

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

B3, INC. d/b/a Tanaz Hair Boutique  
and Day Spa,

Plaintiff,

Case No. 19-10638-CBB

vs.

HON. CHRISTOPHER P. YATES

CLAIRE BAYSORE; and MARCUS  
DEMORAY,

Defendants.

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TEMPORARY RESTRAINING ORDER

This case is yet another overheated battle flowing from contractual restrictive covenants that bind low-level employees. Defendants Claire Baysore and Marcus Demoray worked as hair stylists for Plaintiff B3, Inc. d/b/a Tanaz Hair Boutique and Day Spa (“Tanaz”) until October of 2019, when they left to work for a purported competitor of Tanaz named Tricho Salon & Spa (“Tricho”). As a result, the defendants have allegedly breached contracts they signed with Tanaz. Of course, both of the defendants’ contracts with Tanaz contain broad noncompetition provisions (as well as the usual fee-shifting provisions), so Tanaz has filed an *ex parte* motion demanding a temporary restraining order (“TRO”) that flatly prohibits the defendants from styling hair for Tricho. Despite the fact that the defendants’ contracts with Tanaz are largely enforceable, the Court has the authority to pare back the noncompetition provision to render it reasonable. See MCL 445.774a(1). Here, at least at this early stage of the case, the Court shall issue a TRO, but the Court shall limit its restrictions by simply prohibiting the defendants from offering hair-styling services to clients they serviced for Tanaz. If Tanaz wants broader injunctive relief, it must support its request at a contested hearing.

At the threshold, the Court seriously considered denying Plaintiff Tanaz's request for an *ex parte* TRO. Our adversarial system is premised upon the notion that each side is entitled to be heard before a Court affords relief. Here, Tanaz has asked the Court to remove both defendants from their jobs without so much as a chance to be heard. The due-process concerns raised by such an outcome counsel against granting the drastic relief sought by Tanaz without the benefit of a contested hearing. Indeed, to say that Tanaz has barely satisfied the requirements for *ex parte* relief prescribed by MCR 3.310(B)(1)(b) is an understatement. Nevertheless, the contracts between the defendants and Tanaz include language that makes clear that injunctive relief may very well flow from the specific types of breaches at issue in this case. Moreover, Tanaz sent cease-and-desist letters to the defendants as a prelude to this litigation. Accordingly, the Court concludes that Tanaz is entitled to consideration of its *ex parte* request for a TRO.

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). Our Court of Appeals has identified four factors to consider in determining whether to grant 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 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.

Id. The Court must also bear in mind that injunctive relief is warranted only if “there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury.” Id. at 614. Here, those four factors govern the Court's analysis of the *ex parte* request for a TRO.

With respect to the likelihood of success on the merits, Plaintiff Tanaz has demonstrated that its contracts with the defendants broadly prohibit both defendants from competing with Tanaz for a two-year period within ten miles of Tanaz's business. Therefore, Tanaz can rely upon a contractual right to be free from the sort of competition it now faces from the defendants. But MCL 445.774a authorizes the Court 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." Here, a broad noncompetition provision is unwarranted because a non-solicitation obligation will protect Tanaz's business interests without unduly restricting the defendants' ability to engage in the basic activity of styling hair. "To be reasonable in relation to an employer's competitive business interest, a restrictive covenant must protect against the employee's gaining some unfair advantage in competition with the employer, but not prohibit the employee from using general knowledge or skill." St Clair Medical, PC v Borgiel, 270 Mich App 260, 266 (2006). Allowing the defendants to style hair for the general public, but not for customers they served at Tanaz, strikes the proper balance under Michigan law.

With respect to the likelihood of irreparable harm, permitting the defendants to freely service (and thereby poach) their customers from Plaintiff Tanaz runs the risk of undermining Tanaz's hair-styling business. Under Michigan law, a "relative deterioration of competitive position does not in itself suffice to establish irreparable injury." Thermatool Corp v Borzym, 227 Mich App 366, 377 (1998). But permitting the defendants to use their customer contacts and relationships to hollow out Tanaz's customer base could cause irreparable harm to Tanaz's hair-styling business. See BellSouth Telecommunications, Inc v MCIMetroAccess Transmission Services, LLC, 425 F3d 964, 970 (11th Cir. 2005) (although "economic losses alone do not justify a preliminary injunction, 'the loss of customers and goodwill is an irreparable injury'").



The remaining two factors – the balance of harms and the potential harm to the public interest – militate in favor of some form of injunctive relief, but not the broad TRO that Plaintiff Tanaz has requested. Reducing the defendants’ broad noncompetition obligation to a modest non-solicitation obligation substantially reduces the likelihood of harm to the defendants by permitting them to keep their jobs with Tricho. Moreover, allowing the defendants to continue to work as hair stylists makes their services available to the general public, but not to the customer base on which Tanaz depends. Therefore, **IT IS ORDERED that Defendants Claire Baysore and Marcus Demoray are hereby prohibited and enjoined from offering or providing hair-styling services to all customers for whom they provided hair-styling services while employed by Plaintiff Tanaz.** Because this TRO has been issued on an *ex parte* basis, it will expire by its own terms within 14 days unless Tanaz asks to extend its terms for an additional 14 days or prevails at an evidentiary hearing to convert the TRO into a preliminary injunction. See MCR 3.310(B)(3). If the defendants wish to challenge this TRO, they simply must move to dissolve the TRO and request a hearing demanding that relief. See MCR 3.310(B)(5).

IT IS SO ORDERED.

Dated: December 3, 2019



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