STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

BLUUM OF MINNESOTA, LLC
BLUUM USA, INC.,

Plaintiff,

v.

BEN KEVERN an individual,
CHRIS DAWSON an individual,
JAMIE SPAFFORD an individual,
KIM JONES an individual,
JOHN NISBET an individual,
AVI SYSTEMS INC.,

Defendants,
_____/

Case No. 24-12593-CBB

Hon. Curt A. Benson

OPINION AND ORDER

INTRODUCTION

On April 9, 2025, the court conducted a hearing on plaintiff's motion for a temporary restraining order, order to show cause, and preliminary injunction. At the outset, plaintiff's counsel informed the court that he intended to dismiss without prejudice the action against John Nisbet and Jamie Spafford. The court heard oral argument on the motion and took the matter under advisement.

FACTS

Plaintiffs Bluum of Minnesota, LLC and Bluum USA, Inc. ("Bluum") is an education technology provider serving K-12 schools and school districts. Bluum as an entity evolved into the company it is now through various mergers and acquisitions of alike companies. Defendants Ben Kevern ("Kevern"), Chris Dawson ("Dawson"), Jamie Spafford ("Spafford"), Kim Jones ("Jones"), and John Nisbet ("Nisbet") are all former employees of Bluum (collectively referred to as "individual defendants"). Avi Systems, Inc. ("Avi") is a competitor of Bluum, providing, among other things, educational technology services to K-12 schools and school districts.

As a condition for employment by the plaintiff, or the predecessor companies absorbed by the plaintiff, the individual defendants signed non-compete agreements. These various agreements prohibited the individual defendants from soliciting or servicing Bluum clients for anywhere from 1-2 years, refrain from accepting employment with a Bluum competitor within a 200 mile radius from the office where services where performed, refrain from soliciting Bluum

employees, and maintain the confidentiality of Bluum's trade secrets and confidential information.

At various times, the individual defendants left Bluum and began working for competitor Avi. Plaintiff alleges that the individual defendants violated their non-competition agreements by utilizing Bluum's confidential information and trade secrets and soliciting and servicing Bluum's clients.

Plaintiffs ask the court to issue a preliminary injunction which forces compliance of the terms of the individual non-competition agreements. Specifically, to force the individual defendants to end their employment with Avi and cease communications and solicitation of Bluum clients.

LAW AND ANALYSIS

The Preliminary Injunction Standard

Injunctions sound in equity. *Holland v Miller*, 325 Mich 604, 611; 39 NW2d 87 (1949). As with most equitable doctrines, injunctions come with a lot of precepts. The most familiar of these is as follows: "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." *Senior Accountants, Analysts & Appraisers Ass'n v Detroit*, 218 Mich App 263, 269; 553 NW2d 679 (1996); accord *Davis v City of Detroit Fin Review Team*, 296 Mich App 568, 612; 821 NW2d 896 (2012).

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); *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 9; 753 NW2d 595 (2008).

In *Slis v State of Michigan*, 332 Mich App 312, 336-37; 956 NW2d 569 (2020), the Court of Appeals outlined the four factors a court must consider in determining whether a preliminary injunction should be entered:

> Four factors must be taken into consideration by a court when determining if it should grant the extraordinary remedy of a preliminary injunction to an applicant: (1) whether the applicant has demonstrated that irreparable harm will occur without the issuance of an injunction; (2) whether the applicant is likely to prevail on the merits; (3) whether the harm to the applicant absent an injunction outweighs the harm an injunction would cause to the adverse party; and (4) whether the public interest will be harmed if a preliminary injunction is issued.

"A preliminary injunction should not issue where an adequate legal remedy is available." *Pontiac Fire Fighters Union Local 376*, 482 Mich at 9.

"Other considerations surrounding the issuance of a preliminary injunction 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; 463 NW2d 186 (1990).

The choice of law and forum selection clauses

Chris Dawson's contract was executed on March 22, 2013, between himself and Tiereny Brothers, Inc. Under a choice of law provision, the contract will be governed by the law of whatever state Mr. Dawson resided at the time he signed the contract. Apparently, it is not disputed that Mr. Dawson lived in Michigan on March 22, 2013. Dawson's contract does not have a forum selection clause.

