

STATE OF MICHIGAN

**IN THE 20TH CIRCUIT COURT FOR THE COUNTY OF OTTAWA
SPECIALIZED BUSINESS DOCKET**

414 Washington Street
Grand Haven, Michigan 49417
(616) 846-8320

DRG GILL, LLC, a Michigan limited
liability company, d/b/a Gill Staffing,
Plaintiff,

v

JADE FREEMAN, an individual,
Defendant.

OPINION AND ORDER
ON MOTION FOR
PRELIMINARY INJUNCTION

Case No. 18-5463-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 10th day of September, 2018
PRESENT: HON. JON A. VAN ALLSBURG, CIRCUIT JUDGE

Plaintiff DRG Gill, LLC, d/b/a Gill Staffing (Gill Staffing) brings a motion for a temporary restraining order and a preliminary injunction. Gill Staffing's motion is granted in part and denied in part.

FACTUAL BACKGROUND

Gill Staffing, which is located in Holland, Michigan, is engaged in the business of providing staffing services. In May 2017, Gill Staffing hired defendant Jade Freeman as a receptionist. The parties executed a written employment agreement. Pursuant to this agreement, Ms. Freeman agreed that during her employment with Gill Staffing and for a period of one year thereafter, she would not compete against Gill Staffing, solicit any of Gill Staffing's customers or prospective customers, or associate for business purposes with any person or organization engaged in the personnel services industry if that person or organization had a business premises located within 30 miles of Gill Staffing. In addition, Ms. Freeman agreed not to disclose or otherwise make use of Gill Staffing's confidential information and trade secrets. In October 2017, Ms. Freeman resigned from Gill Staffing and accepted a position with OnStaff USA

SEP 10 2018

(OnStaff). OnStaff, which is located in Holland, is a direct competitor of Gill Staffing. Gill Staffing responded by filing the instant action¹ and by filing a motion for a temporary restraining order and a preliminary injunction. Following a hearing on September 4, 2018, this Court issued a TRO ordering Ms. Freeman to (1) refrain from, and/or cease disclosing or using, any of Gill Staffing's confidential information or customer information and (2) return to Gill Staffing all property of Gill Staffing presently in her possession.

LEGAL ANALYSIS

1. Standard of Review

The party seeking the issuance of a preliminary injunction bears the burden of proof. MCR 3.305(A)(4); *Detroit Fire Fighters Ass'n, IAAF Local 344 v City of Detroit*, 482 Mich 18, 34; 753 NW2d 579 (2008). "The object of a preliminary injunction is to maintain the status quo pending a final hearing regarding the parties' rights." *Michigan AFSCME Council 25 v Woodhaven-Brownstown School District*, 293 Mich App 143, 145; 809 NW2d 444 (2011). "[A]n injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural." *Michigan AFSCME*, 293 Mich App at 149.

In *State Employees' Association v Department of Mental Health*, 421 Mich 152, 157-158; 365 NW2d 93 (1984), the Michigan Supreme Court set forth a four-factor test for determining whether or not a preliminary injunction should issue: (1) the harm to the public interest if an injunction issues; (2) whether the harm to the applicant if a preliminary injunction is not issued outweighs the harm to the opposing party if a preliminary injunction is issued; (3) the strength of the applicant's demonstration that the applicant is likely to prevail on the merits; and (4) a demonstration that the applicant will suffer irreparable injury if a preliminary injunction is not issued, including consideration of whether or not an adequate remedy at law is available to the applicant.

The presence or absence of irreparable injury "is evaluated in light of the totality of the circumstances affecting, and the alternatives available to, the party seeking injunctive relief." *Michigan AFSCME*, 293 Mich App at 149. The moving party must make a "particularized

¹ The action is pled in two counts: count I, breach of contract, and count II, violation of the Michigan Uniform Trade Secrets Act, MCL 445.1901 *et seq* (MUTSA).

showing” of irreparable injury. *Id.* “[A] preliminary injunction should not issue where an adequate legal remedy is available.” *Id.* Granting a preliminary injunction to remedy economic injuries is unnecessary and inappropriate if the injuries can be remedied by damages at law. *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 10; 753 NW2d 595 (2008).

“A breach of contract, by itself, does not establish that a party will suffer an irreparable injury.” *Thermatool Corp v Borzym*, 227 Mich App 366, 377; 575 NW2d 334 (1998). “In order 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.* “The injury must be both certain and great, and it must be actual rather than theoretical.” *Id.* (citation omitted). “Economic injuries are not irreparable because they can be remedied by damages at law.” *Id.* “A relative deterioration of competitive position does not in itself suffice to establish irreparable injury.” *Id.* (citation omitted).

