STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

FMG CONCRETE CUTTING, INC,
Plaintiff,
v.

MANTICORE CONSTUCTION SERVICES, LLC and ARRON INNES.,
Defendants,
_____/

Case No. 20-30866-CB
Hon. Michael P. Hatty

OPINION AND ORDER ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

At a session of the 44th Circuit Court,
held in the City of Howell, Livingston County,
on the 28th day of December, 2021.

THIS MATTER comes before this Court on Plaintiff FMG Concrete Cutting, Inc's Motion for Preliminary Injunction. This Court, having reviewed the Parties' submitted briefs, having heard oral argument from the Parties, having issued findings in both a previous written order and a previous written opinion, and being otherwise fully advised in the premises, GRANTS Plaintiff's Motion for a preliminary injunction as provided herein.

I

Plaintiff is a Brighton, Michigan-based construction services corporation. Defendant Innes was employed by Plaintiff for several months in 1998 and again from May 8, 2002 until February 14, 2020. In 2003, Defendant Innes signed a non-competition and confidentiality agreement ("Agreement") that provided, in pertinent part, that he cannot directly or indirectly compete with Plaintiff for a period of 3 years following the end of his employment with Plaintiff anywhere in "southeastern Michigan, Jackson, Lansing and Midland areas." The Agreement also provided that Defendant Innes cannot use confidential information obtained from Plaintiff. Shortly after Defendant Innes resigned from his position with Plaintiff, he and another former

FMG employee that is not a party to this action organized Defendant Manticore, a Wixom, Michigan-based construction services corporation.

Plaintiff commenced this action, alleging claims of breach of contract, tortious interference, injunctive relief, unjust enrichment, and violations of the Michigan Uniform Trade Secrets Act. Through its instant motion, Plaintiff asserts the contractual breaches of the agreements discussed herein and alleged in its complaint and requests that this Court enjoin both Defendants from such activity. This Court previously considered Plaintiff's motion, together with a motion by Defendants for an evidentiary hearing. By written opinion and order, this Court granted Defendants' motion for an evidentiary hearing and held Plaintiff's instant motion in abeyance pending the outcome of that hearing, to wit:

> This Court finds an ambiguity in the geographical scope of the Agreement because the terms "southeastern Michigan, Jackson, Lansing and Midland areas" are not defined therein and are "equally susceptible to more than a single meaning." *Dancey v Travelers Prop Cas Co*, 288 Mich App 1, 8; 792 NW2d 372 (2010). However, this ambiguity does not make the Agreement unenforceable. Rather, this Court is may "render [the Agreement] reasonable in light of the circumstances in which it was made." MCL 445.774a(1). This Court is unable to perform a proper analysis for the issuance of a preliminary injunction without resolving this ambiguity. Accordingly, this Court finds that an evidentiary hearing is necessary to determine the scope of these three geographical areas, which shall be determined by the intent of the parties and guided by the reasonable business interests FMG seeks to protect. *See Innovation Ventures v Liquid Mfg*, 499 Mich 491, 513; 885 NW2d 861 (2016); *Rory* [*v Continental Ins Co*, 473 Mich 457] at 475 n. 32 [703 NW2d 23 (2005)]; and *Whirlpool Corp* [*Whirlpool Corp v Burns*, 457 F Supp2d 806] at 812 [(WD Mich 2006)]. This Court holds a determination on FMG's underlying motion for preliminary injunction in abeyance until such a determination can be made.

At the aforementioned evidentiary hearing, this Court heard evidence as to the locations throughout the State of Michigan in which Plaintiff conducts business and different sources as to provide a general understanding of the term "southeastern Michigan." At the conclusion of that hearing, this Court found that, for the purposes of the Agreement, the term "southeastern

Michigan" includes the counties of Genesee, Lapeer, Lenawee, Livingston, Macomb, Oakland, St. Clair, Washtenaw, and Wayne; that the "Lansing area" includes the cities of Lansing and East Lansing and the townships of Alaiedon, Delhi, Delta, DeWitt, Lansing, and Meridian; that the "Jackson area" is comprised of the City of Jackson, Michigan; and that the "Midland area" is comprised of the City of Midland, Michigan.