Ben Kevern signed his contract with Tiereny Brothers, Inc. on September 19, 2017. His contract has both a choice of law provision and a forum selection clause. Like Mr. Dawson, Mr. Kevern's contract will be governed by the law of whatever state Mr. Kevern resided at the time he signed the contract. Apparently, it is undisputed that Mr. Kevern resided in Michigan on September 19, 2017. Yet, the forum selection clause provides that "any dispute" arising under the contract will be subject to the "exclusive jurisdiction" of the state or federal courts in Minneapolis, Minnesota.

Finally, Kim Jones electronically signed her contract with Bluum on July 30, 2022. The contract itself states that Ms. Jones will work from a "home office" in Michigan. Her contract has both a choice of law provision and a forum selection clause. It chooses the laws of Arizona to govern the contract. It also provides that "[v]enue of any action brought to enforce or relating to this agreement shall be brought exclusively in the District Court of Maricopa county, Arizona."[1]

Ruling as to Kim Jones

At first glance, Arizona law regarding employee non-compete covenants appears similar to that of Michigan. See generally *Bed Mart, Inc. v. Kelley*, 202 Ariz. 370, 372, 45 P.3d 1219, 1221 (Ct. App. 2002) ("A restrictive covenant is reasonable and enforceable when it protects some legitimate interest of the employer" and does not seek "simply to eliminate competition per se.")

However, determining what Arizona appellate courts deem "unreasonably restrictive of the rights of the employee," *Id.*, how they define Arizona public policy, *Id.*, or—more subtly—what constitutes a "legitimate interest of the employer beyond the mere interest in protecting itself from competition" *Id.*, requires further analysis. Because the plaintiff has neither briefed

[1] Kevern and Jones have filed motions for summary disposition based on the forum selection clauses in their contracts. Those motions will be heard on June 5, 2025. It bears noting that this court has personal jurisdiction over Kevern and Jones. A forum selection clause, while evidence of the parties' intent to forgo personal jurisdiction in Michigan, does not *divest* the court of personal jurisdiction over the defendants. *Turcheck v. Amerifund Fin., Inc.*, 272 Mich. App. 341, 345, 725 N.W.2d 684, 687 (2006). Thus, this court may obligate Kevern and Jones to comply with this order. *Oberlies v. Searchmont Resort, Inc.*, 246 Mich. App. 424, 427, 633 N.W.2d 408, 412 (2001)

Arizona law nor presented any argument addressing it, the Court must deny the request for a preliminary injunction against Kim Jones.

Ruling as to Chris Dawson and Ben Kevern

Michigan law applies to Dawson and Kavern.

Michigan law provides:

> 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. 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.

M.C.L. § 445.774a.

The Michigan Court of Appeals has held that the statute represents a codification of the common-law rule that the enforceability of noncompetition agreements depends on their reasonableness:

> At common law, a covenant not to compete was enforceable if it met four standards established by *Hubbard v. Miller*, 27 Mich. 15, 19, 15 Am Rep 153 (1873). First, the covenant must be for an honest and just purpose. Second, it must be established for the protection of the legitimate interest of the party in whose favor it is imposed. Third, it must be reasonable as between the parties to the contract. Finally, it must not be specially injurious to the public.

St. Clair Med., P.C. v. Borgiel, 270 Mich. App. 260, 266, 715 N.W.2d 914, 918–19 (2006), (Citation omitted), quoting with approval, *Bristol Window & Door, Inc. v. Hoogenstyn*, 250 Mich. App. 478, 485, 650 N.W.2d 670, 673 (2002).

The statute explicitly states that a noncompete contract must be reasonable as to its duration, geographical area, and the type of employment or line of business. These three factors are straightforward. But the part that says that employers may reasonably protect their competitive business interests is a bit more nuanced.