2. Discussion

a. Factor (1): Harm to the Public Interest

In *Merrill Lynch, Pierce, Fenner & Smith, Inc v Ran*, 67 F Supp 2d 764 (ED Mich, 1999), the United States District Court observed that the public has an important interest in the enforcement of contracts because if contracts are not enforced by a court, the court will be undermining the legitimate business expectations not only of the parties, but also of all contracting parties. “It is the knowledge that valid and enforceable contractual agreements will be enforced in courts of competent jurisdiction which allows our competitive marketplace to thrive.” *Merrill Lynch*, 67 F Supp 2d at 781. “Without such a rule of law, parties could not rely on contracts to conduct their affairs.” *Id.*

The Eastern District failed to cite any Michigan authority in support of these broad principles. Despite the lack of citation to Michigan authority, this Court will assume without deciding that the Eastern District’s pronouncements regarding the sanctity of contract accurately reflect common sense and Michigan public policy. The Court finds that factor (1) weighs in favor of the issuance of a preliminary injunction.

b. Factor (2): Balance of Harm

At the hearing, Ms. Freeman, who is a single mother, testified that she would be unable to support herself and her child if a preliminary injunction were to issue.² Gill Staffing argued that Ms. Freeman would easily be able to find other employment if the Court were to order that she cease working for OnStaff. However, Gill Staffing failed to support this argument with testimony or other evidence. Gill Staffing's marketing manager, Jennifer Reeves, testified that while Gill Staffing had lost customers, she had no evidence that Ms. Freeman's actions were the cause of this. Ms. Reeves further testified that while Ms. Freeman had had access to Gill Staffing's confidential information and could have accessed sensitive pricing information located in Gill Staffing's database, Ms. Reeves had no reason to believe that Ms. Freeman had in fact done so. The Court finds that factor (2) weighs against the issuance of a preliminary injunction.

c. Factor (3): Likelihood that Plaintiff will Prevail on the Merits

Ms. Freeman candidly admitted at the hearing that she had breached the employment agreement.³ The Court finds that factor (3) weighs in favor of the issuance of a preliminary injunction.

d. Factor (4): Irreparable Injury

Gill Staffing offered little evidence of injury. As previously stated, Ms. Reeves testified that she had no evidence that Ms. Freeman's admitted breach of the employment agreement caused Gill Staffing to lose customers or otherwise suffer injury or damages of any kind.

Gill Staffing argues that the loss of customer goodwill and the loss of fair competition that results from the breach of a non-competition covenant in and of themselves constitute irreparable injury. In support of this proposition, Gill Staffing cites *Basicomputer Corp v Scott*, 973 F2d 507, 511-512 (CA 6, 1992).

The Court finds this argument unavailing for two reasons. First, *Basicomputer* fails to cite any Michigan authority that supports the proposition that under Michigan law, loss of

² Ms. Freeman earned \$13.00 per hour working for plaintiff (an annual income of just over \$27,000).

³ She has been commuting to OnStaff's Otsego, Michigan office since shortly after this litigation began, a distance of approximately 36 miles from Holland, Michigan.

customer goodwill and loss of fair competition constitute irreparable injury.⁴ Indeed, *Basicomputer* is at odds with *Thermatool*⁵ and with *Pontiac Fire Fighters*.⁶ Second, Gill Staffing failed to present any evidence that Gill Staffing had in fact suffered the loss of goodwill or the loss of fair competition as the result of Ms. Freeman's actions.⁷ The Court finds that factor (4) weighs against the issuance of a preliminary injunction.

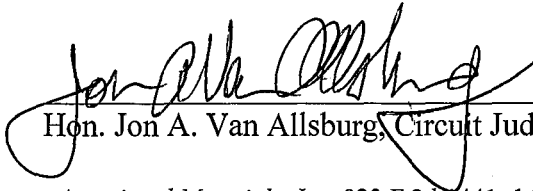
Conclusion

This Court finds that while factors (1) and (3) favor the issuance of a preliminary injunction, factors (2) and (4) disfavor the issuance thereof. Preserving the status quo requires that Ms. Freeman be permitted to continue her employment with OnStaff while this litigation progresses. Gill Staffing has an adequate remedy at law in the form of money damages for breach of contract and for violation of MUTSA.

Gill Staffing's motion for the issuance of a preliminary injunction is granted in part and denied in part. Within seven days of the date of this opinion and order, Gill Staffing shall prepare and submit for the Court's signature a preliminary injunction that incorporates the provisions of the temporary restraining order currently in effect. All additional requests for injunctive relief by Gill Staffing are denied.

IT IS SO ORDERED.

Dated: September 10, 2018


Hon. Jon A. Van Allsburg, Circuit Judge

⁴ *Basicomputer* relies on two federal court decisions, *Ferrero v Associated Materials, Inc.*, 923 F 2d 1441, 1449 (CA 11, 1991), and *Overholt Crop Insurance Service Co v Travis*, 941 F 2d 1361, 1371 (CA 8, 1991).

⁵ "A relative deterioration of competitive position does not in itself suffice to establish irreparable injury." *Thermatool*, 227 Mich App at 377.

⁶ Granting a preliminary injunction to remedy economic injuries is unnecessary and inappropriate if the injuries may be remedied by damages at law. *Pontiac Fire Fighters*, 482 Mich at 10.

⁷ By contrast, in *Basicomputer*, the Sixth Circuit noted: "The record contains ample evidence to support the [federal district] court's findings that the defendants had access to confidential customer information at Basic, that they removed much of this information when they left Basic for Sears, and that they promptly began contacting Basic's customers after arriving at Sears. In addition, the defendants had access to Basic's pricing information and could use that information to underbid Basic. These facts are sufficient to support a finding that Basic would suffer competitive injury and loss of consumer goodwill from the defendant's alleged breach of their covenants." *Basicomputer*, 973 F2d at 512.