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

KAMP OIL, INC.,

Plaintiff,

vs.

KEITH KREBILL; and VAN MANEN OIL COMPANY d/b/a VAN MANEN PETROLEUM GROUP,

Defendants.
_____/

Case No. 17-04786-CBB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER GRANTING PRELIMINARY INJUNCTION

Everyone knows that oil and water don't mix, but what about oil and fuel? On May 18, 2017, Defendant Keith Krebill left his job selling oil for Plaintiff Kamp Oil, Inc. ("Kamp Oil") to take on new responsibilities selling fuel for Defendant Van Manen Oil Company ("Van Manen Oil"). That move prompted Kamp Oil to file suit alleging that Krebill had violated restrictive covenants and that Van Manen Oil had committed tortious interference with Kamp Oil's contractual relationship with Krebill. After the Court issued a temporary restraining order ("TRO"), the defendants responded that selling fuel has virtually nothing to do with selling oil, so the Court should not throw gasoline on the fire by piling injunctive restrictions upon Krebill and Van Manen Oil. Kamp Oil rejoined that the defendants are much too slippery to be trusted, so the Court must extract Krebill from his new job with a stringent injunctive order. Based upon the evidence adduced at an illuminating hearing held on June 6, 2017, the Court finds that Krebill and Van Manen Oil should be restricted in a variety of significant respects in order to protect Kamp Oil's legitimate business interests, but those injunctive restrictions need not include the expulsion of Krebill from his new job with Van Manen Oil.

I. Factual Background

By all accounts, Plaintiff Kamp Oil and Defendant Van Manen Oil compete in some, but not all, of their business ventures. Specifically, both companies sell oil and related products to business customers, but Van Manen Oil also supplies fuel to gas stations, while Kamp Oil does not sell fuel. In 2012, Defendant Krebill began working for Kamp Oil as a sales representative. In that capacity, he not only engaged in industrial and lubricant sales on behalf of Kamp Oil, see Hearing Exhibit B, but also signed an employment contract that included restrictive covenants. See Hearing Exhibit 1. In December of 2015, when Krebill became frustrated with the lack of opportunity for advancement at Kamp Oil, he provided a résumé to Van Manen Oil. Nothing came of it until January 2017, when Bob Evans of Van Manen Oil reached out to Krebill about a lubricant-sales position. The two men came to the conclusion, however, that Krebill's restrictive covenants prevented him from taking that job, so they went their separate ways and Krebill remained an employee of Kamp Oil.

In May 2017, Defendant Van Manen Oil had a vacancy in a sales position involving fuel, as opposed to oil, so Bob Evans made a telephone call to Defendant Krebill to gauge his interest in the job. Events unfolded quickly, and on May 18, 2017, Krebill accepted an offer of employment from Van Manen Oil, resigned from Plaintiff Kamp Oil, and turned in his company equipment, including his cellular telephone and his iPad, which he reset at a Verizon outlet before tendering to his former employer. From that point forward, Krebill had no direct contact with anyone at Kamp Oil, although he did access his company e-mail account on May 22, 2017, to redirect his Yahoo account to his new electronic devices. See Hearing Exhibit 2. Krebill testified (and the evidence indicates) that he took no proprietary information in paper or electronic form from Kamp Oil when he left the company on May 18, 2017.

On May 26, 2017, Plaintiff Kamp Oil filed suit against Defendants Krebill and Van Manen Oil, alleging that Krebill violated his restrictive covenants by accepting his job with Van Manen Oil, that Van Manen Oil committed tortious interference with contractual relations by hiring Krebill, and that the two defendants engaged in a civil conspiracy. On May 31, 2017, after speaking with counsel for both sides, the Court entered a TRO that imposed restrictions upon both defendants, but allowed Krebill to continue working for Van Manen. The Court took up Kamp Oil's request for broadened injunctive relief at a hearing on June 6, 2017, where four witnesses testified. Based upon the record developed at that hearing, the Court must decide whether – and to what extent – Kamp Oil is entitled to injunctive relief.

II. Legal Analysis

Citing MCR 3.310(A), Plaintiff Kamp Oil seeks 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). In seeking an injunction, Kamp Oil bears "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 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.

