

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

VISTA IT GROUP, INC.,

Plaintiff,

vs.

RYAN CODERE,

Defendant.

Case No. 19-05560-CBB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER GRANTING PRELIMINARY INJUNCTION

When Defendant Ryan Codere began working for Plaintiff Vista IT Group, Inc. (“Vista”) in 2016, he signed an employment agreement containing stringent restrictive covenants, including non-solicitation and noncompetition clauses. When Codere chose to leave Vista on June 7, 2019, to take a position with Tech Data Corporation (“Tech Data”), Vista responded not only by filing suit seeking damages, but also by demanding a temporary restraining order (“TRO”) and a preliminary injunction. The Court entered a TRO on June 27, 2019, amended the TRO on June 28, 2019, and extended the TRO on August 5, 2019. Finally, on August 14, 2019, the Court conducted an evidentiary hearing to consider whether to dissolve the TRO or replace it with a preliminary injunction. Based upon the evidence adduced at that hearing, the Court shall enter a carefully tailored preliminary injunction.

Defendant Codere’s broadly worded noncompetition restriction prohibits him from engaging in any competition with Plaintiff Vista, and Codere’s non-solicitation restriction prevents him from seeking any “business of the type performed” by Vista “from any person or company that is” or was a customer of Vista. Ordinarily, a person laboring under such restrictions can still work in a chosen industry by carefully steering clear of the former employer’s customers, but Codere worked for Vista

in a business-to-business secondary market where the participants are sometimes buyers and other times sellers. For its part, Vista has carved out an especially valuable corner of that market because it is only one of eight companies that has a contract with Cisco Capital and, as a result, has access to an exclusive portal for purchasing secondhand Cisco products at preferred prices. In addition, to enhance its access to the marketplace, Vista has developed software to gain rapid access to products desired by all of the market participants.

When Defendant Codere began working for Tech Data, the plan was to have him buying and selling products in the very same secondary market in which Plaintiff Vista operates. But that caused Vista great concern, so its request for injunctive relief makes good business sense. Moreover, Vista found electronic communications from Codere that heightened Vista's concern about his intentions. Codere, however, has done nothing in his career outside Vista's market, so he would be lost at sea professionally if the Court were to force him out of that market. With compelling concerns on both sides, the Court must consider whether Vista is entitled to the sweeping injunctive relief that it seeks in order to protect its business.

An injunction “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 Plaintiff Vista has requested an injunction, it must bear “the burden of establishing that a preliminary injunction should be issued.” See MCR 3.310(A)(4). There are four factors that the Court must consider in determining whether to grant any injunctive relief:

- (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

harméd 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 not forget 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.

The Court readily concludes that, so long as Defendant Codere is working for Tech Data in the secondary marketplace where Plaintiff Vista competes, Vista is likely to succeed on the merits of a claim for breach of contract against Codere predicated upon his restrictive covenants. Although MCL 445.774a permits the Court to rewrite a noncompetition agreement to render it “reasonable,” the Court finds Codere’s noncompetition agreement eminently reasonable. Beyond that, Codere is subject to a non-solicitation provision that the Court must apply as written because non-solicitation clauses are not subject to modification to render them “reasonable.”

On the other hand, Plaintiff Vista must stretch a bit to establish a likelihood of irreparable harm flowing from Defendant Codere’s employment with Tech Data. As a general rule, economic injuries “are not irreparable because they can be remedied by damages at law[,]” Thermatool Corp v Borzym, 227 Mich App 366, 377 (1998), and a “relative deterioration of competitive position does not in itself suffice to establish irreparable injury.” Id. To be sure, although “economic losses alone do not justify a preliminary injunction, ‘the loss of customers and goodwill is an irreparable injury.’” BellSouth Telecommunications, Inc v MCIMetro Access Transmission Services, LLC, 425 F3d 964, 970 (11th Cir 2005). According to Vista’s president and chief operating officer, Codere accounted for eight percent of Vista’s revenue in 2018, so his participation in the marketplace for a competitor of Vista would be harmful, but not fatal, to Vista’s business.

The factor that weighs most significantly in Defendant Codere's favor (and against any type of injunctive relief) is the balance of harms. Codere knows no other line of work, and his skills are best employed in the marketplace where he has operated throughout his professional life. Entry of a stiff injunctive order would force him entirely out of the marketplace and leave him scrambling for gainful employment. In comparison, Plaintiff Vista will suffer some loss of business due to Codere's departure and his employment by another market participant, but that loss of business certainly will not be catastrophic if the Court imposes more measured restrictions upon Codere *via* an injunctive order. Thus, the balance of harms militates in favor of some injunctive relief, but against stringent injunctive relief aimed at forcing Codere from his job with Tech Data.

Finally, the Court does not believe that consideration of harm to the public interest tips the scales significantly in either direction. The enforcement of contracts serves the public interest, but restrictive covenants "are disfavored as restraints on commerce[.]" Coates v Bastian Brothers, Inc, 276 Mich App 498, 507 (2007). Accordingly, the Court cannot place great emphasis upon public-interest concerns in considering the propriety of injunctive relief in this case. Instead, the Court must provide a measured response to the parties' contest concerning Vista's motion for injunctive relief against Codere. Thus, IT IS ORDERED that Defendant Ryan Codere is prohibited and enjoined from engaging in the following activities:

- (i) Seeking, obtaining, or directing any access to the Cisco Capital portal in which Vista and Tech Data operate;
- (ii) Using, engineering, or attempting to design or simulate the software that Vista developed to gain rapid access to the products desired by market participants;
- (iii) Persuading or attempting to persuade any employee of Vista to leave Vista to work elsewhere in the secondary marketplace in which Vista operates.

These restrictions shall remain in effect until June 6, 2021, or further order of the Court, whichever comes first. IT IS FURTHER ORDERED that the amended temporary restraining order issued on June 28, 2019, is hereby dissolved and replaced by the preliminary injunction prescribed above.

IT IS SO ORDERED.

Dated: August 23, 2019



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