

STATE OF MICHIGAN
SAGINAW COUNTY CIRCUIT COURT
BUSINESS COURT

CHRISTOPHER ROTA,

Plaintiff/Counter-Defendant,

v.

COLORTEC INC,

Defendant/Counter-Plaintiff.

Case No. 22-047568-CB

Judge: M. Randall Jurens (P27637)

**OPINION GRANTING IN PART
DEFENDANT'S MOTION FOR
SUMMARY DISPOSITION AND
DENYING PLAINTIFF'S MOTION
FOR SUMMARY DISPOSITION**

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Having opened a competing business, plaintiff seeks to avoid a noncompetition agreement he signed while previously working for defendant. Unsurprisingly, defendant has counterclaimed to enforce the agreement. With pretrial discovery concluded, the parties have filed competing motions for summary disposition.

For the reasons stated below, the court concludes the noncompetition agreement is enforceable, albeit to a limited extent.

Background

Plaintiff (Colortec) is engaged in the business of vehicle restoration and repair (Defendant's Brief, Ex A, ¶ 4). Although Colortec has a repair facility in Saginaw Township, it primarily provides services through its mobile technicians¹ who travel to auto dealerships and fulfill onsite needs.² While Colortec services dealerships in Michigan, it licenses franchisees to operate in other states.³

Years ago, after receiving Colortec training, Rota briefly operated his own vehicle restoration and repair business in Iowa (Plaintiff's Brief, Ex B, ¶¶ 6-10)⁴.

After moving to Michigan, Rota was hired by Colortec in 2016 to work as a mobile technician in the metro-Detroit area (Plaintiff's Brief, Ex B, ¶ 13; Defendant's Brief, Ex A, ¶ 9). Rota was responsible for developing his own accounts to service on behalf of Colortec (Plaintiffs' Brief, Ex B, ¶ 14).

Colortec eventually promoted Rota to mobile manager for the metro-Detroit area (Defendant's Brief, Ex A, ¶ 9). As area manager, in addition to maintaining his own accounts, Rota was responsible for hiring and training new technicians (Defendant's Brief pp 1-2).

When he hired in, Rota signed a noncompetition agreement (NCA) that provides, in relevant part, that he "will not directly or indirectly engage in the motor vehicle restoration and

¹ According to counsel at oral argument, Colortec's mobile technicians perform relatively modest paint repairs.

² Per counsel at oral argument.

³ Per counsel at oral argument.

⁴ According to Rota, his Iowa business was "unconnected to Color[t]ec" (Plaintiff's Brief, Ex B, ¶ 9). However, according to Colortec's counsel at oral argument, Rota operated in Iowa as Colortec's franchisee. Although notable (and possibly actionable if Rota filed a false affidavit), this discrepancy does not impact the court's decision here.

repair business as conducted by Colortec”⁵ in any state where Colortec is engaged in business for a period beginning August 8, 2016 and ending eighteen months after termination of his employment with Colortec (Defendant’s Brief, Ex A).

In November 2021, Rota voluntarily left Colortec and began his own vehicle restoration and repair business (Plaintiff’s Brief, Ex B, ¶¶ 16-17; Defendant’s Brief, Ex B), and acquired for himself the metro-Detroit customer base he had developed during his tenure with Colortec (Defendant’s Brief, Ex B, ¶ 11).

On June 24, 2022, Rota commenced the present action seeking a declaratory judgment that the NCA was unenforceable and, additionally, requested that Colortec be enjoined from attempting to enforce the NCA. Reciprocally, Colortec filed a counterclaim seeking an injunction to enforce the NCA together with imposition of a constructive trust on Rota’s profits, plus recovery of costs and legal fees assessable under the NCA.

Following opportunity for discovery, Rota and Colortec filed competing motions for summary disposition under MCR 2.116(C)(10), together with supporting briefs and documentary evidence, asserting there is no genuine issue of material fact and that they are each, respectively, entitled to judgment as a matter of law.⁶ Following oral arguments, the court took the matter under advisement.

