STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

WASTE MANAGEMENT OF MICHIGAN, INC.,

Plaintiff,

v

Case No. 24-207576-CB
Hon. Michael Warren

JEFFREY M. OTT and RUNCO WASTE INDUSTRIES, INC.,

Defendants.

OPINION AND ORDER DENYING PLAINTIFF'S RENEWED MOTION FOR PRELIMINARY INJUNCTION OR IN THE ALTERNATIVE TEMPORARY RESTRAINING ORDER

At a session of said Court, held in the County of Oakland, State of Michigan
November 14, 2024

PRESENT: HON. MICHAEL WARREN

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OPINION

I
Introduction

Before the Court is Plaintiff's Renewed Motion for Preliminary Injunction or in the Alternative Temporary Restraining Order.[1] Having reviewed the Motion and Response,

[1] On May 21, 2024, Waste Management of Michigan, Inc. ("WM") filed Plaintiff's Motion for Preliminary Injunction. On July 9, 2024, the motion was noticed to be heard on July 24, 2024. On July 19, 2024, Runco Waste Industries, Inc. ("Runco") filed a response. The motion was not heard. Instead, on July 30, 2024, WM

WM having waived oral argument, and the Court otherwise being fully informed in the premises, the Court issues this Opinion and Order. MCR 2.119(E)(3).

At stake is whether a preliminary injunction should issue when (1) the public interest does not favor a preliminary injunction in light of the strength of the merits and lack of irreparable harm, (2) WM has not demonstrated it is likely to prevail on the merits, (3) WM has not demonstrated the harm by denying injunctive relief outweighs the harm if injunctive relief is granted, and (4) WM has not demonstrated any harm, let alone irreparable harm? Because the answer is "no," the requested relief is denied.

II
Background

WM provides comprehensive waste management and environmental services, including garbage collection, recycling pickup and dumpster rental. Runco is allegedly a direct competitor that also engages in the business of providing comprehensive waster services in Southeastern Michigan. WM alleges Jeffrey Ott ("Ott") is WM's former Senior Account Executive in WM's Great Lakes area.[2] WM claims Ott was "privy to WM's cost, pricing and profit margin information as well as additional proprietary information that creates a competitive advantage for WM over its competition." [Motion, p 1.]

filed this Motion. The Motion was noticed to be heard on August 7, 2024. On August 1, 2024, a temporary restraining order was denied. The Motion was re-noticed to be heard on September 4, 2024; October 9, 2024; October 23, 2024; November 6, 2024; and November 13, 2024.

[2] The Defendants claim Ott was a sales representative and never held an executive position.

On February 15, 2008, Ott signed a Loyalty and Confidentiality Agreement (the "Agreement"). The Agreement is not signed by WM.

The Agreement provides that "Employee acknowledges that items of Confidential Information are Company's valuable assets and have economic value, actual or potential, because they are not generally known by the public or others who could use them to their own economic benefit and/or to the competitive disadvantage of the Company, and thus, should be treated as Company's trade secrets." [Agreement, ¶2.1]

The Agreement further provides as follows:

> **3.3.** **Restriction on Interfering with Customer Relationships.** Employee agrees that for a period of one (1) year following the end of Employee's employment with Company, Employee will not interfere with Company's business relationships with a Covered Customer, by soliciting or communicating (regardless of who initiates the communication) with a Covered Customer to induce or encourage the Covered Customer to: (a) stop or reduce doing business with Company, or (b) to buy a Conflicting Product or Service; unless a duly authorized Company officer gives Employee written authorization to do so. The parties agree this restriction is inherently reasonable because it is limited to the places or locations where the Covered Customer is doing business at the time.
>
> **3.4.** **Restriction on Unfair Competition.** Employee agrees that for a period of one (1) year following the end of Employee's employment with Company, Employee will not participate in, supervise, or manage (as an employee, consultant, contractor, officer, owner, director, or otherwise) Competing Activities in the Restricted Area.
>
> [Agreement.]

