STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

VESCO OIL CORPORATION,

Plaintiff,

v **Case No. 25-212934-CB**
Hon. Michael Warren

PETER MAURER,

Defendant.

OPINION AND ORDER DENYING
MOTION FOR PRELIMINARY INJUNCTION PURSUANT TO MCR 3.310

At a session of said Court, held in the
County of Oakland, State of Michigan
March 6, 2025

PRESENT: HON. MICHAEL WARREN

OPINION

I
Introduction

Before the Court is a Motion for Preliminary Injunction Pursuant to MCR 3.310 filed on behalf of Vesco Oil Corporation ("Vesco"). Having reviewed the Motion and

Response, presided over oral argument, and the Court otherwise being fully informed in the premises, the Court issues this Opinion and Order.[1]

At stake is whether a preliminary injunction should issue when (1) the public interest does not favor a preliminary injunction in light of the merits and lack of any irreparable harm, (2) Vesco has not demonstrated it is likely to prevail on the merits, (3) Vesco has not demonstrated the harm by denying injunctive relief outweighs the harm if injunctive relief is granted, and (4) Vesco has not demonstrated any harm, let alone irreparable harm? Because the answer is "no," the requested relief is denied.

II
Background

Vesco sells and distributes lubricating fluids, solvents, and chemicals for use in trucks and cars and related facilities, such as car dealers, municipal fleet management facilities, and quick oil change businesses, among others. Defendant Peter Maurer ("Maurer") was employed by Vesco as a sales representative from November 2018 through October 2023. As a condition of his employment, Maurer executed the Vesco Oil Corporation Non-Competition and Confidentiality Agreement (the "Agreement"). The Agreement provides, in part, as follows:

[1] The Court will not consider a Notice of Filing Affidavit filed on March 5, 2025 at 8:45 am, thirty-five minutes before the scheduled motion hearing. Indeed, the filing was not even available for the Court's review prior to oral argument.

2. **Non-Competition**

A. During the Period, Employee shall not, by means of a Prohibited Association engage in the business of Vesco and/or the business of their affiliated or related entities within the states of Michigan, Ohio, Indiana or any other state or province in which Vesco now or hereafter transacts business.

B. During the Period, Employee shall not, by means of a Prohibited Association transact business with any customer, Vendor and/or Business Prospect of Vesco, solicit for purposes of transacting business any customer, Vendor and/or Business Prospect of Vesco or induce any customer, Vendor and/or Business Prospect of Vesco to terminate such association with Vesco for purposes of transacting business elsewhere or becoming associated elsewhere or otherwise attempting to divert any customer, Vendor and/or Business Prospect from Vesco. Employee shall prevent such solicitation to the extent Employee has authority to prevent same and shall otherwise not interfere with the relationship between Vesco and its customers, Vendors and/or Business Prospects. For purposes of this Agreement, the term customer shall mean any individual and/or business entity to whom Vesco has sold product and/or a business entity with whom Vesco has undertaken to enter into a business transaction and/or who has been targeted for purposes of transacting business.

C. During the Period, Employee shall not, by means of a Prohibited Association employ any employee or agent of Vesco, solicit for purposes of employment or association any employee or agent of Vesco, or induce any employee or agent of Vesco to terminate such employment or association for purposes of becoming employed or associated elsewhere, or hire or otherwise engage any employee or agent of Vesco as an employee of a business with whom Employee may be affiliated or permit such hiring to the extent Employee has the authority to prevent same, or otherwise interfere with the relationship between Vesco and its employees and agents. For purposes of this Agreement, an employee or agent shall mean an individual employed or retained by Vesco during the term of Employee's retention and/or who terminates such association with Vesco within a period of six (6) months either prior to or after Employee's termination hereunder.

Maurer terminated his employment in October 2023. Several months after his termination, Maurer sought employment with Rowley Brothers, Inc. d/b/a Rowley's

Wholesale ("Rowley's"), an alleged direct competitor. Rowley's reached out to Vesco to negotiate an amendment to the Agreement on Maurer's behalf.

