, 2016, barely three months into Defendant Rodriguez’s tenure with The Cash Store, she was summarily terminated. According to the “Termination Request Form” for Rodriguez, she “was secret shopped on [January 12, 2016] and failed to gain [any] commitment from the ‘new customer’ that shopped her.” See Plaintiff’s Brief in Support of Motion for Preliminary Injunction, Exhibit C (Affidavit of Amanda Thomas, Attachment G). The report that explained her termination indicated that Rodriguez and her supervisor “role played how to gain customer commitment for new customers over the phone on [January 11, 2016] during our numbers meeting[,]” and the supervisor “set the expectation with [Rodriguez] to get customers information over the phone including their name and phone number at the minimum.” Id. But when Rodriguez was tested *via* secret shopping, she failed to obtain the needed information, prompting the supervisor to conclude that Rodriguez had “no buy in to making improvements when working with new customers” and that “she is not further developable.” Id. So The Cash Store fired her on January 25, 2016, by directing Rodriguez into “the back room” and telling her “that [she] was done[,]” see Hearing Tr at 7, which prompted Rodriguez to have “a breakdown outside of the building.” See id.

After her termination, Defendant Rodriguez simply received “two weeks’ pay” from Plaintiff The Cash Store. See Hearing Tr at 7. In the ensuing months, Rodriguez lost her house and became homeless, id. at 8, but she continued looking for a new job while recovering from surgery. Id. at 8-9.

In May 2016, she received a part-time placement with ACAC through an employment service. See id. at 9-10. Rodriguez concedes that ACAC – like The Cash Store – provides payday lending. Id. at 10-11. In her current position, Rodriguez not only fields calls from potential customers, but also uses an “active call list” furnished by ACAC. Id. at 11. But Rodriguez uses only lists supplied by her new employer, ACAC, because she did not take customer lists or other company property when she left The Cash Store. Id. Rodriguez testified that she has not intentionally or even inadvertently called any customers of The Cash Store in her capacity as an employee of ACAC, id. at 12, and the record is devoid of evidence that contradicts her testimony in that regard. To be sure, Rodriguez is currently assigned to an ACAC facility within a few miles of the location where she worked for The Cash Store, id., even though ACAC has two other facilities in the Grand Rapids area that are farther from the location where Rodriguez worked for The Cash Store, id. at 28-29, but Rodriguez exercises no control over where ACAC assigns her to work.

After Plaintiff The Cash Store found out that Defendant Rodriguez was working for ACAC, The Cash Store sent Rodriguez two cease-and-desist letters in September 2016 directing Rodriguez to leave her job with ACAC. See Plaintiff’s Brief in Support of Motion for Preliminary Injunction, Exhibits F & G. Rodriguez did not quit her job with ACAC, so The Cash Store filed this action on November 23, 2016, alleging breach of contract, breach of fiduciary duty, and tortious interference with business relationships or expectancies. The Cash Store also moved for preliminary injunctive relief, so the Court conducted an evidentiary hearing on December 20, 2016, to consider that motion. Now, based upon the record developed at that hearing, the Court must determine whether to award injunctive relief barring Rodriguez from using or disclosing confidential information, soliciting the customers of The Cash Store, and working for ACAC in the Grand Rapids area.



## II. Legal Analysis

Plaintiff The Cash Store has moved for entry of a preliminary injunction, which “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 the plaintiff seeks injunctive relief, 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 to 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 the four factors, the Court must remember 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 The Cash Store has advanced three separate claims for breach of contract, breach of fiduciary duty, and tortious interference with business relationships and expectancies, the Court shall focus exclusively upon the plaintiff’s likelihood of success on its claim for breach of the employment agreements that Defendant Rodriguez signed.<sup>1</sup> The Cash Store’s likelihood of success

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<sup>1</sup> The claim for breach of contract is, by far, Plaintiff The Cash Store’s strongest theory. The other two claims appear to be sure losers. See Dalley v Dykema Gossett PLLC, 287 Mich App 296, 323-324 (2010); Bradley v The Gleason Works, 175 Mich App 459, 463 (1989).

on the merits depends upon whether, and to what extent, the restrictive covenants in the employment contracts signed by Rodriguez can be enforced. “Agreements not to compete are permissible under Michigan law,” Thermatool Corp v Borzym, 227 Mich App 366, 372 (1998); MCL 445.774a(1), but “noncompetition agreements are disfavored as restraints on commerce and are only enforceable to the extent they are reasonable.” See Coates v Bastian Brothers, Inc, 276 Mich App 498, 507 (2007). Thus, a “restrictive covenant must protect an employer’s reasonable competitive business interests, but its protection in terms of duration, geographical scope, and the type of employment or line of business must be reasonable.” Id. at 506-507. For example, our Court of Appeals has enforced a noncompetition agreement that “only applied for one year and applied to competitors within 100 miles.” Id. at 508.

The restrictive covenants in Defendant Rodriguez’s employment contracts prohibit her from disclosing proprietary information of Plaintiff The Cash Store, soliciting or contacting customers of The Cash Store for a period of one year after her termination, and working for a competitor of The Cash Store within ten miles of The Cash Store location in Caledonia for one year after her departure from her former employer. See Plaintiff’s Brief in Support of Motion for Preliminary Injunction, Exhibits D (Agreement of Employment, §§ 9(b) and (c)) & E (Confidentiality and Nonsolicitation Agreement, §§ 5 and 6). The Court finds each of these restrictions reasonable. First, a requirement that prohibits dissemination of proprietary information is both reasonable and necessary to protect The Cash Store from losing information it has spent time, money, and effort to collect and organize. Second, a one-year non-solicitation requirement affords The Cash Store a reasonable period of time to shore up its relationships with the customers serviced by Rodriguez. Third, the narrowly tailored noncompetition clause reasonably prevents Rodriguez from exploiting her former employer’s good

will by taking customers from The Cash Store to ACAC. See Rooyakker & Sitz, PLLC v Plante & Moran, 276 Mich App 146, 158 (2007); St Clair Medical, PC v Borgiel, 270 Mich App 260, 266 (2006). Because Rodriguez is working for ACAC within the prohibited ten-mile radius of The Cash Store location where she worked less than one year ago, The Cash Store has established a likelihood of success on the merits of its claim for breach of Rodriguez's employment agreements.