Plaintiff Kamp Oil's complaint accuses Defendant Krebill of breaching restrictive covenants in his employment agreement, contends that Defendant Van Manen Oil tortiously interfered with the contractual relationship between Kamp Oil and Krebill, and asserts that both of the defendants have engaged in a civil conspiracy. Krebill's employment contract includes a noncompetition provision that requires Krebill "[d]uring his term of employment, and for a period of 365 days thereafter . . . not to engage or participate . . . in any business which directly or indirectly competes with [Kamp Oil] in the lower peninsula of Michigan, northwestern Ohio, or northeastern Indiana." See Hearing Exhibit 1 (Employment Contract at page 3 of 6). Additionally, Krebill's employment agreement forbids "directly or indirectly recruit[ing] or solicit[ing] any employee or sales agent of [Kamp Oil] to discontinue such employment or engagement, or solicit[ing] or encourag[ing] any person or any business which has a business relationship with [Kamp Oil] to seek to discontinue that relationship or to reduce the volume or scope of that relationship" for one year after Krebill's termination of his employment with Kamp Oil. See id. (Employment Contract at page 4 of 6). These restrictions form the basis of Kamp Oil's claims.[1]

"Agreements not to compete are permissible under Michigan law," see Thermatool Corp v Borzym, 227 Mich App 366, 372 (1998); MCL 445.774a(1), but "noncompetition agreements are

[1] Defendant Krebill's employment contract also includes restrictions on use and disclosure of trade secrets and confidential information, but the record developed thus far contains no evidence that Krebill has breached those restrictions. Accordingly, the Court shall focus exclusively upon the restrictive covenants set forth in the noncompetition and non-solicitation provisions.

disfavored as restraints on commerce and are only enforceable to the extent they are reasonable." Coates v Bastian Brothers, Inc, 276 Mich App 498, 507 (2007). Accordingly, 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. The Court finds the one-year noncompetition obligation reasonable in duration, see Rooyakker & Sitz, PLLC v Plante & Moran, 276 Mich App 146, 158 (2007) (two-year prohibition was reasonable), that limiting the noncompetition obligation to only portions of three states renders the noncompetition obligation reasonable in its geographic scope, and that the ban on working for competitors of Plaintiff Kamp Oil is reasonable for a sales representative such as Defendant Krebill. Moreover, because a person's restrictive covenants are imputed to those working in concert with that person, Owens v Hatler, 373 Mich 289, 292 (1964), Krebill's restrictive covenants apply with equal force to Defendant Van Manen Oil so long as that company employs Krebill.

Defendant Van Manen Oil competes with Plaintiff Kamp Oil in some – but not all – business activities. Specifically, Van Manen Oil and Kamp Oil both sell oil-related products, but Van Manen Oil also sells fuel, while Kamp Oil does not. Commendably, Van Manen Oil did not hire Defendant Krebill until a vacancy occurred in the area of Van Manen Oil's business that does not compete with Kamp Oil, and Van Manen Oil has taken extraordinary steps to restrict Krebill's involvement with Van Manen Oil's sale of oil and related products. But Van Manen Oil nonetheless must be regarded as a competitor of Kamp Oil, so Kamp Oil has made a substantial showing that Krebill's work with Van Manen Oil violates the noncompetition provision in Krebill's employment contract with Kamp Oil. In that respect, Kamp Oil has carried its burden of demonstrating a likelihood of success on the merits of its central claim against both of the defendants.

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. The record makes clear that, at this juncture, no customer of Plaintiff Kamp Oil has moved any business to Defendant Van Manen Oil since Defendant Krebill changed jobs on May 18, 2017. As a result, Kamp Oil has not yet suffered any loss of business. To be sure, Krebill's departure may have caused Kamp Oil some short-term inconvenience and some consternation, but those concerns do not rise to the level of irreparable harm.

Looking into the future, however, Defendant Krebill's participation in the sales activities of Defendant Van Manen Oil could cause substantial financial loss to Plaintiff Kamp Oil if Krebill uses inside information from Kamp Oil and his relationships with Kamp Oil's customers to lure business away from Kamp Oil. See St Clair Medical, PC v Borgiel, 270 Mich App 260, 266-267 (2006); see also Rooyakker & Sitz, 276 Mich App at 158. And as one federal appellate court put it: "Although economic losses alone do not justify a preliminary injunction, 'the loss of customers and good will is an irreparable injury.'" BellSouth Telecommunications, Inc v MCI Metro Access Transmission Services, LLC, 425 F3d 964, 970 (11th Cir 2005). Accordingly, despite the fact that Krebill's mere presence at Van Manen Oil does not present a significant risk of irreparable harm to Kamp Oil, his direct or indirect involvement with Kamp Oil's customers raises the specter of irreparable harm.