Under the Agreement, "Covered Customer" is defined as "a Company customer (person or entity) Employee had business-related contact or dealings with, or received Confidential Information about, in the two (2) year period preceding the end of Employee's employment with the Company. References to the end of Employee's employment in this Agreement refer to the end, whether by resignation or termination, and without regard for the reason employment ended." [Agreement, ¶3.1(a).]

"Competing Activities" are defined as "any activities or services undertaken on behalf of a competitor (which is understood to mean any person or entity engaged in the business of providing a Conflicting Product or Service in the United States) that are the same or similar in function or purpose to those Employee performed for Company in the two (2) year period preceding the end of Employee's employment with the Company, or that are otherwise likely to result in the use or disclosure of Confidential Information. Competing Activities are understood to exclude: activities on behalf of an independently operated subsidiary, division, or unit of a diversified corporation or similar business that has common ownership with a competitor so long as the independently operated business unit does not involve a Conflicting Product or Service; and, a passive and noncontrolling ownership interest in a competitor through ownership of less than 2% of the stock in a publicly traded company." [Agreement, ¶3.1(c).]

"Restricted Area" is defined as "the geographic area served by the Location (as defined above) and any other facility (landfill, transfer station, recycling center, or office): (1) that Employee regularly works out of, supervises or manages (in whole or part), (2)

that is assigned to Employee as part of his or her designated territory, or (3) about which Employee receives Confidential Information; in the two (2) year period preceding the end of Employee's employment with the Company. As used here, the 'geographic area served' by a Location or facility is understood to be the area within a 75-mile radius of the Location or facility, except where Employee can prove the market area served is smaller by clear and convincing evidence in which case such smaller area shall apply. The parties agree this is a reasonable geographic area restriction because the 75-mile radius identified is a reasonable approximation of the market area or other geographic area typically covered by a location or facility where Employee would be expected to help Company provide its products and services, or about which Employee would receive and help analyze Confidential Information." [Agreement, ¶3.1(d).]

The Agreement provides that restrictions survive the Employee's termination regardless of cause:

> **3.5. Survival of Restrictions.** (a) Before accepting new employment, Employee will advise every future employer of the restrictions in this Agreement. Employee agrees that the Company may advise a future employer or prospective employer of this Agreement and its position on the potential application of this Agreement. (b) The Agreement's post-employment obligations will survive the termination of Employee's employment with Company, regardless of the cause of the termination. If Employee violates one of the post-employment restrictions in this Agreement on which there is a specific time limitation, the time period for that restriction will be extended by one day for each day Employee violates it, up to a maximum extension equal to the length of time prescribed for the restriction, so as to give Company the full benefit of the bargained-for length of forbearance. (c) If a court finds any of the Agreement's restrictions unenforceable as written, it is the intention of the parties that the Court revise or reduce the restriction (for the jurisdiction covered by that court

> only) so as to make it enforceable to protect Company's interests to the maximum extent legally allowed within that jurisdiction. (d) If Employee becomes employed with an affiliate without signing a new agreement, the affiliate will step into Company's position under this Agreement, and will be entitled to the same protections and enforcement rights as the Company.
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> [Agreement, ¶3.5.]

The Agreement requires the Employee to provide written notice prior to going to work for a competitor: "While employed by Company, and for one (1) year thereafter, Employee will (a) give Company written notice at least thirty (30) days prior to going to work for a competitor, (b) provide Company with sufficient information about his or her new position to enable Company to determine if Employee's services in the new position would likely lead to a violation of this Agreement, and (c) within thirty days of Company's request, participate in a mediation or in-person conference to discuss and/or resolve any issues raised by Employee's new position. Employee will be responsible for all consequential damages caused by failure to give Company notice as provided in this paragraph." [Agreement, ¶4]

Ott's employment was terminated on July 27, 2023. Ott was allegedly unemployed for seven (7) months thereafter. WM claims that Ott began employment with Runco without providing the appropriate notice and WM learned of Ott's affiliated with Runco on November 7, 2023. WM claims Ott has solicited current and prospective customers of WM.