⁵ As explained by counsel at oral argument, the phrase “as conducted by Colortec” means its business model of performing non-major paint repairs at auto dealerships.

⁶ The competing motions, notably Colortec’s in particular, focus on the NCA’s general enforceability and do not address the counterclaim’s additional requests for imposition of a constructive trust on Rota’s profits or enforcement of the NCA’s provision that Rota pay Colotec’s enforcement costs, including legal fees.

Summary Disposition Standards

Summary disposition under MCR 2.116(C)(10) is appropriate if “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law”. In reviewing such motions, courts consider the pleadings, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the nonmoving party. *Quinto v Cross & Peters*, 451 Mich 358, 362; 547 NW2d 314 (1996). The moving party has the initial burden of supporting its position with documentary evidence. *Id.* This burden may be satisfied by “submitting affirmative evidence that negates an essential element of the nonmoving party's claim, *or* by demonstrating to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim.” *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 7; 890 NW2d 344 (2016) (cleaned up). Once the moving party meets its burden, the burden shifts to the nonmoving party to establish that a genuine issue of disputed fact exists. *Quinto*, 451 Mich at 362. “If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.” *Id.*; MCR 2.116(G)(4).

Discussion

In Michigan, contracts in restraint of trade are generally unlawful, *MCL 445.772*. However, the Legislature has provided an exception for noncompetition agreements between employers and employees, *MCL 445.774a(1)*:

An employer may obtain from an employee an agreement or covenant which protects an employer's reasonable competitive business interests and expressly prohibits an employee from engaging in employment or a line of business after termination of employment if the agreement or covenant is reasonable as to its duration, geographical area, and the type of employment or line of business. * * *

As summarized in *St Clair Medical PC v Borgiel*, 270 Mich 260, 266; 715 NW2d 914 (2006) (citations omitted):

[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. Additionally, a restrictive covenant must be reasonable as between the parties, and it must not be specially injurious to the public.

Because the prohibition on all competition is in restraint of trade, an employer's business interest justifying a restrictive covenant must be greater than merely preventing competition. 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.

The burden of demonstrating the validity of the agreement is on the party seeking enforcement. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 508; 741 NW2d 539 (2007).

Here, Rota argues the NCA goes beyond protecting Colortec's reasonable competitive business interest by precluding all competition and, therefore, is unenforceable as a matter of law (Plaintiff's Brief, pp 4-7).⁷ Conversely, Colortec argues the NCA is enforceable because it reasonably protects against unfair competition by preventing the loss of customers to a departing employee (Defendant's Brief, p 4). As is often the case, the truth here falls somewhere in the middle.

As observed in *St. Clair Medical*⁸, 270 Mich App at 268:

[T]he restrictive covenant was protecting plaintiff's competitive business interest in retaining patients, that it provided plaintiff with time to regain goodwill with its patients, and that it prevented defendant from using patient contacts gained during the course of his employment to unfair advantage in competition with plaintiff. A physician who establishes patient contacts and relationships as the result

⁷ Notably, Rota does not seriously challenge the other components of an enforceable noncompetition agreement but, rather, acknowledges the reasonableness of the NCA's eighteen month tail and, with some hedging, its geographic scope (Plaintiff's Brief, p 6 n 16), and does not meaningfully contest the NCA's reasonableness as to the type of employment or line of business involved.

⁸ In *St Clair Medical*, the defendant, a physician, had a noncompete agreement with his employer that prevented the defendant from engaging in the practice of medicine within seven miles of any of his employer's offices for one year after his employment ended. The Michigan Court of Appeals upheld a grant of summary disposition enforcing the noncompete agreement.

of the goodwill of his employer's medical practice is in a position to unfairly appropriate that goodwill and thus unfairly compete with a former employer upon departure.