To be clear, prohibiting all competition constitutes a restraint on trade. An employer must demonstrate a legitimate interest beyond merely preventing competition to justify imposing a

noncompete clause. *Id.* To be considered reasonable in relation to an employer's competitive business interests, a restrictive covenant must specifically protect against an employee gaining an unfair advantage in competition, rather than broadly prohibiting the employee from using general knowledge and skills acquired during employment. *Id.; Follmer, Rudzewicz & Co., PC v. Kosco,* 420 Mich. 394, 402–404, 362 N.W.2d 676 (1984). See also, *Radio One, Inc. v. Wooten,* 452 F. Supp. 2d 754, 757 (E.D. Mich. 2006).

In very general terms, Dawson and Kavern's contracts provide in relevant part as follows:

During employment and a specified "Restricted Period" after, the employee:

1. Cannot disclose or use the employer's confidential information for personal benefit or to the employer's detriment.

2. Cannot solicit or attempt to take away the employer's current customers for competing products.

3. Cannot divert or attempt to divert business from current customers.

4. Cannot solicit prospective customers to sell competing products.

5. Cannot work for a competing business in the "Restricted Territory" in a role that uses the employer's confidential information or is substantially similar to their current role.

6. Cannot interfere with the employer's relationships with suppliers or other business partners.

7. Cannot solicit or encourage other employees to seek employment with competitors.

These provisions collectively establish a non-compete, non-disclosure, and non-solicitation agreement.

Both contracts describe the "Restricted Period" as 2 years after termination; the "Restricted Territory" is 200 miles from "Last Base of Operations."

"Last Base of Operations" is any office where the employee performed services for the employer during the two years before his employment ended. Importantly, if the employee primarily works from home (their residence) despite being assigned to an office, then "Last Base of Operations" includes both his residence and the assigned office.

Bluum is likely to prevail on the merits.

Through affidavits and exhibits, Bluum has introduced sufficient evidence that Dawson and Kevern left the company between September and November 2024 and later joined

competitor AVI. Despite having signed non-competition agreements, these individuals allegedly continued working with the same Bluum clients at their new employer, including Holt Public Schools, Dearborn Heights District 7, Mansfield Christian School, Pettisville Schools, and Lake Central School Corp. Bluum discovered this breach when clients mistakenly sent emails to the former employees' old Bluum email addresses. Bluum claims measurable economic damages, supported by data from govspend.com showing that AVI had not conducted significant business with public schools prior to hiring these individuals, but began working with these Bluum clients after their arrival, causing Bluum to lose business.

Bluum has demonstrated that irreparable harm will occur without the issuance of an injunction.

The Court of Appeals has said this about irreparable harm:

> The irreparable-harm factor is considered an indispensable requirement for a preliminary injunction. It requires a particularized showing of irreparable harm. It is well settled that an injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural. The injury is evaluated in light of the totality of the circumstances affecting, and the alternatives available to, the party seeking injunctive relief. Equally important is that a preliminary injunction should not issue where an adequate legal remedy is available.

Michigan AFSCME Council 25 v. Woodhaven-Brownstown Sch. Dist., 293 Mich. App. 143, 149, 809 N.W.2d 444, 448 (2011)(Cleaned up)

In Michigan, loss of good will can constitute irreparable harm. *Johnson v. Michigan Minority Purchasing Council,* 341 Mich. App. 1, 22, 988 N.W.2d 800, 813–14 (2022). The *Slis* Court put it this way:

> Moreover, the Court of Claims was correct that a loss of customer goodwill often amounts to irreparable injury because the damages flowing from such losses are difficult to compute. Whether the loss of customer goodwill amounts to irreparable harm often depends on the significance of the loss to the plaintiff's overall economic well-being.

Slis, supra, at 362, 956 N.W.2d 569, 597 (quotation marks and citation omitted).