**B. Irreparable Harm.**

Consideration of possible irreparable harm in the absence of injunctive relief militates against the broad injunctive order sought by the plaintiff. A "relative deterioration of competitive position does not in itself suffice to establish irreparable injury." Thermatool Corp., 227 Mich App at 377. Here, Plaintiff The Cash Store has not demonstrated that Defendant Rodriguez has taken any of the customers of The Cash Store. To the contrary, the record establishes that Rodriguez has not made any contact, either intentional or inadvertent, with any of The Cash Store's customers. See Hearing Tr at 12. Beyond that, Rodriguez has no customer lists or other property of The Cash Store, see id. at 11, so she cannot readily solicit The Cash Store's customers. All that Rodriguez has retained from her employment with The Cash Store is "general knowledge, skill, or facility" that, standing alone, cannot support sweeping injunctive relief for the purpose of ensuring appropriate protection for The Cash Store. See St Clair Medical, 270 Mich App at 267.

Additional important factors further militate against injunctive relief broad enough to force Defendant Rodriguez to give up her job at ACAC. First and foremost, each of the two employment contracts signed by Rodriguez includes a liquidated-damages clause. See Plaintiff's Brief in Support of Motion for Preliminary Injunction, Exhibits D (Agreement of Employment, § 11, which provides

for “the sum of \$5,000 as liquidated damages”) & E (Confidentiality and Nonsolicitation Agreement, § 7, which prescribes “the sum of \$10,000 as liquidated damages”). Our Supreme Court has ruled “that a preliminary injunction should not issue where an adequate remedy at law is available.” See Pontiac Fire Fighters Union Local 376 v City of Pontiac, 482 Mich 1, 9 (2008). In this situation, the liquidated-damages clauses provide the plaintiff with a readily available remedy at law, so the Court should refrain from awarding sweeping injunctive relief to boot. Moreover, the one-year restriction period that began with Rodriguez’s discharge on January 25, 2016, has nearly expired, yet Rodriguez has not caused any noticeable harm – irreparable or otherwise – to The Cash Store. Thus, the Court cannot find that Rodriguez’s continued employment with ACAC poses any real threat of irreparable harm to The Cash Store.

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 be mindful of the circumstances that led to the hiring of Defendant Rodriguez by ACAC. Unlike so many defendants in noncompetition cases who voluntarily leave their employers to search for greener pastures, Rodriguez was discharged by Plaintiff The Cash Store. Dispossessed of her job, Rodriguez searched for employment in order to address her homelessness. Not surprisingly, she obtained a part-time placement with another payday loan provider in the Grand Rapids market. If the Court gives The Cash Store its way, Rodriguez will face the Hobson’s choice of paying a severe penalty for keeping the only job that she could find or rendering herself destitute. The harm resulting from such a choice is obvious. In comparison, the greatest harm that could befall The Cash Store is the presence in the local payday loan market of an



employee it regarded as too useless to keep on its own payroll. Given the fact that The Cash Store discharged Rodriguez for ineptitude and lack of initiative, it seems reasonable to conclude that The Cash Store should prefer to have her working for one of its competitors so long as she does not have any of The Cash Store's proprietary materials to share with her new employer.

D. Potential Harm to the Public Interest.

Michigan jurisprudence is of two minds on the enforcement of noncompetition agreements. On one hand, such agreements "are permissible under Michigan law as long as they are reasonable." See Thermatool Corp., 227 Mich App at 372. On the other hand, "noncompetition agreements are disfavored as restraints on commerce and are only enforceable to the extent they are reasonable." See Coates, 276 Mich App at 507. Thus, the touchstone of the analysis is reasonableness. Here, at this early stage of the lawsuit, the Court concludes that a carefully tailored injunction comports with Michigan law, and such injunctive relief best serves the public interest as well by enabling Defendant Rodriguez to maintain her current job without causing undue harm to The Cash Store. Although it would plainly be unfair to permit Rodriguez to engage in unfettered competition with The Cash Store for its customers, the public interest is best served by allowing Rodriguez to keep her new job.


III. Conclusion

For all of the reasons set forth in this opinion, and pursuant to the obligations imposed by the two employment agreements Defendant Rodriguez signed on November 18, 2015, IT IS ORDERED that Defendant Rodriguez is prohibited and enjoined from retaining, using, or disclosing any and all confidential and proprietary information obtained during her tenure with Plaintiff The Cash Store. IT IS FURTHER ORDERED that Rodriguez is prohibited and enjoined from contacting or soliciting

any customers of The Cash Store to do business with herself or her employer, ACAC. Each of these prohibitions shall remain in effect until further order of the Court.<sup>2</sup>

IT IS SO ORDERED.

Dated: January 17, 2017

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

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<sup>2</sup> The Court recognizes that many of the restrictive covenants in Defendant Rodriguez's two employment contracts will expire, by their own terms, on January 25, 2017. If Rodriguez wishes to be excused from any aspects of the Court's injunctive order, she must file a motion seeking to have the restrictions lifted pursuant to the language of her employment agreements.