STATE OF MICHIGAN

COURT OF APPEALS

LANDSCAPE FORMS, INC,

Plaintiff/Counter-Defendant-Appellant,

UNPUBLISHED
October 25, 2012

v

No. 307116
Kalamazoo Circuit Court
LC No. 2010-000495-CK

WILLIAM QUINLAN,

Defendant/Counter-Plaintiff-Appellee.

Before: MARKEY, P.J., and SHAPIRO and RONAYNE KRAUSE, JJ.

PER CURIAM

Plaintiff/Counter-Defendant-Appellant Landscape Forms, Inc (LFI) appeals by right the trial court's order resolving the parties' cross motions for summary disposition by reforming a contract between the parties and ordering injunctive relief. We reverse and remand.

Defendant/Counter-Plaintiff-Appellee William Quinlan (Quinlan) was formerly an employee of LFI, a closely held corporation. During his employment, he obtained stock in LFI pursuant to an employee compensation plan. The stock purchase agreements by which Quinlan obtained stock[1] all contained noncompetition provisions forbidding LFI shareholders from competing with LFI for a period of five years after ceasing to be a shareholder. Quinlan executed several other documents affirming that he agreed to be bound by these noncompetition provisions and that he agreed they were reasonable. Violation of the noncompetition provisions entitled LFI to injunctive relief and a forced repurchase of its stock at "net book value," which is how all stock transactions were valued. Despite termination of employment also being a contractually specified basis for such a forced repurchase, Quinlan was permitted to retain his stock when his employment with LFI ended, and he became an independent contractor for a time for LFI. He eventually discontinued that status as well, and he now contends that the

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[1] Multiple "stock purchase agreement" contracts were executed, but because they all contain identical or effectively identical provisions, we simply refer to "the stock purchase agreement" for ease of reading.

noncompetition provisions to which he agreed are unenforceable. He and LFI essentially filed cross-claims for declaratory relief.

The trial court issued an opinion and order finding that the noncompetition provisions in the stock purchase agreements were really based on Quinlan's employment but also finding that LFI "has a legitimate concern in which a former high level employee, presently sitting as a shareholder would have access to information which could seriously affect its competitive advantage" and Quinlan's offer simply to not access any confidential information was inadequate. The trial court concluded that the noncompetition agreement should reasonably be three years from the date of Quinlan's last employment, which had already elapsed, and that the parties would be ordered to transfer Quinlan's stock back to LFI immediately at fair market value. The trial court subsequently denied LFI's motion for reconsideration, clarification, or relief from judgment; among other matters, LFI pointed out that all of its stock valuations had always been based on net book value. LFI appealed; Quinlan initially filed a claim of cross-appeal but subsequently withdrew it.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). This Court reviews the trial court's interpretation of a contract de novo as a question of law. *Klapp v United Ins Group Agency*, *Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). If the relevant facts are not in dispute, the reasonableness of a contractual noncompetition provision is a question of law, and this Court reviews it de novo. *Coates v Bastian Brothers*, *Inc*, 276 Mich App 498, 506; 741 NW2d 539 (2007). We review equitable relief granted by a trial court de novo. *Corwin v DaimlerChrysler Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2012) (Docket No. 301931, slip op at p 6).

Noncompetition agreements are in principle enforceable in Michigan, because contracts are generally presumed to be valid and proper, but noncompetition agreements are disfavored as restraints on commerce. *Coates v Bastian Brothers*, *Inc*, 276 Mich App 498, 507; 741 NW2d 539 (2007). At early Michigan common law, noncompetition agreements were considered valid and enforceable if, under the circumstances, they were made for a good faith purpose to protect legitimate interests and were reasonable as between the parties and not harmful to the public. *Bristol Window and Door*, *Inc v Hoogenstyn*, 250 Mich App 478, 486-487; 650 NW2d 670 (2002), citing *Hubbard v Miller*, 27 Mich 15, 19 (1873). For a time, Michigan adopted statutory provisions ostensibly prohibiting noncompetition agreements entirely, but our Supreme Court nevertheless continued to evaluate the enforceability of noncompetition agreements by applying the "rule of reason." *Bristol Window*, 250 Mich App at 489-492. When the Legislature enacted the Michigan Antitrust Reform Act (MARA), MCL 445.771 *et seq* in 1985, it repealed the statutory provisions governing noncompetition agreements. *Bristol Window*, 250 Mich App at 492.