II

An injunction is an extraordinary remedy which should be granted only when justice requires. *Fancy v Egrin*, 177 Mich App 714, 720; 442 NW2d 765 (1989). Four factors must be considered in determining whether to grant injunctive relief: (1) the likelihood that the party requesting 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 will be harmed more by absence of an injunction than the opposing party would be by granting the relief; (4) the harm to public interest if the injunction is issued. *Michigan State Employees Ass'n v Dept of Mental Health*, 421 Mich 152; 365 NW2d 93 (1984).

Demonstrating irreparable harm is an "indispensable requirement" to obtaining a preliminary injunction. *Michigan Coalition of State Employees Unions v Michigan Civil Serv Comm'n*, 465 Mich 212; 634 NW2d 692 (2001). Irreparable harm requires the showing of a non-compensable injury for which there is no legal measure of damages. *Thermatool Corp v Borzyn*, 227 Mich App 366; 575 NW2d 334 (1998). Further, "[a]t the hearing on an order to show cause why a preliminary injunction should not issue, the party seeking injunctive relief has the burden of establishing that a preliminary injunction should be issued whether or not a temporary restraining order has been issued." MCR 3.310(A)(4).

Of these four factors, the most important is the likelihood that the plaintiff will suffer irreparable injury of a nature beyond the power of the court to remedy before a trial on the merits may occur. The showing of irreparable injury must be "particularized." *Lash v City of Traverse City*, 479 Mich 180; 735 NW2d 628 (2007). There must be a real and imminent danger of irreparable injury. *Michigan Council 25, AFSCME v Wayne County*, 136 Mich App 21, 25; 355 NW2d 624 (1984). Speculative or potential injuries do not suffice. *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 11; 753 NW2d 595 (2008). Thus, if trial will take place before any injury is likely to occur, injunctive relief is not appropriate. Nor is equitable relief appropriate if the injury is of such a nature that other adequate relief, normally money damages, is available. Thus, once imminent irreparable injury has been established, the court must balance the other factors. In general, the extent to which a party must demonstrate a likelihood of success varies inversely with the degree of harm the party will suffer absent an injunction. *Roth v Bank of the Commonwealth*, 583 F2d 527, 538 (CA6 1978).

III

Pursuant to the aforementioned prior holdings of this Court, this Court finds that the Agreement between the parties, now with the ambiguity resolved, is reasonably drawn to protect Plaintiff's business interests. *Total Quality, Inc v Fewless*, 332 Mich App 681, 699; 958 NW2d 294 (2020). This Court further finds that the factors outlined above favor granting Plaintiff's motion for a preliminary injunction. **NOW, THEREFORE**:

IT IS HEREBY ORDERED that Plaintiff's Motion for Preliminary Injunction is hereby GRANTED.

IT IS FURTHER ORDERED that Defendant Innes is not to disclose or use Plaintiff's Confidential Information, as that term is defined in the Agreement.

IT IS FURTHER ORDERED that Defendants shall return to Plaintiff all such Confidential Information and any other property belonging to Plaintiff in Defendants' possession.

IT IS FURTHER ORDERED that Defendant Innes is not to violate the non-competition agreement in all respects, including any direct or indirect competitive activity in the Agreement's geographic scope for three years from the date of the termination of his employment with Plaintiff.

IT IS FURTHER ORDERED that relative to the geographic scope of the non-competition agreement discussed in the Agreement, the term "southeastern Michigan" is comprised of the counties of Genesee, Lapeer, Lenawee, Livingston, Macomb, Oakland, St. Clair, Washtenaw, and Wayne; that the "Lansing area" includes the cities of Lansing and East Lansing and the townships of Alaiedon, Delhi, Delta, DeWitt, Lansing, and Meridian; that the "Jackson area" is comprised of the City of Jackson, Michigan; and that the "Midland area" is comprised of the City of Midland, Michigan.

IT IS FURTHER ORDERED that Defendant Manticore is enjoined from inducing breaches of the Agreement by Defendant Innes.

IT IS SO ORDERED.

Michael P. Hatty
Circuit Court Judge