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

WELLS FARGO INSURANCE SERVICES, USA, INC., a North Carolina corporation,

Plaintiff,

vs.

RAYMOND A. DEWEY, a Michigan resident; and WILLIS OF MICHIGAN, a Michigan corporation,

Defendants.
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Case No. 13-10338-CKB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER GRANTING PRELIMINARY INJUNCTION

By all accounts, Defendant Raymond Dewey has valuable knowledge and connections in the employee-benefits field. For many years, Dewey was an employee and owner of Universal Insurance Services, Inc. ("UIS"). In 2007, Dewey and the other UIS principals entered into a stock-purchase agreement with Plaintiff Wells Fargo Insurance Services, USA, Inc. ("Wells Fargo"), and he began working for Wells Fargo under an employment agreement that contained clear noncompetition and non-solicitation obligations. Then, in November 2013, Dewey joined Defendant Willis of Michigan ("Willis") – a competitor of Wells Fargo – and continued his work in the employee-benefits field. Before any Wells Fargo clients migrated to Willis, Wells Fargo filed this action against Dewey and Willis seeking damages and injunctive relief to prevent Dewey from competing against Wells Fargo. Based upon the evidence adduced at a two-day evidentiary hearing, the Court finds that a stringent injunction must be entered to protect Wells Fargo against impermissible competition from Dewey and his new employer, Willis.

I. Factual Background

Defendant Dewey has a wealth of experience providing employee-benefits services.[1] Dewey worked for many years as a sales executive at UIS. See Hearing Tr (1/29/14) at 31. In that capacity, he developed personal relationships with clients, see id. at 33, and sought potential clients through "a variety of sources, both internal and external." Id. at 34. Over a period of more than a decade, Dewey accumulated stock in UIS amounting to three to four percent of the company. Id. at 35. On June 20, 2007, Dewey and his fellow principals at UIS entered into a stock-purchase agreement with Plaintiff Wells Fargo. See Hearing Exhibit 5. Specifically, Dewey sold all of his UIS stock to Wells Fargo for approximately $750,000, see Hearing Tr (1/29/14) at 41, and thereafter worked for Wells Fargo as an employee-benefits sales executive under an employment contract entitled "Employment, Trade Secrets, Non-Solicitation and Non-Competition Agreement." See Hearing Exhibit 6.

Beginning in early 2013, Defendant Willis reached out to Defendant Dewey in an effort to recruit him to join Willis. See Hearing Tr (1/29/14) at 23. That initial inquiry evolved into a more serious discussion of employment in the late summer of 2013, see id. at 24, and ultimately ripened into a firm job offer and acceptance on October 9, 2013. See Hearing Exhibit 1. Dewey received a signing bonus from Willis and a guarantee of compensation in the form of a generous salary, see id., so Dewey left Plaintiff Wells Fargo on October 24, 2013, see Hearing Tr (1/29/14) at 51, and he formally started working for Willis on November 1, 2013. See id. at 8. Ever since then, Dewey has remained a sales executive handling employee benefits for Willis, id. at 8, 32, which competes with Wells Fargo in the insurance industry. See id. at 54.

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[1] Defendant Dewey testified that "[e]mployee benefits is an area that ranges everything from life, medical, dental, disability," and similar forms of insurance. See Hearing Tr (1/29/14) at 32.

On October 29, 2013, before Defendant Dewey even started his job with Defendant Willis, Plaintiff Wells Fargo filed this case alleging breach of contract by Dewey, misappropriation of trade secrets by Dewey and Willis, tortious interference with existing Wells Fargo business relationships and expectancies, tortious interference by Willis with Dewey's employment contract, and two forms of conversion. The parties' commercial disagreement was exacerbated when three of Dewey's Wells Fargo clients moved their insurance business to Willis. See Hearing Tr (1/29/14) at 26-28. Thus, on November 26, 2013, Wells Fargo filed a motion for a preliminary injunction. The parties came before the Court for an evidentiary hearing on January 29, 2014, but then fell silent for two and a half months while they apparently attempted to work out their differences. When those efforts failed, the parties returned to complete the evidentiary hearing on April 14, 2014. Accordingly, the Court must now determine whether Wells Fargo is entitled to injunctive relief.

II. Legal Analysis

In requesting an injunctive order, Plaintiff Wells Fargo bears "the burden of establishing that a preliminary injunction should be issued[.]" See MCR 3.310(A)(4). 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 a preliminary injunction." Id. Those four factors are as follows:

> (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.

Davis, 296 Mich App at 613. In analyzing these four considerations, the Court must bear in mind that injunctive relief is only appropriate if "there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury." Id. at 614.

A. Likelihood of Success on the Merits.

In assessing Plaintiff Wells Fargo's likelihood of success on the merits, the Court shall focus primarily upon the claims that Defendant Dewey breached his Wells Fargo employment contract and that Defendant Willis tortiously interfered with Wells Fargo's business relationships and Dewey's employment contract.[2] Dewey's breach of his employment agreement seems manifest, but success on the tortious-interference claims against Willis seems less certain. The Court shall address the lead claims against each of the defendants in turn.

