CANNON SERVICES INC. v. CULHANE

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MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

This matter is before the undersigned United States District Judge onPlaintiffs Cannon Services, Inc., Whitewater Outdoors, Inc.("Whitewater"), and Robinson Outdoors, Inc.'s (collectively,"Plaintiffs") Motion for a Preliminary Injunction ("PI") [Docket No. 3].Based on an alleged violation of the non-compete agreement between theparties, Plaintiffs seek to prohibit Defendant Steve Culhane ("Defendant")from continuing his present employment. For the reasons set forth below,the PI Motion is denied.

II. BACKGROUND

Plaintiffs are involved in the design, manufacture and supply ofhunting apparel and products, which are sold throughout the country atvarious retail outlets. Defendant was employed by Plaintiffs from approximately May 1, 2003, to January 28, 2004. He has nearly20 years of experience in the hunting apparel industry and is currentlyworking for a competitor of Plaintiffs, Mossy Oak Apparel ("Mossy Oak), adivision of Russell Corporation, in Atlanta, Georgia.

During late Winter and early Spring of 2003, Defendant engaged inmultiple discussions with Whitewater President Scott Shultz ("Shultz")and other company representatives regarding potential employment asPlaintiffs' Vice President of Product Development and Manufacturing. Atthe time, Defendant was working in a managerial position for Cabela's, ahunting and fishing retailer, where he had been employed for nearly eightyears. Defendant orally accepted Plaintiffs' offer for the position onApril 5, 2003, at a meeting in Minnesota. Culhane Decl. ¶¶ 6-7. Defendantbegan work on April 30, 2003, at which time he filled out personnelpaperwork, including signing an Employment Agreement which contains thefollowing non-compete clause: COVENANT NOT TO COMPETE. During the term of Employee's employment with Company, and for a period of two (2) years thereafter, Employee shall not: a. within North America, own, manage, operate or control . . . or be employed by . . . any corporation, partnership, person, firm or other entity that is engaged in any business that is then conducted by Company . . . Employee expressly acknowledges that the multi-state region for which the non-compete applies is reasonable because Employee is responsible for operations in the various states in which Company conducts business, Employee will have access to confidential information relating to all of Company's offices, and Employee will have relationships with Company's customers in various states.Employment Agreement sec. 3.3 (Compl. Ex. A). This

provision additionallyprecludes employees from soliciting business from Plaintiffs' customersand attempting to induce other employees to engage in any of theprohibited conduct. Id. Shultz submits that he reminded Defendant on several occasions duringemployment negotiations and discussions that the position was contingentupon signing a covenant not to compete. Shultz Aff. ¶¶ 4-6, 12. Defendantdenies this, claiming that no one informed him he would be required tosign such an agreement and that the written proposal and job descriptionhe received at the April 5, 2003 meeting did not include anynon-competition terms. Culhane Decl. ¶¶ 6, 9, 10, Ex. A (proposal memo).

During his employment with Plaintiffs, Defendant spent most of his timedeveloping a new clothing line. Plaintiffs allege that as a high-levelexecutive, Defendant had access and was privy to all Plaintiffs'confidential and proprietary information, including pricing, costs,license and vendor arrangements, product designs and specifications andbusiness plans. After working for Plaintiffs for approximately ninemonths, Defendant resigned, stating he wished to move to Atlanta to bewith his girlfriend, who worked in product development for Mossy Oak, adirect competitor of Plaintiffs. According to Plaintiffs, Defendantspecifically represented that he did not intend to work for Mossy Oak.Recently, Plaintiffs learned of Defendant's position with Mossy Oak,prompting the instant Motion. They allege that he has attempted to solicitbusiness for Mossy Oak from Wal-Mart, one of Plaintiffs' most significantcustomers, using contacts and information he gained from his employmentwith Plaintiffs. Second Shultz Aff. ¶¶ 14-15. Defendant counters that hehad no role in arranging the cited meeting, that Wal-Mart is a long-timecustomer of Mossy Oak, and that he had a business relationship with theWal-Mart buyer that preexisted his employment with Plaintiffs. CulhaneDecl. ¶¶ 14, 16, 17; Tate Decl. ¶ 4. He denies disclosing or intending todisclose any confidential information. Culhane Decl. ¶¶ 12, 21, 23; seeTate Decl. ¶ 9. In his Second Affidavit, Shultz additionally states he has receivedreports of Defendant contacting two of Plaintiffs' licensors[1] onbehalf of Mossy Oak, seeking to obtain rights to the same product designsand lines licensed to Plaintiffs. Id. ¶¶ 11-13. Therefore, Plaintiffsaver, Defendant has blatantly breached the non-compete covenant inmultiple respects and must be enjoined to prevent further unfaircompetition.

III. DISCUSSION

A party seeking a preliminary injunction bears the burden of showingthe following factors weigh in favor of such relief: (1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest.Dataphase Sys., Inc. v. C.L. Sys., Inc., 640 F.2d 109, 113 (8th Cir.1981). While no one factor is determinative, likelihood of success on themerits is generally the touchstone inquiry. Id.; see S&M Contractors,Inc. v. Foley Co., 959 F.2d 97, 98 (8th Cir. 1981). The Court willaccordingly begin with this analysis.

Plaintiffs focus this Motion on their assertion that Defendant violatedthe non-compete provision of his employment agreement. Defendant countersthat the covenant is invalid and therefore Plaintiffs cannot succeed onthis claim.