WM now moves the Court to "immediately enjoin Defendant, Jeffrey Ott and his current principal and employer Runco from: (a) directly or indirectly working or performing any services for a competitor (as defined in the Agreement), including Runco; (b) directly or indirectly soliciting any WM customers/potential customers; (c) using or disclosing WM's confidential and proprietary information; and (d) violating any other term and condition of the Agreement." [Motion, p 17.]

III
WM Has Not Met Its Burden of Showing that Injunctive Relief Should Be Granted

A
The Law Regarding Injunctive Relief

Under MCR 3.310(A), this Court is vested with the authority to grant a preliminary injunction. The burden is on the party seeking injunctive relief to prove why such relief should be issued. MCR 3.310(A)(4) ("At the hearing on an order to show cause why a preliminary injunction should not issue, the party seeking injunctive relief has the burden of establishing that a preliminary injunction should be issued"). "Whether a preliminary injunction should issue is determined by a four-factor analysis . . . ." *MSEA v Dep't of Mental Health*, 421 Mich 152, 157 (1984). This analysis must address the following factors:

1) Harm to the public interest if an injunction issues;

2) Whether harm to the moving party in the absence of injunctive relief outweighs the harm to the opposing party if a stay is granted;

3) The strength of the moving party's demonstration that the moving party is likely to prevail on the merits; and

4) Demonstration that the applicant will suffer irreparable injury if injunctive relief is not granted.

[*MSEA,* 421 Mich at 157-158.]

In addition, this inquiry "often includes the consideration of whether an adequate legal remedy is available to the applicant." *Id.* at 158. Other considerations to be addressed when considering injunctive relief "are whether it will preserve the status quo so that a final hearing can be held without either party having been injured and whether it will grant one of the parties final relief prior to a hearing on the merits." *Campau v McMath*, 185 Mich App 724, 729 (1990). See also *Thermatool Corp v Borzym*, 227 Mich App 366, 376 (1998).

Moreover, "[t]he general rule is that whenever courts have found a mandatory injunction essential to the preservation of the status quo and a serious inconvenience and loss would result to plaintiff and there would be no great loss to defendant, they will grant it." *Steggles v National Discount Corp,* 326 Mich 44, 50 (1949). See also *Gates v Detroit & Mackinac Railway Co,* 151 Mich 548, 552 (1908); *L & L Concession Co v Goldhar-Zimner Theatre Enterprises, Inc,* 332 Mich 382, 388 (1952), quoting *Steggles*, 326 Mich at 50.

Furthermore, this Court's ruling "must not be arbitrary and must be based on the facts of the particular case." *Thermatool,* 227 Mich App at 376. Generally, the granting of such relief falls within the broad discretion of the court. *Steggles*, 326 Mich at 50 (holding

that granting injunctive relief "is largely a matter of discretion of the trial court"); *Campau*, 331 Mich at 729; *Bratton v DAIIE*, 120 Mich App 73, 79 (1982).

A preliminary injunction should not be issued if an adequate legal remedy is available, and 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). Economic injuries generally are not sufficient to demonstrate irreparable injury because such injuries typically can be remedied by damages at law. *Alliance for Mentally Ill of Mich v Dep't of Community Health*, 231 Mich App 647, 664 (1998).

B
Application of the Law

1. Harm to the Public Interest.

Under this factor of the analysis, this Court must address whether the public policy of Michigan is furthered or undermined by the granting of the injunctive relief.

In this particular case, the public interest rises or falls with the underlying merits of the case. After all, Michigan law generally favors enforcing written contracts and agreements. See e.g., Const 1963, art 1, § 10 ("No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted"); MCL 566.132; *Rory v Cont'l Ins Co,* 473 Mich 457, 468 (2005) (internal footnotes and quotation marks omitted) ("A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be enforced as written. Courts enforce contracts according

to their unambiguous terms because doing so respects the freedom of individuals freely to arrange their affairs via contract. This Court has previously noted that "[t]he general rule [of contracts] is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts.").[3] There is nothing in this case that would otherwise affect this public policy analysis.