On June 12, 2024, the Amendment to Vesco Oil Corporation Non-Competition and Confidentiality Agreement (the "Amendment") was executed. The Amendment provides that "[t]he Noncompetition Agreement [] prohibits Maurer from soliciting or transacting any business with any Vesco Oil customer or business prospect in an effort to terminate any association with Vesco Oil for purposes of transacting business elsewhere for a two year period after the separation of his employment from Vesco Oil" and "[w]hile employment with Rowley's as a full time Industrial/Commercial Sales Manager with a territory in the state of Michigan is prohibited by the Noncompetition Agreement, Vesco Oil and Rowley's have engaged in negotiations designed to protect Vesco Oil's legitimate competitive business interests while permitting Maurer to take on the new position at Rowley's." [Amendment, Recital C and Recital F.] Under the Amendment, between October 16, 2024 and October 15, 2025, Maurer is prohibited from "[d]irectly or indirectly contact[ing] former accounts which he solicited or became aware of through Vesco Oil." [Amendment, ¶b(iii).] The Amendment further provides that

> 2. This Amendment modifies the Noncompete Agreement only as to potential breaches that would occur as a result of Maurer's employment with Rowley's. This Amendment shall not be interpreted to change Maurer's obligations described in the Noncompetition Agreement during his engagement with any other person, real or legal, or on his own behalf.
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> 3. Should Maurer breach the terms set forth in paragraph 1 of this Amendment, this Amendment shall automatically be rendered void

and the original Noncompetition Agreement shall be immediately effective against Maurer, including the provisions of that Agreement that would prohibit him from working for Rowley's in any capacity.[2]

4. This Amendment is intended as a partial waiver of Vesco Oil's rights under Section 7 of the Noncompetition Agreement. All other provisions of the Noncompetition Agreement, including the restrictions on the use and disclosure of Confidential Information and the prohibition against solicitation of employees, remain in full force and effect following the execution of this Amendment.

[Amendment, ¶2-¶4.]

Vesco alleges that in January 2025 it discovered that Maurer breached the Amendment by visiting an existing Vesco customer on behalf of Rowley's. In particular, Maurer acknowledges that he left two business cards at the City of Ann Arbor Garage which another Vesco employee observed at the business. Vesco alleges that the City of Ann Arbor Garage is a Vesco customer which Maurer gained knowledge through his employment with Vesco. Maurer claims that Ann Arbor solicits bids for lubricant products using a publicly-posted bidding process and both Vesco and Rowley's are approved bidders. Maurer claims he did not contact anyone at the City of Ann Arbor

[2] Paragraph 4 of the Agreement governs enforcement and provides, in part, that "[a] violation of any of the terms hereof would cause irreparable injury to Vesco, the amount of which may be impossible to estimate or determine and which may not be compensated adequately. Vesco may, at its sole option and in its exclusive discretion, take or exercise any and all remedies and actions available at law or equity, including but not limited to the following rights and remedies, concurrently, consecutively or alternatively. Vesco may file a suit in equity to enforce the terms and provisions hereof by obtaining the issuance of an Ex-Parte Restraining Order to enjoin and prohibit Employee from such breach or threatened breach hereof."

before leaving the business care or after. Vesco demanded that Rowley's terminate Maurer and Rowley's refused.

Vesco now moves for a preliminary injunction "preventing Defendant Peter Maurer from: (1) working for Rowley Brothers, Inc. d/b/a Rowley's Wholesale until the resolution of this lawsuit and at least through June 2026; (2) soliciting any current Vesco customers until the resolution of this lawsuit and at least through June 2026; or (4) [sic] using or disclosing any Vesco trade secrets in his possession." Vesco also seeks "attorneys' fees incurred in enforcing its rights under the Agreement."

III
Vesco Has Not Met Its Burden of Demonstrating that Injunctive Relief Should Be Granted

A
The Law Regarding Injunctive Relief

Under MCR 3.310(A), this Court is vested with the authority to grant a preliminary injunction. The burden is on the party seeking injunctive relief to prove why such relief should be issued. MCR 3.310(A)(4) ("At 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 a preliminary injunction should issue is determined by a four-factor analysis . . . ." *MSEA v Dep't of Mental Health*, 421 Mich 152, 157 (1984). This analysis must address the following factors:

1) Harm to the public interest if an injunction issues;

2) Whether harm to the moving party in the absence of injunctive relief outweighs the harm to the opposing party if a stay is granted;

3) The strength of the moving party's demonstration that the moving party is likely to prevail on the merits; and

4) Demonstration that the applicant will suffer irreparable injury if injunctive relief is not granted.

[*MSEA,* 421 Mich at 157-158.]

In addition, this inquiry "often includes the consideration of whether an adequate legal remedy is available to the applicant." *Id.* at 158. Other considerations to be addressed when considering injunctive relief "are whether it will preserve the status quo so that a final hearing can be held without either party having been injured and whether it will grant one of the parties final relief prior to a hearing on the merits." *Campau v McMath*, 185 Mich App 724, 729 (1990). See also *Thermatool Corp v Borzym*, 227 Mich App 366, 376 (1998).

