

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

HERITAGE SERVICES, LLC,

Plaintiff/Counter-Defendant,

vs.

Case No. 2013-788-CK

HERITAGE SERVICES NORTH and
RONALD T. FULLER,

Defendants/Counter-Plaintiffs.

OPINION AND ORDER

Defendants/Counter-Plaintiffs Heritage Services North and Ronald T. Fuller (“Defendants”) have filed a motion to dismiss Defendant/Counter-Plaintiff Ronald T. Fuller (“Defendant Fuller”). Plaintiff/Counter-Defendant Heritage Services, LLC (“Plaintiff”) has filed a response and requests that the motion be denied.

Factual and Procedural History

Plaintiff’s claims in this matter arise from Defendant Fuller’s alleged breach of a non-compete agreement entered into by the parties, as well as Defendant Fuller’s alleged use of Plaintiff’s confidential information without authorization.

On February 19, 2013, Plaintiff filed its complaint in this matter asserting claims for: Count I: Breach of Contract, Count II: Quantum Meruit, and Count III: Injunctive Relief. Plaintiff’s claims against Defendant Heritage Services North, LLC, as well as the counterclaim filed against Plaintiff have since been dismissed.

On August 13, 2013, Defendant Fuller obtained a discharge from the United States Bankruptcy Court. While it appears undisputed that Plaintiff’s monetary claim in

this matter is barred by the discharge pursuant to 11 USC 524(a)(2), Plaintiff contends that its claim for injunctive relief remains viable. Defendants' instant motion, and Plaintiff's response, address this issue and request a determination by the Court.

On January 13, 2015, the Court held a hearing in connection with the instant motion and took the matter under advisement.

Arguments and Analysis

While Plaintiff concedes that the non-compete provision in this matter expired on June 5, 2013, Plaintiff contends that the Court should fashion appropriate equitable relief to account for Defendant's alleged continual disregard and violation of the non-compete provision over the course of its term. In support of its request, Plaintiff cites to the Michigan Court of Appeals' decision in *Thermatool Corp v Borzym*, 227 Mich App 336; 575 NW2d 334 (1998).

In *Thermatool* the Court of Appeals addressed the defendant's appeal of the trial court's preliminary injunction order extending the term of a non-compete agreement beyond its stated expiration date. In its opinion, the Court of Appeals adopted the rule previously set forth in some other jurisdiction that "under appropriate circumstances, an agreement not to compete can be extended beyond its stated expiration date as a remedy for a breach of the agreement." *Id.* at 374. Specifically, the Court held:

In cases where a party has flouted the terms of a noncompetition agreement, the court should be able to fashion appropriate equitable relief despite the fact that the parties did not expressly provide for such relief in their agreement. Furthermore, as courts allowing extensions of the terms of noncompetition agreements have found, it may not be possible to determine monetary damages with any degree of certainty. Where this is the case, the breaching party should not be rewarded because the agreement has already expired.

Id. at 375.

While this Court recognizes that it, under *Thermatool*, has the authority to extend the term of a non-compete provision under certain circumstances, it is convinced that the facts presented in this matter do not permit such relief to be granted. *Thermatool*, nor any of the cases applying its rule of law in this state have addressed whether equitable remedies arising from a defendant's breach survive a defendant's bankruptcy discharge. However, the United States Bankruptcy Court in *In re Ruth* ___ BR ___ (Bankr ED Tex, 2013); slip op at 5-6, in applying both federal bankruptcy law and Michigan contract law, held that equitable remedies available as a result a defendant's breach of a non-compete agreement still fall within the definition of a bankruptcy claim, and are still subject to any discharge order entered as a result of the defendant's bankruptcy filing. Accordingly, under *In re Ruth*, this Court is convinced that any equitable relief otherwise available as a result of Defendant Fuller's breach has been barred by his bankruptcy discharge. Consequently, Defendants' motion to dismiss Plaintiff's claims against Defendant Fuller must be granted.

Conclusion

Based upon the reasons set forth above, Defendants' motion to dismiss Plaintiff's claims against Defendant Ronald T. Fuller is GRANTED. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order resolves the last claim and CLOSES the case.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

JCF/sr

Cc: *via e-mail only*
Dean W. Amburn, Attorney at Law, damburn@howardandhoward.com
John B. McNamee, Attorney at Law, mcnameelaw@msn.com