

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

AMERICAN ANESTHESIOLOGY OF
MICHIGAN, PC,

Plaintiff,

v

Case No. 15-147134-CK
Hon. Wendy Potts

BALAJEE NALLAMOTHU, M.D.,

Defendant.

OPINION AND ORDER RE: PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

At a session of Court
Held in Pontiac, Michigan
On

JUN 15 2015

In 2007, Defendant Balajee Nallamothu, M.D. joined an anesthesiology practice known as South Oakland Anesthesiology Associates, PC (SOAA), which was the exclusive anesthesia provider for Beaumont's hospitals in Royal Oak, Troy, and Grosse Pointe. Dr. Nallamothu claims that while employed by SOAA he was subject to a three-year, 10-mile radius noncompete agreement. In December 2012, Dr. Nallamothu and his partners sold SOAA to Plaintiff American Anesthesiology of Michigan, PC (AAM). As part of the purchase agreement, Dr. Nallamothu agreed that for five years after the December 16, 2012 closing he would not provide anesthesiology services within 30 miles of any SOAA office or facility where he provided those services in the two years before the sale. Dr. Nallamothu also signed an employment agreement with a restrictive covenant stating that for two years after his termination from AAM he would

not provide anesthesiology services within 30 miles of any AAM office or facility where he provided those services during his last two years of employment.

On May 15, 2015, Dr. Nallamotheu resigned his employment with AAM effective May 15, 2015, to begin working for Long Lake Anesthesiology Consultants (LLAC) at the UnaSource Surgery Center in Troy and Orthopedic Surgery Institute in Rochester Hills. AAM claims that LLAC is a direct competitor of AAM and the two locations where Dr. Nallamotheu will be working are within 30 miles of AAM's medical facilities where he provided anesthesiology services during his last two years of employment with AAM. Dr. Nallamotheu claims that AAM's counsel responded to his resignation by threatening an arbitration action, however, it never served him with an arbitration demand. AAM also threatened legal action but did not immediately file suit. Dr. Nallamotheu claims that when he left AAM, he did not take any confidential information with him.

Dr. Nallamotheu claims that while at both SOAA and AAM, he worked only at Beaumont's facilities in Royal Oak, Troy, and Macomb County, and at the Clarkston ambulatory surgical center. He further claims that the 30-mile restrictive covenants in the purchase and employment agreements extends north of Flint, south almost to Monroe, west past Ann Arbor, and east to Sarnia, Ontario. Dr. Nallamotheu also notes that both the purchase and employment agreements have mandatory arbitration provisions. According to Dr. Nallamotheu, SOAA and AAM selectively enforced their noncompete agreements by allowing some departing anesthesiologists to work within the SOAA 10-mile zone and the AAM 30-mile zone. He claims that in 2004 or 2005, former SOAA employees/shareholders Drs. Bruce Evans and Christopher Chaput established LLAC, both of whom had noncompete agreements with SOAA that were not enforced. Dr. Nallamotheu further claims that AAM allowed Dr. Paul Johnson, who was also

under a two-year, 30-mile noncompete, to leave AAM and join LLAC, and allowed Dr. Philip Rubin, a former AAM shareholder, to leave and work for Henry Ford Healthcare within the 30-mile zone.

AAM filed this action on May 19, 2015 claiming that Dr. Nallamothu breached the noncompete covenants of the purchase and employment agreements. AAM also immediately filed this motion seeking injunctive relief barring Dr. Nallamothu from violating his restrictive covenants. When deciding a motion for injunctive relief, the Court considers (1) whether the applicant will suffer irreparable injury if the injunction is not granted; (2) the likelihood that the applicant will succeed on the merits; (3) whether harm to the applicant in the absence of relief outweighs the harm to the opposing party if the injunction is granted; and (4) the harm to the public if the injunction issues. *Thermatool Corp v Borzym*, 227 Mich App 366, 376; 575 NW2d 334 (1998). The Court also considers whether granting an injunction is necessary to preserve the status quo before a final hearing or whether it will grant one of the parties final relief before a decision on the merits. *Thermatool, supra*.

Regarding Plaintiff's likelihood of success on the merits, Dr. Nallamothu does not directly contest Plaintiff's claim that his work for LLAC violates his restrictive covenants. Instead, Dr. Nallamothu asserts that the agreement is unenforceable because it is unreasonable in geographic scope and does not protect AAM's reasonable competitive business interests. The Michigan Antitrust Reform Act (MARA) allows an employment-related noncompetition agreement if it "protects an employer's reasonable competitive business interests" and "is reasonable as to its duration, geographical area, and the type of employment or line of business." MCL 445.774a(1). The Court determines reasonableness if the relevant facts are undisputed. *Coates v Bastian Bros, Inc.*, 276 Mich App 498, 506; 741 NW2d 539 (2007).