The Court, evaluating the alleged injury in light of the totality of circumstances, concludes that Bluum has presented sufficient evidence that its damages cannot be adequately measured or estimated in monetary terms at this juncture. The evidence demonstrates that, if left unchecked, AVI—with the substantial assistance of Dawson and Kevern—will continue to undermine and potentially undersell Bluum. Bluum has convincingly demonstrated that it has cultivated considerable customer goodwill through positive customer experiences, consistent quality and effective communication. Although intangible, this goodwill represents substantial

financial value, as businesses with strong customer relationships typically benefit from repeat business, higher profit margins, and enhanced resilience during economic downturns.

Bluum has substantiated its claim of customer loss to AVI. While the loss of a discrete number of customers might be quantifiable in dollars, future losses of this nature defy precise calculation. When a business suffers erosion of customer goodwill, the consequences extend beyond immediate revenue decline to encompass reputational damage, increased customer acquisition costs, and diminished market value—as loyal customers not only redirect their business elsewhere but potentially dissuade others from engaging with the company. These damages fundamentally differ from conventional economic losses.

Given AVI's documented pattern of successfully soliciting Bluum's customers, the prospect of continued customer diversion is neither speculative nor conjectural. *Niedzialek v. Journeymen Barbers, Hairdressers & Cosmetologists' Int'l Union of America*, 331 Mich. 296, 300, 49 N.W.2d 273 (1951) ("It is the settled policy of this Court under such circumstances to grant to a litigant who is *threatened* with irreparable injury temporary injunctive relief and thereby preserve the original status quo.") (emphasis added). See also, *Stone Age Props. v. 800 Golf Drive LLC*, 511 Mich. 1046, 992 N.W.2d 285 (2023).

The public interest will not be harmed if the court issues a preliminary injunction.

Neither party has identified any critical public interest that would be harmed by the issuance of an injunction in this case. The scope of this injunction will be narrow, affecting only the immediate parties and potentially a limited number of Dawson and Kevern's former customers whom they will be prohibited from soliciting.

The harm to Bluum absent an injunction outweighs the harm the injunction will cause to the defendants.

Preliminary injunctions are equitable remedies that require courts to balance competing interests when addressing alleged violations of non-compete clauses in employment contracts. In such cases, courts must carefully weigh the economic hardship that enforcement would impose on employees, as a strict application of non-compete provisions may severely restrict their ability to earn a living in their field of expertise.

Consequently, rather than compelling employees to cease employment entirely, courts typically craft narrowly tailored injunctions that serve dual purposes: protecting the legitimate business interests of the former employer while minimizing unnecessary impediments to the employees' livelihood. This balanced approach reflects the court's commitment to equitable principles that avoid disproportionate harm to either party.

ORDER

Ben Kevern may continue working for Avi Systems, Inc. Other than Paragraph 5.5, Ben Kevern is restrained from violating any other provision of his September 19, 2017, employment contract with Tiereny Brothers, Inc. By way of example only, Ben Kevern will not contact

"Prospective Customers," (¶1.7) or "Restricted Customers, (¶1.8), or use "Confidential Information", (¶1.1) or "Employer's Property. (¶1.4) in connection with his work for Avi Systems, Inc.

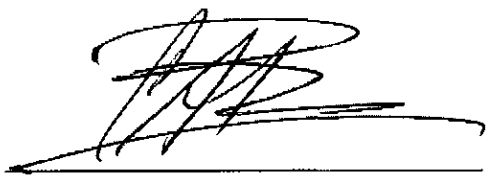
Chris Dawson may continue working for Avi Systems, Inc. Other than Paragraph 5.5, Chris Dawson is restrained from violating any other provision of his March 22, 2013, employment contract with Tiereny Brothers, Inc. By way of example only, Chris Dawson will not contact "Prospective Customers," (¶1.7) or "Restricted Customers, (¶1.8), or use "Confidential Information", (¶1.1) or "Employer's Property. (¶1.4) in connection with his work for Avi Systems, Inc.

The request for a preliminary injunction against Kim Jones is DENIED.

This order will remain in effect until further order of the court.

IT IS ORDERED.

This order does not resolve all pending matters before the court and does not resolve the case.



Dated: April 16, 2025
at Grand Rapids, Michigan.

Honorable Curt A. Benson