

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

MODULAR TRANSPORTATION, INC.,

Plaintiff,

Case No. 21-07379-CBB

vs.

HON. CHRISTOPHER P. YATES

JEREMY INGERSOLL,

Defendant.

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OPINION AND ORDER GRANTING PRELIMINARY INJUNCTION

Plaintiff Modular Transportation, Inc. (“Modular”) – a trucking logistics company that not only operates a freight-brokerage business, but also owns a fleet of trucks that enable it to serve as a direct freight carrier – hired Defendant Jeremy Ingersoll on October 8, 2020, to work as a freight broker. On November 19, 2020, Ingersoll signed a “noncompetition and confidentiality agreement” that flatly prohibited him for one year after his employment with Modular ended from “compet[ing] in any way with the business of” Modular. Embedded in that broad prohibition were restrictions that prevented him from working for a competing company, soliciting Modular’s customers, soliciting Modular’s employees, and selling services competitive with Modular’s offerings. The contract also imposed a sweeping confidentiality requirement upon Ingersoll. On April 30, 2021, Ingersoll chose to leave Modular to work for Fide Freight as a freight broker. When Modular realized that Ingersoll was working for a direct competitor in the freight-brokerage industry, Modular filed this lawsuit and demanded a preliminary injunction. After conducting an evidentiary hearing on October 13, 2021, the Court shall enter a carefully tailored injunction that allows Ingersoll to continue working for Fide Freight, but ties his hands in several important respects.

## I. Factual Background

Almost all of the basic facts are undisputed. Both sides agree that Defendant Ingersoll left Plaintiff Modular to work for Fide Freight as a freight broker. Both sides agree that Ingersoll signed the “noncompetition and confidentiality agreement” that Modular presented to him shortly after he began his tenure with Modular in late 2020, so he remains bound by the restrictions of that contract for one year after his voluntary departure from Modular on April 30, 2021. Both sides agree that in the course of Ingersoll’s work for Fide Freight, he successfully bid on loads for a Modular customer called Heidtman Steel beginning in June 2021. Both sides agree that those successful bids involved transportation lanes that Modular services.<sup>1</sup> Finally, both sides agree that Modular and Fide Freight use third-party aggregator platforms in their capacity as freight brokers to match load requests with available freight haulers. The parties differ, however, in their explanations of third-party aggregator platforms and in their beliefs about whether Ingersoll poses a serious risk to Modular. Specifically, Ingersoll contends that third-party aggregator platforms afford an advantage to asset-based brokerage companies like Modular, which always prevail when seeking loads that mere freight-brokerage firms like Fide Freight also pursue. In contrast, Modular insists that its freight-brokerage business directly competes against Fide Freight without any advantage. Also, although Modular recognizes that Fide Freight constitutes only one of many freight-brokerage competitors, Modular argues that Fide Freight can carve out a large share of Modular’s business because Ingersoll is using confidential information of Modular in bidding on loads at prices slightly below what Modular charges. Thus, the Court must decide whether the threat from Ingersoll is serious enough to justify injunctive relief.

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<sup>1</sup> A “lane” is a specified route, such as the Butler, Indiana, to Dexter, Michigan, run on which loads travel for customers like Heidtman Steel. See Hearing Exhibit 6.

## II. Legal Analysis

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). Because Plaintiff Modular has sought an injunction, it must bear “the burden of establishing that a preliminary injunction should be issued.” See MCR 3.310(A)(4). There are four factors that the Court must consider in determining whether to grant any injunctive relief:

(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 not forget 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 analyzing the likelihood of success on the merits, the Court shall focus exclusively upon Plaintiff Modular’s claim for breach of Defendant Ingersoll’s “noncompetition and confidentiality agreement.” To prevail on its breach-of-contract claim, Modular must “establish by a preponderance of the evidence that (1) there was a contract, (2) [Ingersoll] breached the contract, and (3) the breach resulted in damages to” Modular. Bank of America, NA v First American Title Ins Co, 499 Mich 74, 100 (2016). As an initial matter, Ingersoll’s breach of his noncompetition obligation by working for Modular’s competitor, Fide Freight, within one year of his departure from Modular seems beyond



dispute. Moreover, although the Court can rewrite a noncompetition clause to render it “reasonable,” see MCL 445.774a(1), the Court cannot characterize as unreasonable the noncompetition provision’s one-year duration, see Coates v Bastian Brothers, Inc., 276 Mich App 498, 507 (2007), its geographic range of the ten states where Modular bids on lanes,<sup>2</sup> or the proscribed “type of employment or line of business,” *i.e.*, freight brokerage.<sup>3</sup> See MCL 445.774a(1). Finally, the noncompetition agreement protects Modular’s “reasonable competitive business interests[,]” id., by preventing Ingersoll from using professional connections and confidential information that he acquired during his employment with Modular. Accordingly, the Court concludes that Modular is likely to succeed on the merits of its claim against Ingersoll for breach of contract.