On its face, the 30-mile restrictive zone appears reasonable, given that the Court of Appeals in *Coates* endorsed a 100-mile limitation. *Id* at 508. However, Dr. Nallamotheu asserts that it could result in barring him from offering anesthesiology service anywhere in Southeast Michigan and effectively put him out business because it encompasses not only Wayne, Oakland, and Macomb counties, but parts of Washtenaw, Genesee, St. Clair, and Monroe counties. However, even if the restriction were deemed unreasonable in geographic scope, this Court has authority to “limit the agreement to render it reasonable in light of the circumstances in which it was made and specifically enforce the agreement as limited.” MCL 445.774a(1). Moreover, even if the Court were to reduce the scope to the 10-mile radius of Dr. Nallamotheu’s SOAA agreement that he appears to concede was reasonable, there is no dispute that Dr. Nallamotheu’s work for LLAC in Troy and Rochester Hills would fall well within that limit. Thus, even under more a limited restriction, there would be no question of fact that Dr. Nallamotheu is violating his agreements by working for LLAC. On this basis, AAM has a strong likelihood of success on the merits.

Dr. Nallamotheu also asserts that the agreement is unenforceable because it does not protect AAM’s reasonable competitive business interests. MCL 445.774a(1). Dr. Nallamotheu claims that AAM’s business is not threatened by him providing anesthesiology services within the restricted zone because AAM and LLAC’s anesthesiologists do not solicit patients or receive patients referred to them by other doctors. Instead, Dr. Nallamotheu claims that while working for both AAM and LLAC he would be assigned a shift or a room at a facility to provide anesthesiology services to patients who are scheduled for surgery by the facility or other doctors. Dr. Nallamotheu also asserts that AAM does not provide anesthesiology services to facilities where LLAC provides them, and vice versa. These claims, if proven, could call into question

whether the restrictive covenants protect AAM's competitive business interests or whether Dr. Nallamothe's provision of anesthesiology services within the restricted zone threatens AAM's business. However, AAM disputes this claim and making this interpretation would require more factual development. Thus, the Court cannot conclude based on the evidence presented that the agreement is unenforceable on this ground.

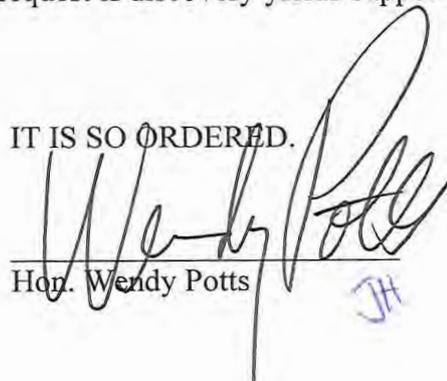
Although AAM appears to have a likelihood of success on the merits of its claim that Dr. Nallamothe is violating the agreement, Dr. Nallamothe asserts that AAM has not established that Dr. Nallamothe's work for LLAC is causing harm or will cause AAM irreparable harm. Certainly, AAM will suffer harm from Dr. Nallamothe working for LLAC because AAM is losing the benefit of what it bargained for in its agreements. However, evidence of a breach of a contract, by itself, does not establish that AAM will suffer an irreparable injury. *Thermatool, supra* at 377. Instead, the key question for an injunction analysis is whether the harm is irreparable, or "a noncompensable injury for which there is no legal measurement of damages or for which damages cannot be determined with a sufficient degree of certainty." *Id.* Dr. Nallamothe claims that he did not take patient lists or other confidential information when he left AAM and he has not and will not solicit or provide services to any of AAM's patients. AAM presents no evidence to the contrary. Although AAM claims that Dr. Nallamothe will harm its goodwill by working for LLAC, it presents no evidence or authority to support this position. To the extent that Dr. Nallamothe does provide services to AAM's patients, that financial injury should be easily calculated and remedied with money damages. Based on the evidence presented, the Court cannot conclude at this time that AAM is likely to suffer irreparable harm if Dr. Nallamothe is not enjoined from working for LLAC.

Regarding the balance of the harms, this factor favors neither party. AAM has suffered and will continue to suffer harm by losing the benefit of its bargain. However, Dr. Nallamotheu would be harmed if the Court enjoins him from working for LLAC and orders him to comply with the restrictive covenants' 30-mile limit. The public interest factor is irrelevant because the public has no apparent interest in this private dispute.

This motion presents a close question because there does not appear to be any question of fact that Dr. Nallamotheu is breaching his agreements with AAM. However, a showing of irreparable harm is critical for obtaining injunctive relief. *Michigan AFSCME Council 25 v Woodhaven-Brownstown School District*, 293 Mich App 143, 149; 809 NW2d 444 (2011). Because AAM has not established that it will be irreparably harmed by Dr. Nallamotheu working for LLAC, the Court is constrained to deny AAM's request for injunctive relief. However, because further factual development may provide support for the irreparable harm element, such as evidence that Dr. Nallamotheu or LLAC are soliciting AAM's patients or business, the Court denies the motion without prejudice. AAM may renew its request if discovery yields support for its position that it is or will suffer irreparable harm.

Dated: **JUN 15 2015**

IT IS SO ORDERED.



Hon. Wendy Potts