Moreover, "[t]he general rule is that whenever courts have found a mandatory injunction essential to the preservation of the status quo and a serious inconvenience and loss would result to plaintiff and there would be no great loss to defendant, they will grant it." *Steggles v National Discount Corp,* 326 Mich 44, 50 (1949). See also *Gates v Detroit & Mackinac Railway Co,* 151 Mich 548, 552 (1908); *L & L Concession Co v Goldhar-Zimner Theatre Enterprises, Inc,* 332 Mich 382, 388 (1952), quoting *Steggles*, 326 Mich at 50.

Furthermore, this Court's ruling "must not be arbitrary and must be based on the facts of the particular case." *Thermatool,* 227 Mich App at 376. Generally, the granting of such relief falls within the broad discretion of the court. *Steggles*, 326 Mich at 50 (holding that granting injunctive relief "is largely a matter of discretion of the trial court"); *Campau*, 331 Mich at 729; *Bratton v DAIIE*, 120 Mich App 73, 79 (1982).

A preliminary injunction should not be issued if an adequate legal remedy is available, and the mere apprehension of future injury or damage cannot be the basis for injunctive relief. *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 9 (2008). Economic injuries generally are not sufficient to demonstrate irreparable injury because such injuries typically can be remedied by damages at law. *Alliance for Mentally Ill of Mich v Dep't of Community Health*, 231 Mich App 647, 664 (1998).

B
Application of the Law

1. Harm to the Public Interest.

Under this factor of the analysis, this Court must address whether the public policy of Michigan is furthered or undermined by the granting of the injunctive relief.

Michigan law generally favors enforcing written contracts and agreements. See e.g., Const 1963, art 1, § 10 ("No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted"); MCL 566.132; *Rory v Cont'l Ins Co,* 473 Mich 457, 468 (2005) (internal footnotes and quotation marks omitted) ("A fundamental tenet of our

jurisprudence is that unambiguous contracts are not open to judicial construction and must be enforced as written. Courts enforce contracts according to their unambiguous terms because doing so respects the freedom of individuals freely to arrange their affairs via contract. This Court has previously noted that "[t]he general rule [of contracts] is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts.").[3] There is nothing in this case that would otherwise affect this public policy analysis.

Notwithstanding the foregoing, as revealed below, Michigan public policy and jurisprudence prohibit the issuance of injunctive relief unless there is a risk of irreparable

[3] The *Rory* Court, quoting *Wilkie v Auto–Owners Ins Co*, 469 Mich 41, 51-52 (2003) (internal citations omitted), elaborated:

> This approach, where judges . . . rewrite the contract . . . is contrary to the bedrock principle of American contract law that parties are free to contract as they see fit, and the courts are to enforce the agreement as written absent some highly unusual circumstance such as a contract in violation of law or public policy. This Court has recently discussed, and reinforced, its fidelity to this understanding of contract law in *Terrien v Zwit*, 467 Mich. 56, 71 (2002). The notion, that free men and women may reach agreements regarding their affairs without government interference and that courts will enforce those agreements, is ancient and irrefutable. It draws strength from common-law roots and can be seen in our fundamental charter, the United States Constitution, where government is forbidden from impairing the contracts of citizens, art. I, § 10, cl. 1. Our own state constitutions over the years of statehood have similarly echoed this limitation on government power. It is, in short, an unmistakable and ineradicable part of the legal fabric of our society. Few have expressed the force of this venerable axiom better than the late Professor Arthur Corbin, of Yale Law School, who wrote on this topic in his definitive study of contract law, Corbin on Contracts, as follows:
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> > "One does not have 'liberty of contract' unless organized society both forbears and enforces, forbears to penalize him for making his bargain and enforces it for him after it is made." [15 Corbin, Contracts (Interim ed.), ch. 79, § 1376, p. 17.

harm. The absence of irreparable harm governs this public interest analysis in the instant case, and the public interest favors denying injunctive relief.

2. Balance of Harm.

Under this prong of the analysis, this Court must evaluate whether the harm suffered by the nonmoving party caused by granting the proposed injunctive relief will outweigh the harm suffered by the moving party if the injunctive relief is denied.

In the instant action, Vesco argues that the harm it will suffer if injunctive relief is denied far outweighs the harm Maurer will suffer if injunctive relief is granted because a preliminary injunction would simply require Maurer to comply with the limitations and restrictions in the Agreement that he expressly agreed to uphold. However, Maurer argues that Vesco will suffer no harm if injunctive relief is denied because the Amendment will continue to bind Maurer and he will continue to comply with it. Moreover, Vesco demands that Maurer terminate his employment with Rowley, a clear cut substantial harm. In the end, this factor favors denying injunctive relief.

