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

AARON SYMONDS,

Plaintiff/Counter-Defendant,

vs.

LIGHTHOUSE INSURANCE GROUP, INC.,

Defendant/Counter-Plaintiff.
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Case No. 20-03145-CBB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER GRANTING PRELIMINARY INJUNCTION

According to Plaintiff Aaron Symonds, his past employer – Defendant Lighthouse Insurance Group, Inc. ("Lighthouse") – has devolved into the sort of dystopian workplace depicted in the 2019 film called "The Lighthouse." In contrast, Lighthouse characterizes itself as a beacon for those who seek a pleasant place to work as shareholders or employees. But at least one thing is clear: Symonds has violated noncompetition and non-solicitation obligations that he once accepted as a shareholder in Lighthouse. Specifically, Symonds voluntarily left Lighthouse burdened by restrictive covenants in the forms of noncompetition, non-solicitation, and confidentiality obligations, yet he immediately went to work for one of Lighthouse's direct competitors, Collins & Associates ("Collins"). In fact, Symonds's employment terms with Collins anticipated litigation over his restrictive covenants and afforded him monetary protection in the event that those covenants were enforced by a court. As it turns out, Symonds will need that protection because, despite his appeals to equitable principles, the Court is bound as a matter of law to enforce those restrictive covenants largely as written. In doing so, the Court shall issue a preliminary injunction that permits Symonds to remain with Collins, but significantly ties his hands as a participant in the insurance industry.

I. Factual Background

Plaintiff Symonds joined Defendant Lighthouse as an employee in 2005, and eventually he became a shareholder in 2016. When Symonds moved into an ownership role with Lighthouse, he signed a shareholder agreement that included restrictive covenants. See Hearing Exhibit B. Then, in 2018, Symonds signed a revised shareholder agreement, see Hearing Exhibit A, and he voted to approve that agreement. See Hearing Exhibit C. Among the terms in that revised agreement was a comprehensive set of restrictive covenants, see Hearing Exhibit A (Shareholder Agreement, § 12), including a noncompetition provision, a non-solicitation provision, and a confidentiality obligation. See id. Those restrictive covenants form the bases for Lighthouse's request for injunctive relief. In addition, the revised shareholder agreement contains a section entitled "Breach of Covenants," which prescribes the remedies available to Lighthouse in the event of a breach of the restrictive covenants. See id. (Shareholder Agreement, § 13).

On April 24, 2020, Plaintiff Symonds sent a letter to Defendant Lighthouse through e-mail announcing his intent to leave Lighthouse on May 15, 2020. See Hearing Exhibit E. What prompted Symonds to depart is a matter of some contention, but the record leaves no doubt that Symonds had arranged to join Collins as a producer handling property and casualty insurance, see Hearing Exhibit G; see also Hearing Tr (Sept 9, 2020) at 39-40, which was the same role he played as a shareholder at Lighthouse. See Hearing Tr (Sept 9, 2020) at 39-40. Accordingly, Symonds conceded under oath that his work with Collins was a breach of his contractual noncompetition obligation to Lighthouse. See Hearing Tr (Sept 9, 2020) at 23. Beyond that, Symonds acknowledged that he had participated in soliciting several Lighthouse clients after he joined Collins, see id. at 56-59, thereby violating his non-solicitation obligation to Lighthouse. See id. at 56-57.

Almost immediately after Plaintiff Symonds notified Defendant Lighthouse of his intent to leave the company, he filed this action on April 27, 2020, seeking a declaratory judgment stating that the noncompetition obligation imposed by the Lighthouse revised shareholder agreement cannot be enforced because it is unreasonable. On June 18, 2020, Lighthouse responded with a counterclaim accusing Symonds of violating the noncompetition, non-solicitation, and confidentiality obligations imposed by section 12 of the revised shareholder agreement. Then, on August 7, 2020, Lighthouse moved for a preliminary injunction barring Symonds from working for Collins. The Court took up that motion at a three-day evidentiary hearing, and now the Court must decide the motion by relying upon the evidence adduced at the hearing on Lighthouse's motion for a preliminary injunction.