The noncompetition provision in Defendant Dewey's employment agreement with Plaintiff Wells Fargo is both sweeping and unambiguous. See Hearing Exhibit 6, § 6. It not only bears the heading "**Non-Competition**," see id., but also flatly prohibits Dewey from, *inter alia*, "engag[ing] in competition with Wells Fargo in the business of offering commercial, personal or group benefits insurance . . . within the states of Michigan, Indiana, or Ohio" and "aid[ing] or assist[ing] any person or company in engaging in, developing, or entering into the Restricted Business within the states of Michigan, Indiana, or Ohio" for one year following his voluntary departure from Wells Fargo. See

[2] The parties' competing presentations at the hearing did not include substantial discussion of confidential information, so the Court cannot make any informed decision at this juncture about the strength of Plaintiff Wells Fargo's claim for misappropriation of trade secrets or its related claims that the defendants converted Wells Fargo's confidential information. Indeed, most of the testimony concerning confidential information came in the form of Defendant Dewey's assertions that he took no documents, electronic materials or devices, or other confidential information when he left Wells Fargo. Dewey's former supervisor at Wells Fargo, William Rothwell, essentially confirmed every detail of Dewey's testimony on that point. See Hearing Tr (1/29/14) at 87-90.

id., § 6(a) & (b). Beyond that, Dewey's employment agreement clearly states that, for one year after his "voluntary resignation" from Wells Fargo, he cannot "in any manner become, act or serve as an employee, consultant, contractor, director, officer, or advisor, to any person or company engaging in the Restricted Business within Michigan, Indiana, or Ohio." See id., § 6(e). When read together, these restrictions obviously preclude Dewey from doing exactly what he has chosen to do, *i.e.*, work for a competitor of Wells Fargo in the insurance industry within one year of his voluntary resignation from Wells Fargo in the geographic area that encompasses Michigan, Indiana, and Ohio.

Defendant Dewey cannot argue that the non-competition clause in his employment contract should be invalidated. "Agreements not to compete are permissible under Michigan law as long as they are reasonable." Thermatool Corp v Borzym, 227 Mich App 366, 372 (1998); see also MCL 445.774a(1). Moreover, noncompetition agreements should enjoy special solicitude when they result from a bargain in which the restricted party receives substantial compensation for selling its business interest to the restricting party. Dewey obtained approximately $750,000 and a job from Plaintiff Wells Fargo in exchange for his small stake in UIS, which Wells Fargo bought. Finally, our Court of Appeals has routinely invoked noncompetition agreements to prohibit employees from exploiting their good will by taking clients from their former employer to their new employer. E.g., Rooyakker & Sitz, PLLC v Plante & Moran, 276 Mich App 146, 158 (2007); St Clair Medical, PC v Borgiel, 270 Mich App 260, 266 (2006). Here, three Wells Fargo clients have transferred their business to Dewey's new employer, Willis, in the wake of Dewey's transition from Wells Fargo to Willis. See Hearing Tr (1/29/14) at 26. Under these circumstances, the Court readily concludes that Wells Fargo has shown a likelihood of success on the merits with respect to its claim against Dewey for breach of the noncompetition clause in his employment agreement.

Plaintiff Wells Fargo's most promising claims against Defendant Willis concern the alleged tortious interference with Wells Fargo's employment contract with Defendant Dewey as well as its business relationships with its clients. To prevail on its claim of tortious interference with a contract, which "is an intentional tort[,]" Wells Fargo must establish that Willis engaged in the "'intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law . . . .'" Knight Enterprises, Inc v RPF Oil Co, 299 Mich App 275, 280 (2013). Similarly, to support a claim for tortious interference with a business relationship, Wells Fargo must demonstrate that Willis "'did something illegal, unethical or fraudulent.'" Dalley v Dykema Gossett PLLC, 287 Mich App 296, 324 (2010). To be sure, Willis reviewed Dewey's noncompetition obligations before extending an offer of employment to him.[3] See Hearing Tr (1/29/14) at 51-52, 110. Consequently, the Court can conclude that Willis simply chose to disregard Dewey's contractual commitment to Wells Fargo by offering Dewey a job that flatly violated his noncompetition obligation, but the Court must strain to characterize the actions of Willis as the "'intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law[.]" See Knight Enterprises, 299 Mich App at 280. Likewise, the Court is hard-pressed to describe Willis's decision to accept three Wells Fargo clients who presumably followed Dewey as "'something illegal, unethical or fraudulent.'" See Dalley, 287 Mich App at 324. Thus, the Court must struggle to find that Wells Fargo has any reasonable chance of succeeding against Willis on its claims of tortious interference either with Dewey's employment contract and with Wells Fargo's business relationships with its clients.