#### B. Irreparable Harm.

Michigan law regards the likelihood of irreparable harm as an indispensable element of any request for injunctive relief. See, e.g., Michigan Coalition of State Employee Unions v Civil Service Comm’n, 465 Mich 212, 225 (2001). Moreover, a “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). Finally, “[a] relative deterioration of competitive position does not in itself suffice to establish irreparable injury.” Thermatool Corp v Borzym, 227 Mich App 366, 377 (1998).

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<sup>2</sup> Because of the nature of freight-brokerage services, which simply involves matching loads with available haulers, freight brokers need not be physically present in a geographic location to bid on “lanes” in that location.

<sup>3</sup> When Plaintiff Ingersoll left his job with Defendant Modular, he falsely told Modular that he was leaving to work for an asset-based trucking company that uses refrigerated vans and trucks operating in the western United States. The significance of that false representation is that Ingersoll understood that he could readily work in the freight-hauling industry as long as he did not provide freight-brokerage services to a direct competitor of Modular. His decision to work for Fide Freight as a freight broker was a conscious choice to disregard his reasonable noncompetition obligation.

Nevertheless, even though “economic losses alone do not justify a preliminary injunction, ‘the loss of customers and goodwill is an irreparable injury.’” See BellSouth Telecommunications, Inc v MCIMetro Access Transmission Services, LLC, 425 F3d 964, 970 (11th Cir 2005).

The Court recognizes that the freight-brokerage industry is teeming with competitors and that each load is a fresh opportunity for every competitor to obtain business. Thus, Defendant Ingersoll can plausibly contend that his work for Fide Freight poses no threat of irreparable harm to Plaintiff Modular, even with respect to its freight-brokerage business. But Ingersoll has already proven to be a thorn in Modular’s side by taking loads from one of Modular’s regular customers, Heidtman Steel, through informed underbidding of Modular’s prices on its regular lanes. To be sure, Ingersoll should present no risk of irreparable harm to Modular if he steers clear of Modular’s customers and abstains from using Modular’s confidential information. Therefore, the Court need not enjoin Ingersoll from working for Fide Freight to prevent irreparable harm.<sup>4</sup> But the Court must impose non-solicitation and non-disclosure obligations to ensure that Modular does not suffer irreparable harm.

### C. Balance of Harms to the Opposing Parties.

In considering injunctive relief, the Court must balance the potential harm to each side in the presence or absence of an injunction. See Davis, 296 Mich at 613. The Court ought not visit acute injury upon Defendant Ingersoll by forcing him from his job at Fide Freight, but enjoining Ingersoll in a less-restrictive manner will not cause injury to him. On the other side of the ledger, the Court’s refusal to provide any injunctive relief to Plaintiff Modular could cause significant harm if Ingersoll

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<sup>4</sup> Our Court of Appeals very recently reminded the trial courts that “a preliminary injunction should only issue to preserve the status quo, not to change it.” Busuito v Barnhill, No 353424, slip op at 9 (Mich App May 27, 2021) (**published** opinion). An injunction that would effectively force Defendant Ingersoll out of his job seems like the antithesis of preserving the status quo.

is permitted to compete against Modular unfettered by any restrictions. Thus, the balance of harms militates in favor of limited injunctive relief.

D. Potential Harm to the Public Interest.

In weighing the potential harm to the public interest that may flow from injunctive relief, the Court sees no significant threat to anyone other than Plaintiff Modular, Defendant Ingersoll, and his new employer, Fide Freight. Moreover, the Court's preliminary injunction will hew carefully to the non-solicitation and confidentiality requirements in the contract signed by Ingersoll, so the restriction will resemble enforceable terms of the parties' contract. Therefore, no public interest outweighs the need for injunctive relief that the record from the evidentiary hearing establishes.

III. Conclusion

For the reasons stated in this opinion, IT IS ORDERED that **Defendant Jeremy Ingersoll shall neither solicit any customers or employees of Plaintiff Modular nor use or disclose any confidential information that he obtained from Modular.** This injunctive order does not prohibit Ingersoll from working as a freight broker for Fide Freight, but if someone acts and conspires with Ingersoll to violate his obligations, "they are equally liable with him to" Modular. Owens v Hatler, 373 Mich 289, 292 (1964); see also MCR 3.310(C)(4). This injunction shall remain in effect until April 30, 2022, or further order of the Court, whichever occurs first.

IT IS SO ORDERED.

Dated: October 21, 2021



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