3. The Merits.

Under this prong of the analysis, the moving party must demonstrate that it is likely to prevail on the merits of a fully litigated action. That is, the moving party must demonstrate a substantial likelihood of success.

Here, Vesco argues that it has a strong likelihood of prevailing on the merits of its claim because Maurer breached his non-compete and non-solicitation obligations under the Agreement by visiting a Vesco customer (that he became aware of through his work with Vesco) to solicit business. Maurer argues that leaving his business card with Ann Arbor Garage, and confirming Rowley's is on the mailing list for soliciting bids, does not violate the non-compete agreement when both Vesco and Rowley's are registered bidders. Mauer further argues that he had no sales relationship with Ann Arbor. In the end, despite a significant showing, Vesco has not met its burden of demonstrating it is more likely to prevail on the merits. Vesco has not shown that the limited nature of Maurer's interaction with Ann Arbor Garage has infringed the Agreement. This factor favors denying injunctive relief.

4. Irreparable Harm.

"[A] particularized showing of irreparable harm is an indispensable requirement to obtain a preliminary injunction." *Pontiac Fire Fighters Union Local 376,* 482 Mich at 9 (quotation marks, citation, and ellipses omitted). Irreparable harm means harm that cannot be remedied by damages. *Thermatool,* 227 Mich App at 377. In other words, "to establish irreparable injury, the moving party must demonstrate a noncompensable injury for which there is no legal measurement of damages or for which damages cannot be determined with a sufficient degree of certainty." *Id.* Moreover, the "[t]he injury must be both certain and great, and it must be actual rather than theoretical." *Id.* Our Supreme Court elaborated in *Michigan Coalition of State Employee Union v Civil Service Comm'n*, 465

Mich 212, 225-226 (2001) (footnote omitted) in the context of injunctive relief sought pursuant to Const 1963, art 11, § 5:

> Thus, it is clear that in 1940 it was beyond dispute in the legal community that a party needed to make a particularized showing of concrete irreparable harm or injury in order to obtain a preliminary injunction. Moreover, there is no basis to conclude that the requirements to secure a preliminary injunction changed in any pertinent way between the adoption of the amendment in 1940 and the adoption of its successor, § 5, in the present Michigan Constitution in 1963, or even up to this day. The requirement of a showing of irreparable harm remains as it did a century ago. In our latest statement on this issue in *Michigan State Employees Ass'n v Dep't of Mental Health*, 421 Mich 152, 157-158 (1984), this Court reiterated the requirement of a showing of irreparable harm as a prerequisite for a preliminary injunction, explaining that it was a requirement for the issuance of a preliminary injunction to demonstrate "that the applicant will suffer irreparable injury if a preliminary injunction is not granted."
>
> Accordingly, we conclude that a particularized showing of irreparable harm was, and still is, as our law is understood, an indispensable requirement to obtain a preliminary injunction. Moreover, the people, in causing the Michigan Constitution to be amended in 1940, evidenced no desire, as they had done with standing, to modify the traditional rules that had pertained with regard to this requirement for a preliminary injunction. Therefore, when considering the request for a preliminary injunction in this matter, the trial court and the Court of Appeals were in error in granting any preliminary injunction without a showing of concrete irreparable harm to the interests of a party before the Court.

Here, Vesco argues it will suffer immediate and irreparable injury if injunctive relief is not granted because Maurer is aiding the business interests of Vesco's competitor by converting the business relationships he formed by virtue of his employment with Vesco. However, Vesco does not allege it has actually suffered any harm and mere apprehension of future injury or damage cannot be the basis for injunctive relief. *Pontiac*

Fire Fighters Union Local 376, 482 Mich at 9. Vesco has not lost any clients, market share or goodwill. Moreover, any harm incurred by the loss of a customer relationship can likely be quantified and compensable with money damages. Any losses Vesco would suffer should be easily traceable to Rowley's and quantifiable. There is no general allegation of defamation or tortious interference. In the end, Vesco has not met its burden of demonstrating irreparable harm,

5. Other Considerations.

None of the other miscellaneous considerations set forth in Michigan jurisprudence favor granting injunctive relief.

In light of the foregoing analysis, under the totality of circumstances, injunctive relief is denied.

ORDER

In light of the foregoing Opinion, the Motion for Preliminary Injunction Pursuant to MCR 3.310 is DENIED.

/s/ Michael Warren

HON. MICHAEL WARREN
CIRCUIT COURT JUDGE