Notwithstanding the foregoing, as revealed below, Michigan public policy and jurisprudence prohibit the issuance of injunctive relief unless there is a risk of irreparable harm. In the end, the absence of sufficient irreparable harm govern this public interest analysis in the instant case, and the public interest favors denying injunctive relief.

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[3] The *Rory* Court, quoting *Wilkie v Auto–Owners Ins Co*, 469 Mich 41, 51-52 (2003) (internal citations omitted), elaborated:

> This approach, where judges . . . rewrite the contract . . . is contrary to the bedrock principle of American contract law that parties are free to contract as they see fit, and the courts are to enforce the agreement as written absent some highly unusual circumstance such as a contract in violation of law or public policy. This Court has recently discussed, and reinforced, its fidelity to this understanding of contract law in *Terrien v Zwit*, 467 Mich. 56, 71 (2002). The notion, that free men and women may reach agreements regarding their affairs without government interference and that courts will enforce those agreements, is ancient and irrefutable. It draws strength from common-law roots and can be seen in our fundamental charter, the United States Constitution, where government is forbidden from impairing the contracts of citizens, art. I, § 10, cl. 1. Our own state constitutions over the years of statehood have similarly echoed this limitation on government power. It is, in short, an unmistakable and ineradicable part of the legal fabric of our society. Few have expressed the force of this venerable axiom better than the late Professor Arthur Corbin, of Yale Law School, who wrote on this topic in his definitive study of contract law, Corbin on Contracts, as follows:
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> > "One does not have 'liberty of contract' unless organized society both forbears and enforces, forbears to penalize him for making his bargain and enforces it for him after it is made." [15 Corbin, Contracts (Interim ed.), ch. 79, § 1376, p. 17.

2. Balance of Harm.

Under this prong of the analysis, this Court must evaluate whether the harm suffered by the nonmoving party caused by granting the proposed injunctive relief will outweigh the harm suffered by the moving party if the injunctive relief is denied.

In the instant action, WM argues that the harm it will suffer if injunctive relief is denied outweighs any harm caused to Ott if injunctive relief is granted and the Agreement he signed is enforced. WM argues that by signing the Agreement, Ott has acknowledged that WM is entitled to immediate appropriate injunctive relief and enforcement of the Agreement does not preclude Ott was continuing his chosen career. Rather, "Ott is only precluded from direct competition for twelve months." [Motion, p 14.] WM does not address Runco in its argument.

However, the Defendants argue that WM fails to identify any harm it will purportedly suffer if injunctive relief is denied, whereas Ott will lose his sole source of income and ability to procure work in his field if the requested relief is granted.

In the end, the balancing of harms favors the Defendants. WM has not demonstrated its harm outweighs that of Ott and Runco.

3. The Merits.

Under this prong of the analysis, the moving party must demonstrate that it is likely to prevail on the merits of a fully litigated action. That is, the moving party must demonstrate a substantial likelihood of success.

Here, WM argues it is likely to prevail on the merits because the restrictive covenants in the Agreement are reasonable and enforceable, do not preclude Ott from earning a living and pursing his vocation in the waste services industry and are narrowly tailored to prevent unfair competition. WM argues that Ott established unique contacts, relationships and goodwill through his employment with WM and had access to confidential business plans, including those involving technical or product information.

However, WM entirely disregards that the restrictions on interfering with customer relationships and unfair competition apply "for a period of one (1) year following the end of Employee's employment with Company." [Agreement, ¶3.3 and ¶3.4.] Ott was terminated on July 27, 2023 and WM does not argue that the restrictions were extended. Moreover, the Defendants identify several threshold issues. In particular, whether the Agreement is enforceable (a) in the absence of WM's signature, (b) if Ott was not provided consideration, and/or (c) if WM committed the first material breach by wrongfully terminating Ott's employment based on his age, are all threshold issues that may preclude recovery. The Defendants further argue that customer lists and pricing information are not trade secrets, that Ott does not hold any trade secrets belonging to

WM, and that WM fails to identify any lost customers as a result of the alleged use of such trade secrets. The Defendants also argue that WM has failed to present any substantive support of Runco's alleged tortious interference. WM parrots the language of the standard applicable to obtaining injunctive relief but has no substance to support those allegations.