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 Defendant Lighthouse requests injunctive relief, it must bear "the burden of establishing that a preliminary injunction should be issued." MCR 3.310(A)(4). Our Court of Appeals has cited four factors to consider in determining whether to grant a preliminary injunction. Davis, 296 Mich App at 613. 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. Injunctive relief is only appropriate when "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.

Defendant Lighthouse's success on its counterclaim against Plaintiff Symonds for breaching the restrictive covenants in the revised shareholder agreement seems inevitable. Michigan law may authorize the Court to modify the noncompetition obligation in the revised shareholder agreement in order to render it "reasonable as to its duration, geographical area, and the type of employment or line of business," see MCL 445.774a(1), but the noncompetition clause in the revised shareholder agreement strikes the Court as largely reasonable. To be sure, its three-year duration may very well be excessive given the one-year cycle for renewal of insurance contracts, but a length of 18 months would necessarily be reasonable under the circumstances to enable Lighthouse to "regain goodwill" with its clients. See St Clair Medical,, PC v Borgiel, 270 Mich App 260, 268 (2006). Beyond that, the modest geographic restrictions appear eminently reasonable,[1] see Coates v Bastian Brothers, Inc, 276 Mich App 498, 508 (2007) (approving 100-mile radius), and the line of business seems narrowly tailored to simply prevent Symonds from fishing in exactly the same pond as Lighthouse.[2] Indeed, Symonds not only acknowledged that the restrictions in the noncompetition clause were reasonable, see Hearing Tr (Sept 9, 2020) at 21-22, but also unequivocally conceded that he was violating the noncompetition covenant set forth in section 12(A) of the revised shareholder agreement by working for Collins. See id. at 23.

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[1] Section 12(A) of the revised shareholder agreement merely prevents Plaintiff Symonds from competing with Defendant Lighthouse within "(i) thirty miles of any county in which [Lighthouse] maintains an office, and (ii) within ten miles of any zip code in which [Symonds] maintains a book of business that constitutes 5% or more of his . . . entire book of business[.]" See Hearing Exhibit A (Shareholder Agreement, § 12(A)).

[2] Section 12(A)(a) of the revised shareholder agreement defines the term "compete" merely as "engaging in the same or any similar business as" Defendant Lighthouse. See Hearing Exhibit A (Shareholder Agreement, § 12(A)(a)).

Remarkably, Defendant Lighthouse's counterclaim against Plaintiff Symonds for violating his non-solicitation obligation is even stronger than the counterclaim against Symonds for breaching his noncompetition covenant. Unlike a noncompetition provision that can be modified to render it reasonable, see MCL 445.774a(1), a non-solicitation covenant cannot be rewritten by the Court. See Total Quality, Inc v Fewless, No 346409, slip op at 9 (Mich App July 9, 2020) (**published** opinion). Therefore, Symonds remains bound by the non-solicitation covenant in section 12(B) of the revised shareholder agreement for three years from the date of his voluntary departure from Lighthouse, *i.e.*, April 24, 2020. See Hearing Exhibit A (Shareholder Agreement, § 12(B)). Because the evidence shows – and Symonds has conceded – that he violated the non-solicitation duty imposed upon him by section 12(B) of the revised shareholder agreement, see Hearing Tr (Sept 9, 2020) at 56-59, the likelihood of Lighthouse succeeding on its counterclaim that Symonds violated his non-solicitation covenant is extraordinarily high. Thus, the first factor weighs heavily in favor of injunctive relief.

B. Irreparable Harm.

Under Michigan law, a movant must "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 Commission, 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, 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). But a loss of business, coupled with the prospect of catastrophic erosion of a client base, can support a finding of irreparable harm. Performance Unlimited, Inc v Questar Publishers,

Inc, 52 F3d 1373, 1382 (6th Cir 1995). Additionally, although "economic losses alone do not justify a preliminary injunction, 'the loss of customers and goodwill is an irreparable injury.'" BellSouth Telecommunications, Inc v MCI Metro Access Transmission Services, LLC, 425 F3d 964, 970 (11th Cir 2005).