While the present case is not in a medical setting, the fundamental principle remains the same: “where an employee establishes unique contacts, relationships, and goodwill through employment, it is reasonable to bar that employee, thorough use of a sound non-compete agreement, from using those accomplishments to the possible detriment of the past employer and for the benefit of a new employer”, *Edward Publication, Inc v Kandsdorf*, unpublished per curiam opinion of the Court of Appeals issued January 20, 2009 (Docket No. 281499)⁹.

Here, however, the NCA casts a longer shadow, wholly prohibiting Rota from “directly or indirectly” engaging in the “motor vehicle restoration and repair business as conducted by

⁹ Although unpublished opinions of the Court of Appeals are not binding precedent, MCR 7.215(C)(1); *In re Application of Indiana Michigan Power Co.*, 275 Mich App 369, 380, 738 NW2d 289 (2007), they may, however, be considered instructive or persuasive. *Paris Meadows, LLC v. Kentwood*, 287 Mich App 136, 145 n 3, 783 NW2d 133 (2010).

In *Kasdorf*, the Court of Appeals observed,

Kasdorf developed and nurtured close and personal relationships with numerous business customers while working for Edwards, learning much about their operations, tendencies, and leanings. The businesses reached a comfort level with Kasdorf that might not be reached, or might take awhile to reach, with another sales rep. By going to work for Bilbey, where Kasdorf's accounts would be with many of those same customers or where those customers would be subject to not-so-cold cold calls, Kasdorf would be gaining and taking an unfair advantage in competition with Edwards after years of acquiring a unique insight into various business operations thanks to her employment with Edwards. The development and cultivation of close relationships with people is undeniably a driving force in the sales profession and generates revenue; the more reliable, liked, and accountable the rep, the more income that is generated. And Kasdorf's relationship with each contact person at a particular business most certainly is unique. While Kasdorf may have acquired general knowledge, skill, or facility in relation to the mechanical functioning of sales, e.g., how to generally approach a customer, sell ad space, take ad requests and materials, and finalize an ad for publication, she also developed goodwill and strong personal relationships that are invariably different from person to person or business to business and cannot be labeled as generally acquired knowledge.

Colortec” (Plaintiff’s Brief, Ex A, ¶¶ 2-3). This serves to insulate Colortec from competition itself and, accordingly, is unreasonably broad. However, this overbreadth does not necessarily void the NCA in its entirety. *Compton v Joseph Lepak, DDS, PC*, 154 Mich App 360, 367-368; 397 NW2d 311 (1986).

Rather than an “all or nothing” proposition, MCL 445.774a(1) authorizes courts to effectively reform offending noncompetition agreements:

* * * To the extent any such agreement or covenant is found to be unreasonable in any respect, a court may 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, the court believes the NCA is unreasonable to the extent it applies to customers with whom Rota had no contact while at Colortec, *Frontier Corp v Telco Comm ’ns Group*, Inc, 965 F Supp 1200, 1209 (SD Ind, 1997)¹⁰. Conversely, the court believes that Colortec should not have to compete to keep or win back its own customers, *Merrill Lynch, Pierce, Fenner & Smith, Inc v Ran*, 67 F Supp 2d 764, 779 (ED Mich, 1999), at least for the duration of time Rota agreed to keep hands off. The court will enforce the NCA and enjoin Rota’s competition accordingly.

Conclusion

Plaintiff seeks to avoid a noncompetition agreement he signed while previously working for defendant. Conversely, defendant seeks to enforce the agreement and enjoin plaintiff’s competition. While both parties agree there is no genuine issue of material fact and judgment should enter as a matter of law, they disagree on who should prevail.

¹⁰ Although not binding on state courts, federal precedent is generally considered highly persuasive when it addresses analogous issues. *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 360 n 5; 597 NW2d 250 (1999).

The court concludes that the noncompetition agreement is enforceable, albeit to a limited extent. Accordingly, the court will grant Colortec's motion for summary disposition in part and deny plaintiff's motion for summary disposition.

The court will sign an Order that comports with this opinion upon presentment in accordance with MCR 2.602(B).

Date: February 3, 2023

/s/ (P27637)
M. Randall Jurrens, Business Court Judge