

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

LAMBERT, EDWARDS &
ASSOCIATES, and its wholly
owned subsidiary, Sterling
Consulting Corporation

Plaintiffs,

vs.

STEPHEN LINDER; and DUSTIN
ROAD COMPANY, LLC,

Defendants.

Case No. 17-09813-CBB

HON. CHRISTOPHER P. YATES

ORDER GRANTING IN PART, AND DENYING IN PART, PLAINTIFFS'
EX PARTE MOTION FOR A TEMPORARY RESTRAINING ORDER

The commercial courtship between Plaintiff Lambert, Edwards & Associates (“LEA”) and Defendant Stephen Linder resulted in the corporate marriage of LEA and Linder’s former company, Sterling Consulting Corporation (“Sterling”). But that corporate marriage has now ended in an ugly corporate divorce. The competing parties tried to work out their separation, memorializing a series of exchanged promises in a written agreement that Linder signed on March 8, 2017. Significantly, that agreement modified restrictive covenants in Linder’s LEA employment agreement and the asset-purchase agreement between LEA and Sterling by preserving some of the restrictions, but stating:

Except as modified herein, the [employment agreement]’s covenant not to compete and [the asset purchase agreement]’s non-solicitation clause shall remain in effect until October 31, 2017. At 5 p.m. EST on October 31, 2017, paragraph 12 of the [employment agreement] and paragraph 7(1) of the [asset purchase agreement] are, by this Agreement, terminated and of no further force or effect.

See Complaint, Exhibit 3 (Agreement, § III – Termination of Non-Compete and Non-Solicit).

Perhaps it was mere coincidence that the parties defined Halloween as the witching hour for the restrictive covenants imposed upon Defendant Linder, but the parties' agreement leaves no doubt that those noncompetition and non-solicitation restrictions expire at 5:00 P.M. today. Consequently, to the extent that the plaintiffs have requested a temporary restraining order ("TRO") broadly barring Linder from competing with the plaintiffs and soliciting the plaintiffs' clients, the Court must deny that relief as contrary to the controlling language of the parties' March 2017 agreement. The Court cannot extend the restrictive covenants without conducting an evidentiary hearing where the burden will be squarely on the plaintiffs to prove that Linder breached his restrictive covenants and to justify any reinstatement of the restrictive covenants. See Thermatool Corp v Borzym, 227 Mich App 366, 375-378 (1998). But that ruling does not mean that the defendants are entirely out of the woods.


Under well-settled Michigan law, an employee such as Defendant Linder can be contractually barred from using trade secrets and other confidential information obtained from a former employer such as Plaintiff LEA. Moreover, the Michigan Uniform Trade Secrets Act, MCL 445.1901, *et seq.*, prohibits unauthorized use of all trade secrets irrespective of contractual restrictions. Thus, the Court can enjoin Linder from using trade secrets and other confidential information he obtained from LEA. Because the Court finds that the plaintiffs have established a likelihood of success on the merits of their claims concerning trade secrets and other confidential information, a TRO is appropriate if the record demonstrates a likelihood of irreparable harm in the absence of injunctive relief. The Court concludes that, given the nature of the parties' business, *i.e.*, public relations and public affairs, the protection of confidential information is of paramount concern. Thus, the likelihood of irreparable harm in the absence of injunctive relief is manifest. Additionally, the balance of harms militates in favor of a TRO, which will not cause undue harm to the public interest.

Finally, the Court must determine whether a TRO governing Defendant Linder's use of trade secrets and other confidential information should extend to Defendant Dustin Road Company, LLC ("Dustin Road"). Although the relationship between Linder and Dustin Road is still a bit murky, the record indicates that Linder formed Dustin Road nearly a decade ago, and he still remains an owner of the company. Our Supreme Court has ruled that, when a person or entity without restrictions acts in concert with a person or entity subject to restrictive covenants, those restrictions apply with equal force to anyone acting in concert with the restricted person or entity. See Owens v Hatler, 373 Mich 289, 292 (1964). Consequently, Dustin Road is bound by the contractual restrictions imposed upon Linder as long as Dustin Road is acting in concert with Linder, so the Court shall subject Dustin Road to the TRO that applies to Linder.

For all of the reasons set forth above, IT IS ORDERED that **Defendants Stephen Linder and Dustin Road Company, LLC, are prohibited and enjoined from using any trade secrets or other confidential information of Plaintiff Lambert, Edwards & Associates, Inc., or Sterling Consulting Corporation until further order of the Court.** If the plaintiffs seek broader relief or the defendants seek to dissolve the TRO, the Court shall conduct an evidentiary hearing to consider such a request.

IT IS SO ORDERED.

Dated: October 31, 2017



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