The greatest risk of irreparable harm is reflected in Plaintiff Symonds's evolving story about his efforts to solicit the clients – and even the key employees – of Defendant Lighthouse. With each discussion at the evidentiary hearing of his solicitation efforts, Symonds had to concede the existence of additional targets of his solicitations. When first confronted on the matter, Symonds admitted that "I've talked to a couple" of Lighthouse customers. See Hearing Tr (Sept 9, 2020) at 56. But as the cross-examination unfolded, Symonds had to admit that he had not only solicited Buist Electric (as everybody seemed to know), see id. at 57, but also that he had made overtures to Meekhof Tire, see id. at 58, Speed Wrench, see id. at 59, Pioneer Quick Lube, see id. at 61, and Rasmussen Trucking. See id. at 62. Beyond that, cross-examination revealed that Symonds had reached out to Lighthouse employees, including Dave Hildenbrand, see id. at 64, and Griffith Gatewood, see id. at 65-66, and Symonds had arranged contact between Collins's principal and Lighthouse employee Jason Nickel. See id. at 68-70. Finally, soon after Symonds left Lighthouse to work for Collins, he sent an e-mail to Collins's principal listing "[a]ccounts to look at down the road[,]" including Buist Electric and Speed Wrench, see Hearing Exhibit AA, thereby making those Lighthouse clients targets for Collins. That evidence leads ineluctably to concern that Symonds poses a threat to Lighthouse's client base.

Plaintiff Symonds asserts that concern about irreparable harm is ameliorated by the existence of a liquidated-damages clause in the revised shareholder agreement. Specifically, section 13 of that revised shareholder agreement provides that if "a court refuses for any reason to grant equitable relief

to prevent all continuing breaches of [the restrictive] covenants, or if the Company does not seek an injunction, the Company shall be entitled to liquidated damages" calculated under a defined formula. See Hearing Exhibit A (Shareholder Agreement, § 13). But section 13 also makes clear that, "[u]pon breach of any of the [restrictive] covenants contained in Section 12" of the agreement, "the Company shall have the right to monetary damages for any past breach and equitable relief consisting of . . . specific performance by means of an injunction, to prevent any further breach." See id. Therefore, the preferred relief is an injunction, but liquidated damages are available as an alternative if, but only if, no injunction is issued. In this case, Defendant Lighthouse has formally requested an injunction, so the Court ought not concern itself with liquidated damages if injunctive relief is appropriate. As a result, the Court must stand by its determination that Lighthouse has made a sufficient showing of a likelihood of irreparable harm to support a preliminary injunction.

C. Balance of Harms to the Opposing Parties.

Ordinarily, the balance of harms militates against stringent injunctive relief in cases involving restrictive covenants because the former employees will be dispossessed of income if a preliminary injunction bars them from maintaining their new employment. This case is different. In negotiating the terms of employment with Collins, Plaintiff Symonds received an assurance that he would be handsomely compensated even if he were held to his restrictive covenants. Specifically, he worked out a three-step process that includes two options at step one: payment of "$200,000 per year until the noncompete expires" if his "noncompete is enforced" or a compensation package that includes scaled commissions if his "noncompete is removed and he begins production on his book of business immediately." See Hearing Exhibit R. Under these extraordinary circumstances, the Court finds that

the balance of harms weighs in favor of injunctive relief because Defendant Lighthouse faces greater peril in the absence of injunctive relief that Symonds will endure if the Court grants injunctive relief that holds him to the restrictive covenants in section 12 of the revised shareholder agreement.

D. Potential Harm to the Public Interest.

In weighing "'the harm to the public interest if [an] injunction is issued[,]'" see Davis, 296 Mich App at 613, the Court recognizes that enforcement of contracts serves the public interest, Rory v Continental Ins Co, 473 Mich 457, 468 (2005), "[b]ut noncompetition agreements are disfavored as restraints on commerce[.]" Coates, 276 Mich App at 507. These competing legal principles leave the analysis of the public interest in equipoise, so the Court concludes that the final factor does not tip the scales in favor of either side in this dispute.

