

**STATE OF MICHIGAN**

**IN THE 20<sup>th</sup> CIRCUIT COURT FOR THE COUNTY OF OTTAWA  
SPECIALIZED BUSINESS DOCKET**

414 Washington Street  
Grand Haven, MI 49417  
616-846-8315

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**FASTENAL COMPANY, dba MANSCO,**  
Plaintiff,

v

**KURT PATRICK GROSS and HI-TECH  
FASTENERS, LLC,**  
Defendants.

**OPINION AND ORDER ON  
DEFENDANT'S MOTION FOR  
CLARIFICATION OR  
RECONSIDERATION**

File No. 22-007065-CB  
Hon. Jon A. Van Allsburg

At a session of said Court, held in the Ottawa County  
Courthouse in the City of Grand Haven, Michigan,  
on the 26<sup>th</sup> day of June, 2023:

PRESENT: THE HON. JON A. VAN ALLSBURG, Circuit Judge

On May 8, 2023, this Court issued a preliminary injunction order against defendants Gross and Hi-Tech Fasteners. The injunction was granted pending final judgment in this case and included a clause enjoining defendant Gross from the following:

Continuing to breach the Confidentiality and Noncompetition Agreement by directly or indirectly soliciting, selling to or offering or providing the provision of any similar services or products to any customer whom Gross (or other employees or agents under Gross's supervision) had contact, or for whom Gross (or other employees or agents under Gross's supervision) has performed services during the last two (2) years of his employment at Fastenal;

Defendants now bring a motion asking the Court to clarify whether this term of the injunction was intended to remain in effect until final judgment was reached or until the original expiration date of the Confidentiality and Noncompetition Agreement. The originally contemplated expiration date was one year from the termination of employment. Mr. Gross

terminated his employment with plaintiff Fastenal on June 3, 2022, so the expiration date accordingly was June 3, 2023, which has already passed.

Plaintiff argues that defendants have not properly placed this motion before the Court. While defendants did not present their motion as a motion for reconsideration, the Court has the authority to treat it as such.<sup>1</sup> “As a general matter, courts are permitted to revisit issues they previously decided, even if presented with a motion for reconsideration that offers nothing new to the court.”<sup>2</sup>

Under MCR 2.604(A), an order that does not dispose of all issues in a case does not terminate the action or entitle a party to appeal as of right and “is subject to revision before entry of final judgment adjudicating all the claims and the rights and liabilities of all the parties.” The court rules therefore give the trial court explicit procedural authority to revisit an order while the proceedings are still pending[.]<sup>3</sup>

As the Court’s previous order did not dispose of all issues in the case, the Court will therefore consider defendants’ motion as a motion to reconsider.

Plaintiff and defendants have each cited *Thermatool Corp v Borzym* in support of their respective positions.<sup>4</sup> In *Thermatool*, the Court held that “in appropriate circumstances, the term of a noncompete agreement by be extended beyond its stated expiration date.”<sup>5</sup> The Court has the authority to award specific performance of an agreement “where enforcement of the promise is necessary to avoid injustice.”<sup>6</sup> *Thermatool* is clear that extension of the term of a noncompete agreement is not a matter of right but rather is a remedy to be granted only when circumstances warrant.<sup>7</sup>

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<sup>1</sup> *Hill v City of Warren*, 276 Mich App 299, 307; 740 NW2d 706 (2007).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Thermatool Corp v Borzym*, 227 Mich App 366; 575 NW2d 334 (1998).

<sup>5</sup> *Id.* at 375.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 376.

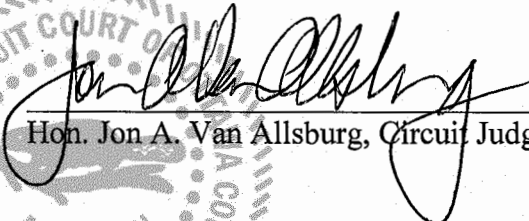
Here, the Court previously found only that the preliminary injunction factors were in plaintiff's favor. The Court did not make a finding that defendant Gross flouted the terms of a noncompete agreement, nor did it find a breach of the agreement consisting of continuous and systematic activity. These were the reasons the Court in *Thermatool* overturned the trial court's extension of that noncompetition agreement. The same reasons prevent this Court from extending the expiration date of this noncompetition agreement. This Court's preliminary injunction issued May 8, 2023, is hereby modified to add the following clarification:

This preliminary injunction does not act to extend any term from the Confidentiality and Noncompetition Agreement set to expire past its originally contemplated expiration date.

*IT IS SO ORDERED.*

This is not a final order and does not close this case.

Date: June 26, 2023



Hon. Jon A. Van Allsburg, Circuit Judge