When the MARA was initially enacted, it did not specifically address noncompetition agreements, and it was held therefore to revive and embody the common-law "rule of reason." *Bristol Window*, 250 Mich App at 492-493. The Legislature subsequently enacted MCL 455.774a, which explicitly permitted reasonable noncompetition agreements between employers and employees, and further empowers courts to "limit [an] agreement to render it reasonable in light of the circumstances in which it was made and specifically enforce the agreement as

limited." This Court has explained that the enactment of the MARA revived the old common-law "rule of reason" as to noncompetition agreements generally and that the enactment of MCL 455.774a did not change that revival or have the effect of prohibiting noncompetition agreements between any entities other than employers and employees. *Bristol Window*, 250 Mich App at 494-496. Consequently, whether the instant noncompetition provision is construed as between an employer and an employee, or between an employer and either a shareholder or an independent contractor, its validity turns on its reasonableness.

The party seeking to enforce a noncompetition provision has the burden of establishing its reasonableness. *Coates*, 276 Mich App at 508. At common law, a noncompetition agreement will be found valid "if, considered with reference to the situation, business and objects of the parties, and in light of all the surrounding circumstances with reference to which the contract was made, the restraint contracted for appears to have been for a just and honest purpose, for the protection of the legitimate interests of the party in whose favor it is imposed, reasonable as between them and not specifically injurious to the public." *Hubbard*, 27 Mich at 19. An employer-employee noncompetition agreement must additionally be specifically "reasonable as to its duration, geographical area, and the type of employment or line of business . . . in light of the circumstances in which it was made." MCL 445.774a(1). Both of these standards look to the circumstances *surrounding the creation and execution of the agreement*, so Quinlan's arguments pertaining to whether he actually ever came into contact with confidential information, or otherwise pertaining to how events actually unfolded, are inapposite.

Because Quinlan has not cross-appealed, he is limited to the issues raised by LFI and may not obtain a more favorable judgment. *Middlebrooks v Wayne Co*, 446 Mich 151, 166 n 41; 521 NW2d 774 (1994). The trial court found that LFI had a legitimate and good-faith interest in protecting its competitive advantage by preventing "a former high level employee, presently sitting as shareholder" from making use of even theoretically available information. We deem this finding therefore established that the noncompete agreement was made "for a just and honest purpose, for the protection of the legitimate interests of" LFI, but in any event, we agree with it. We cannot imagine any reason why the noncompetition agreement at issue would be "injurious to the public," nor do the parties suggest any.

However, we disagree with the trial court's finding that the noncompetition provisions were employer-employee agreements and therefore specifically governed by MCL 455.774a. The trial court correctly observed that Quinlan originally became a stockholder because of his employment and could not, in fact, have become a stockholder in any other way. However, the stock purchase agreements all state that they are made between the company and the shareholders. The plain language of the contracts is not ambiguous and must be enforced according to its terms; significantly, a contract *cannot* be generally rewritten to comport with a court's sense of reasonableness. *Rory v Continental Ins Co*, 473 Mich 457, 468-470; 703 NW2d 23 (2005). Courts are explicitly empowered by statute to reform a noncompetition agreement between an employer and an employee to make them reasonable, pursuant to the second sentence of MCL 455.774a. Statutes must also be enforced as written. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159-160; 645 NW2d 643 (2002). Consequently, there is no statutory authority permitting a court to reform a noncompetition agreement between other kinds of parties.

Nevertheless, we conclude that the trial court is permitted to do so at common law in all other kinds of noncompetition agreements. Our Supreme Court explained that "[t]he court has the authority to enter a decree according to the facts so as to make the area of restriction [in a noncompetition agreement] a reasonable one." *Hopkins v Crantz*, 334 Mich 300, 304; 54 NW2d 671 (1952). That statement may have been based on *Hubbard*, in which our Supreme Court noted that the parties had not specified a geographical boundary; and, in light of the legal principle that if an ambiguous contract was susceptible of both a legal and an illegal interpretation, the parties would be presumed to have intended not to violate the law; the Court found the omission not fatal to the agreement's reasonableness and set forth such a limitation. *Hubbard*, 27 Mich at 21-25. However, in a more recent case pre-dating the enactment of MCL 455.774a, and therefore at common law, our Supreme Court relied on both *Hopkins* and *Hubbard* to hold that courts may also make other kinds of changes to noncompetition agreements to make them reasonable. *Follmer*, *Rudzewicz & Co*, *PC v Kosco*, 420 Mich 394, 409; 362 NW2d 676 (1984).[2]

Consequently, even though the noncompetition provision here was not between an employer and an employee, the trial court was empowered to reform it to be reasonable and enforce it as modified.