E. Equitable Defenses to Injunctive Relief.

Noting that "[a] court's issuance of a preliminary injunction is generally considered equitable relief[,]" Michigan AFSCME Council 25 v Woodhaven-Brownstone School District, 293 Mich App 143, 145 (2011), and "'that one who seeks the aid of equity must come in with clean hands[,]'" Rose v National Auction Group, 466 Mich 453, 463 (2002), Plaintiff Symonds contends that Defendant Lighthouse must be denied injunctive relief because of its unclean hands. The clean-hands doctrine "'closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant.'" Stachnik v Winkel, 394 Mich 375, 382 (1975). Although Symonds has presented a laundry list of grievances against Lighthouse, the Court finds no basis to invoke the clean-hands doctrine to prevent Lighthouse from obtaining a preliminary injunction.

Plaintiff Symonds's principal argument proceeds from the premise that Defendant Lighthouse restructured his compensation formula to create incentives to perform unethical and even illegal acts, such as soliciting life insurance without a proper license in violation of MCL 500.1201a(1), engaging in improper fee arrangements only available to counselors in direct contravention of MCL 500.1232 and MCL 500.1236, and steering clients in a manner designed to maximize contingent commission payments to Lighthouse. To be sure, Lighthouse revised its incentive formula, see Hearing Exhibit 1, but the evidence that the formula encouraged unethical or illegal behavior is, at best, inconclusive. Lighthouse employees Griffith Gatewood and Shawn McDougall both contradicted testimony from Symonds on that issue, explaining in clear terms how the incentive system operated and how all of the producers could readily satisfy the incentive requirements without acting unethically or illegally. Symonds further asserts that Lighthouse has failed to recognize him as an existing shareholder and, in so doing, Lighthouse has deprived him of information and distributions to which he is entitled as a matter of law and contract. Immediately after Symonds tendered his resignation on April 24, 2020, see Hearing Exhibit E, Lighthouse promptly moved to close him out of the company because they regarded him as a fox in the henhouse. To be sure, there remain unresolved issues arising from the exercise of Lighthouse's contractual right to repurchase Symonds's shares.[3] See Hearing Exhibit A (Shareholder Agreement, § 6). But no event or act in the stock-repurchase process rises to the level of unclean hands that should foreclose Lighthouse's motion for a preliminary injunction.

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[3] To the extent that Plaintiff Symonds believes he is being deprived of financial information to which is entitled as a shareholder, the Court shall promptly take up his concerns under Michigan law. See MCL 450.1487 (granting shareholders access to corporate books and records). His right to review the books and records of Defendant Lighthouse appears to turn upon his status as a current shareholder – a matter that seems to be in great dispute. Similarly, Symonds's right to distributions turns upon his status as a current shareholder, so the Court encourages the parties to present the issue of his status for formal consideration as soon as possible.

III. Conclusion

For all of the reasons set forth in this opinion, IT IS HEREBY ORDERED that the plaintiff, Aaron Symonds, is enjoined from engaging in competition with Defendant Lighthouse by offering, soliciting, or accepting any insurance business within the restricted areas defined by section 12(A) of the revised shareholder agreement. See Hearing Exhibit A. This restriction shall remain in force until October 23, 2021, *i.e.*, 18 months after Symonds resigned from Lighthouse, or further order of the Court, whichever comes first. IT IS FURTHER ORDERED that the plaintiff, Aaron Symonds, is enjoined from soliciting any insurance business from any Lighthouse "customer," as that term is defined in section 12(A)(c) of the revised shareholder agreement. This restriction shall remain in force until April 23, 2023, *i.e.*, three years after Symonds resigned from Lighthouse, or further order of the Court, whichever comes first. Neither of these injunctive provisions shall preclude Plaintiff Symonds from working for Collins & Associates so long as he abides by the injunctive restrictions. IT IS FURTHER ORDERED that the plaintiff, Aaron Symonds, shall forthwith return to Lighthouse all records and data in his possession or control that he obtained from Lighthouse during his tenure with the company, as contemplated by section 12(C) of the revised shareholder agreement.

IT IS SO ORDERED.

Dated: October 21, 2020

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