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[3] The Michigan president of Willis, William McCarthy, see id. at 99-100, testified that he "didn't believe that it was an issue" that Dewey had a noncompetition obligation because "[n]obody has those type of restrictive covenants" in the insurance industry and, in any event, Willis was "going to abide by the non-solicitation" requirement imposed upon Dewey. But given the pellucid language of Dewey's noncompetition agrement, the Court can only wonder: "What you talkin' bout, Willis?"

B. Irreparable Harm.

Under settled Michigan law, "a party need[s] to make a particularized showing of concrete irreparable harm or injury in order to obtain a preliminary injunction." Michigan Coalition of State Employee Unions v Civil Service Comm'n, 465 Mich 212, 225 (2001). "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). Moreover, "relative deterioration of competitive position does not in itself suffice to establish irreparable injury." Thermatool Corp, 227 Mich App at 377. But in this case, soon after Defendant Dewey moved from Plaintiff Wells Fargo to Defendant Willis, three of Dewey's clients at Wells Fargo migrated to Willis. See Hearing Tr (1/29/14) at 26. This loss of business – coupled with the prospect of significant additional erosion of Wells Fargo's client base – can support a finding of irreparable harm. See Performance Unlimited, Inc v Questar Publishers, Inc, 52 F3d 1373, 1382 (6th Cir 1995).

C. Balance of Harms to the Opposing Parties.

In assessing the relative harm to the opposing parties in the presence or absence of injunctive relief, see Davis, 296 Mich App at 613, the Court takes at face value the testimony of the Michigan president of Defendant Willis that he hired Defendant Dewey for his skills as a producer, rather than for the Wells Fargo clients that Dewey could attract. See Hearing Tr (1/29/14) at 109-111. Because the Michigan president of Willis disclaimed any interest in hiring Dewey in order to attract his client base from Wells Fargo, see id. at 110-111, the Court finds that an injunction forbidding contact with Dewey's Wells Fargo clients will not harm Dewey or Willis. In contrast, Plaintiff Wells Fargo could suffer significant harm if Willis could build its client base at the expense of Wells Fargo.

D. Potential Harm to the Public Interest.

In considering potential harm to the public interest, the Court must take into account the right of Plaintiff Wells Fargo's clients to take their business elsewhere in the wake of Defendant Dewey's departure. Indeed, no insurance firm enjoys a guarantee of agency-client relationships in perpetuity. Accordingly, the Court has no authority to enter any injunctive order that unduly restricts the options of Wells Fargo clients to shop around as they see fit. The Court, however, can restrict the ability of Dewey and, more broadly, Willis to communicate with those clients.[4] Indeed, such a restriction may constitute the only mechanism for protecting the legitimate business interests of Wells Fargo. Thus, the Court must strike an appropriate balance between restricting the defendants' actions and enabling Wells Fargo's clients to pursue their business preferences.

III. Conclusion

The Court's decision to impose a carefully tailored injunction in this case springs from two competing concerns. On one hand, Defendant Dewey's employment with Defendant Willis amounts to a blatant violation of the clear terms of Dewey's employment contract with Plaintiff Wells Fargo. On the other hand, Dewey's move from Wells Fargo to Willis was not unnecessarily brazen. He was forthright with Wells Fargo, he made efforts to minimize the erosion of his Wells Fargo client base, and he furnished his Wells Fargo employment agreement to Willis for careful review before he made the transition from Wells Fargo to Willis. As a result, the Court believes that Dewey will abide by

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[4] Our Supreme Court has long recognized that an individual or entity engaged in a business enterprise with someone bound by a noncompetition obligation can likewise be subjected to such a restriction so long as the business relationship with the restricted person exists. Owens v Hatler, 373 Mich 289, 292 (1964). Thus, as long as Defendant Willis employs Defendant Dewey, Willis can be restrained to the full extent that Dewey's noncompetition agreement allows.

the terms of an injunction, so the Court need not remove Dewey from his job at Willis in order to safeguard Wells Fargo's legitimate business interests. Instead, for all of the reasons set forth in this opinion, **IT IS ORDERED that Defendants Dewey and Willis are prohibited and enjoined from retaining, using, or disclosing any confidential and proprietary information Dewey obtained in his capacity as an employee of Wells Fargo.**[5] **IT IS FURTHER ORDERED that Defendants Dewey and Willis are prohibited and enjoined from initiating contact with any current client of Wells Fargo until October 23, 2014, or further order of the Court, whichever comes first.**

IT IS SO ORDERED.

Dated: June 11, 2014

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

[5] In imposing this obligation, the Court acknowledges that the record thus far is bereft of any evidence that Defendant Dewey has retained or used any confidential information of Wells Fargo. But given the mandate of Dewey's employment agreement on this subject, see Hearing Exhibit 6, § 5, such a requirement is justified in order to protect Wells Fargo's legitimate business interests.