However, we conclude that the trial court's ruling went beyond mere modification of the noncompetition provision and is itself unreasonable and contrary to the purpose of the noncompetition agreement at issue here. First, the trial court changed the noncompetition duration from five years after ceasing to be a shareholder to three years after ceasing to be employed by LFI.[3] This completely undermined the purpose of the noncompetition provision to protect LFI from abuse of information available to *shareholders*, at least until such time as that information becomes stale. The noncompetition duration, if any duration at all is deemed reasonable, therefore *must* begin running at the time Quinlan *ceases to be a shareholder*, not when he ceases to be an employee or when he ceases to be an independent contractor.[4] Although neither party contests the number of years, we do not believe that portion of the revision to be separable from the date upon which the trial court determined the noncompetition period to commence. We therefore reverse the trial court's grant of relief to the extent of its modification of the noncompetition provision, and we direct on remand that the trial court evaluate the reasonableness thereof based on when Quinlan ceases to be a shareholder.

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[2] We note further that although a majority of the members of the Legislature at the time apparently disagreed, objections were raised to the passage of MCL 455.774a that the statute would be unnecessary. House Legislative Analysis, HB 4072, December 18, 1987.

[3] The trial court did not analyze the geographic scope or the scope of work covered in the noncompetition agreement, finding them moot. We decline to consider any argument pertaining to those aspects of the noncompetition agreement on appeal, and we hold that the trial court is not precluded from reconsidering them on remand.

[4] The trial court additionally erred when it apparently deemed Quinlan's independent contractorship to be "employment" by LFI.

We are also concerned by the additional relief the trial court ordered in the form of an immediate repurchase by LFI of Quinlan's shares at fair market value. We do not know by what authority the trial court ordered this relief, and although neither party specifically asks for it to be reversed in its entirety, both parties agree that neither of them had requested any such relief and at no relevant time did Quinlan actually violate the noncompetition agreement. The stock purchase agreements provide, at most, three grounds for a forced repurchase; because Quinlan had been permitted to retain his shares after he ceased to be an employee and has not yet died, the only remaining basis for a forced repurchase by LFI of his shares would be a violation of the noncompetition agreement. It is, again, undisputed that Quinlan did not actually violate the noncompetition agreement at any relevant time. The trial court did not assert that it was exercising its equitable jurisdiction, and there is no way to construe the forced repurchase as any kind of revision to the noncompetition provision. Rather, the trial court appeared to believe that such relief was actually required.

Likewise, there is simply no contractual basis for ordering the repurchase to be at fair market value. LFI correctly points out that all stock transactions conducted by the company appear to have been based on net book value. The stock purchase agreements all specify net book value as the price to be paid when LFI repurchases shares. The trial court stated in its order that a repurchase at fair market value had been the parties' agreement, but this assertion is simply mistaken. This remedy is simply not required by any of the parties' contracts, and it appears to not even be *permitted* by any of the parties' contracts. Therefore, it was erroneous to the extent the trial court ordered it in the belief that it must or that it was based on the contracts.

The trial court might have exercised its equitable powers and made this finding however, it did not cite any authority for doing so, and the parties likewise do not cite any authority for it either.[5] The trial court's power to reform the terms of a noncompete agreement, either by statute or at common law, does *not* by itself extend to crafting equitable relief. Michigan Court Rule 2.605(F) only establishes that a trial court in a declaratory judgment action is not precluded from awarding relief beyond only declaratory relief. See *Durant v State*, 456 Mich 175, 208-210; 566 NW2d 272 (1997). MCR 2.605(F) would have required the court to afford the parties reasonable notice and a hearing, see *id.*, which it did not do. Although the parties either urge us to uphold or at least do not contest discrete portions of the trial court's remedy, however this may not be reviewed piece by piece and must be reviewed as a whole.

The lower court register of actions does not reflect any order staying the effect of the trial court's order, but the parties explained at oral argument that they agreed to an informal stay pending this appeal. We hold that any repurchase by LFI of Quinlan's shares must be at net book value rather than fair market value, and any term of noncompetition must run from the date Quinlan ceases to be a shareholder of LFI rather than the date he ceased to have any employment relationship with LFI.

[5] Again, such authority might exist, but we decline to conduct our own independent search for it. See *Peterson Novelties Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

In sum, we hold that the trial court did not have authority (a) to initiate the non-competition period from the end of defendant's employment; (b) to order an immediate sale of shares; or (c) to alter the share price from net book value;. With those limitations, we remand the case to the trial court to make modifications to the scope and duration of non-competition provision as necessary to render it reasonable. We do not retain jurisdiction. LFI, being the prevailing party, may tax cost.

/s/ Jane E. Markey
/s/ Douglas B. Shapiro
/s/ Amy Ronayne Krause