In the end, WM has not demonstrated it is more likely to prevail on the merits. WM presents no argument that the restrictions are still in effect and no evidence that Ott has solicited current and prospective customers of WM. This factor strongly favors the Defendants.

4. Irreparable Harm.

"[A] particularized showing of irreparable harm is an indispensable requirement to obtain a preliminary injunction." *Pontiac Fire Fighters Union Local 376,* 482 Mich at 9 (quotation marks, citation, and ellipses omitted). Irreparable harm means harm that cannot be remedied by damages. *Thermatool,* 227 Mich App at 377. In other words, "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.* Moreover, the "[t]he injury must be both certain and great, and it must be actual rather than theoretical." *Id.* Our Supreme Court elaborated in *Michigan Coalition of State Employee Union v Civil Service Comm'n*, 465

Mich 212, 225-226 (2001) (footnote omitted) in the context of injunctive relief sought pursuant to Const 1963, art 11, § 5:

> Thus, it is clear that in 1940 it was beyond dispute in the legal community that a party needed to make a particularized showing of concrete irreparable harm or injury in order to obtain a preliminary injunction. Moreover, there is no basis to conclude that the requirements to secure a preliminary injunction changed in any pertinent way between the adoption of the amendment in 1940 and the adoption of its successor, § 5, in the present Michigan Constitution in 1963, or even up to this day. The requirement of a showing of irreparable harm remains as it did a century ago. In our latest statement on this issue in *Michigan State Employees Ass'n v Dep't of Mental Health*, 421 Mich 152, 157-158 (1984), this Court reiterated the requirement of a showing of irreparable harm as a prerequisite for a preliminary injunction, explaining that it was a requirement for the issuance of a preliminary injunction to demonstrate "that the applicant will suffer irreparable injury if a preliminary injunction is not granted."
>
> Accordingly, we conclude that a particularized showing of irreparable harm was, and still is, as our law is understood, an indispensable requirement to obtain a preliminary injunction. Moreover, the people, in causing the Michigan Constitution to be amended in 1940, evidenced no desire, as they had done with standing, to modify the traditional rules that had pertained with regard to this requirement for a preliminary injunction. Therefore, when considering the request for a preliminary injunction in this matter, the trial court and the Court of Appeals were in error in granting any preliminary injunction without a showing of concrete irreparable harm to the interests of a party before the Court.

Even if WM was to demonstrate it is likely to prevail on the merits (and it has not) and the restrictions on interfering with customer relationships and unfair competition have not expired, WM has not demonstrated any harm to warrant injunctive relief. WM argues the risk of harm to its business is immediate and substantial and the potential for harm threatens WM's business with its current and prospective customers; however,

Michigan jurisprudence is well-settled that the mere apprehension of future injury or damage cannot be the basis for injunctive relief. *Pontiac Fire Fighters Union Local 376*, 482 Mich at 9. Moreover, any harm that could be sustained (i.e., lost sales) can be remedied with calculable money damages. Again, WM parrots the language of the standard applicable to obtaining injunctive relief but has no substance to support those allegations.

In the end, WM has not met its burden of demonstrating irreparable harm necessary to warrant injunctive relief.

5. Other Considerations.

None of the other miscellaneous considerations set forth in Michigan jurisprudence favor granting injunctive relief.

In light of the foregoing analysis, under the totality of circumstances, injunctive relief is denied.

ORDER

In light of the foregoing Opinion, Plaintiff's Renewed Motion for Preliminary Injunction or in the Alternative Temporary Restraining Order is DENIED.

/s/ Michael Warren

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HON. MICHAEL WARREN
CIRCUIT COURT JUDGE