The defendants insist that, because Defendant Krebill's employment contract with Plaintiff Kamp Oil contains a liquidated-damages provision, see Hearing Exhibit 1 (Employment Contract at page 4 of 6), money damages necessarily constitute an "'adequate remedy at law'" that forecloses any form of injunctive relief. See Davis, 296 Mich App at 614. The language and structure of that provision in Krebill's employment contract entitled "Injunctive Relief & Damages," however, leaves no doubt that "the liquidated damages clause was intended to operate in tandem with an injunction not instead of it." See Pinnacle Healthcare, LLC v Sheets, 17 NE3d 947, 954 (Indiana App 2014). Thus, the "liquidated damages clause in the parties' agreement does not obviate [Kamp Oil's] right to injunctive relief." Id. As a result, the Court must stand by its determination that there exists some significant likelihood of irreparable harm to Kamp Oil if Krebill and Defendant Van Manen Oil are not prohibited from relying upon Krebill's knowledge and connections to solicit customers of Kamp Oil to move their business to Van Manen Oil.

C. Balance of Harms to the Opposing Parties.

In considering an injunctive order that would force Defendant Krebill from his employment with Defendant Van Manen Oil, thereby depriving Krebill of the income that he needs to support his family, the Court gives no weight to Plaintiff Kamp Oil's blithe assurance that Krebill can find other employment selling products that have nothing to do with fuel or oil. The record offers no support whatsoever for that bald assertion. Balanced against the harm that would befall Krebill if the Court were to order him out of his job at Van Manen Oil, the risk of harm to Kamp Oil in the absence of such a stringent injunctive order seems insubstantial. Nevertheless, the Court believes that a balance can be struck that affords protection to Kamp Oil without severely harming Krebill.

D. Potential Harm to the Public Interest.

The record predicts virtually no harm to the public interest no matter which way the Court's ruling goes. For all practical purposes, the resolution of Plaintiff Kamp Oil's request for injunctive relief will affect only Kamp Oil, Defendant Krebill, and Defendant Van Manen Oil. To be sure, the effects on those parties will be significant, but the Court has already considered those impacts in its discussion of the first three factors.

III. Conclusion

For all of the reasons stated in this opinion, the Court concludes that Plaintiff Kamp Oil is entitled to injunctive relief that protects its legitimate business interests without depriving Defendant Krebill of his employment with Defendant Van Manen Oil. Accordingly, **IT IS ORDERED that Defendant Krebill is prohibited and enjoined from soliciting, either directly or indirectly, any customers of Kamp Oil until May 17, 2018, or further order of the Court. IT IS FURTHER ORDERED that Defendant Krebill is prohibited and enjoined from selling oil and any related product on behalf of anyone, either directly or indirectly, until May 17, 2018, or further order of the Court. IT IS FURTHER ORDERED that Defendant Krebill is prohibited and enjoined from using or disclosing any confidential or proprietary information of Kamp Oil until further order of the Court. IT IS FURTHER ORDERED that Defendant Van Manen Oil is prohibited and enjoined from soliciting, either directly or indirectly, any customers of Kamp Oil for any new business until May 17, 2018, or further order of the Court.**[2] Finally, IT IS ORDERED that

[2] This restriction does not prohibit Defendant Van Manen Oil from continuing to service any of its existing customers that also happen to be customers of Plaintiff Kamp Oil. The Court intends this provision of the injunctive order to maintain the status quo, rather than to afford Kamp Oil a leg up in any effort to expand its business with customers it currently shares with Van Manen Oil.

the TRO entered by the Court on May 31, 2017, is dissolved in favor of the preliminary injunction issued today. Pursuant to MCR 3.310(A)(5), the Court shall promptly schedule a pretrial conference with counsel for the parties in order to develop an expedited scheduling order and consider discovery matters raised in conjunction with the hearing on the motion for injunctive relief. Therefore, counsel should be prepared to discuss preservation and retrieval of electronically stored information if the parties wish to obtain such discovery.

IT IS SO ORDERED.

Dated: June 7, 2017

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