Non-competition agreements, though disfavored by Minnesota courts, areenforceable if they serve a legitimate employer interest and are nobroader than necessary to protect this interest. See Kallok v. Medtronic, Inc., 573 N.W.2d 356, 361 (Minn. 1998). They willnot be upheld, however, when introduced after the initial employmentagreement and unsupported by additional consideration. Sanborn Manuf.Co. v. Currie, 500 N.W.2d 161, 164 (Minn. Ct. App. 1993).

The testimony of the involved parties is directly contradictoryregarding whether or not Defendant was aware of the terms of thenon-compete provision prior to accepting the position with Plaintiffs.[2] Shultz maintains he repeatedly reminded Defendant of the requirement ofthis restriction throughout discussions of Defendant's prospectiveemployment. Defendant submits that no one ever mentioned anon-competition covenant, and proffers the proposal memo, which reflectsthe negotiations surrounding Defendant's acceptance of the position onApril 5, 2003, to show this was not a part of the initial employmentagreement. See Culhane Decl. Ex. A. Such circumstances present a classicdispute of material fact that precludes finding a decisive likelihood ofsuccess by Plaintiffs. Furthermore, while the cases cited by Defendantare not completely analogous, they offer strong legal backing forDefendant's position on the merits. Under Minnesota law, when arestrictive covenant "is not ancillary to the initial oral employmentcontract, it can only be sustained if supported by independentconsideration." Nat'l Recruiters, Inc. v. Cashman, 323 N.W2d 736, 740(Minn. 1982); Sanborn, 500 N.W.2d at 164 (explaining additionalconsideration is required because "[w]hen the employer fails to informprospective employees of noncompetition agreements until after they haveaccepted jobs, the employer `takes undue advantage of the inequalitybetween the parties'"). Like the defendant employee in Sanborn, at the time Defendant signed Plaintiffs' non-competecovenant "he had already quit his job," packed his things and moved to anew geographic locale. id. at 163. Plaintiffs have not alleged anyadditional consideration in exchange for the agreement. Thus, if Shultzor another representative did not inform Defendant of the terms of thenon-compete at or before the April 5 meeting, it is invalid and cannotjustify injunctive relief. See Universal Hosp. Servs., Inc. v.Henderson, No. Civ. 02-951, 2002 WL 1023147, at *3, 5 (D. Minn. May 20,2002). The terms of the April 5, 2003 job proposal and description do notinclude a non-competition clause,[3] and given the opposing sworntestimony on this key issue and the lack of further corroborativeevidence for either side, Plaintiffs have not shown a probability ofsuccess on the breach of covenant claim.

Similarly, the controverted and uncertain nature of the evidenceregarding Defendant's disclosure of confidential information militatesagainst an early determination of the likelihood of either party'ssuccess on the duty of loyalty claim. Though Plaintiffs, through Shultz,have averred Defendant possesses a great deal of confidential data andhas had contact with three of Plaintiffs' business affiliates sincebeginning work at Mossy Oak, Defendant has declared under penalty ofperjury that he has and will not reveal any such information.Additionally, Mossy Oak President Mark Tate states in his declarationsthat the referenced contacts between Defendant and Wal-Mart, Gore andALS, respectively, were all based on pre-established, on-goingrelationships between Mossy Oak and these companies, and had nothing to do with Plaintiffs' business. SecondTate Decl. ¶¶ 2-4. These allegations, however, do raise the specter ofthe first Dataphase factor, irreparable harm.

Although Plaintiffs' have not submitted sufficient evidence of record toestablish irreparable harm or a likelihood that Defendant has wrongfullyused or revealed trade secrets, he undisputedly was given access toextensive inside information regarding Plaintiffs' pricing, designs, andcontractual arrangements. See IBM v. Seagate, 941 F. Supp. 98, 101 (D.Minn. 1992) ("Merely possessing trade secrets and holding a comparableposition with a competitor does not justify an injunction."). Defendant isforewarned that he remains bound by his common law duty "not to discloseor use confidential information gained at the expense of his employer"and will be responsible for damages in the event of a finding at trialfor Plaintiffs. Saliterman v. Finney, 361 N.W.2d 175, 179 (Minn. Ct.App. 1985). He will also be held to account for his actions when leavinghis employment with Plaintiffs, including the purported erasure of hishard drive and representations that he would not seek employment with anycompetitors for two years. Shultz Aff. ¶¶ 16, 17.

Finally, the balance of the harms and the public interest do not tipsufficiently in favor of Plaintiffs to meet the burden required forinjunctive relief. Though Plaintiffs' concern for protecting proprietaryand secret information is understandable, restraints on trade and freeemployment are not well received as a matter of public policy, andplainly Defendant has a significant interest in pursuing a career in hisarea of specialization for the last 20 years.

Based upon the controverted material facts and the disfavor with whichthe law looks upon covenants not to compete, the balance of theDataphase factors does not warrant an injunction at this point.Determinations of credibility and the inferences to be drawn fromsuspicious circumstances are the province of the jury, and as such, Plaintiffs have a remedy atlaw in the form of compensatory damages.

IV. CONCLUSION

Based on the foregoing, and all the files, records and proceedingsherein, IT IS HEREBY ORDERED that Plaintiffs' Motion for PreliminaryInjunction [Docket No. 3] is DENIED.

1. Shultz asserts Defendant contacted W.L. Gore Company ("Gore") andALS Enterprises ("ALS").

2. It is uncontested, however, that Defendant had previously beensubject to such an agreement at a late juncture in his prior employment,and signed Plaintiffs' contract without questioning the terms of therestriction or requesting to consult an attorney.

3. Plaintiffs' assertion that the proposal's listed contingency of"[s]atisfactory resolution of any covenants not to compete" refers totheir non-compete clause, rather than any previously signednon-competition agreements, requires a strained reading of thislanguage, particularly since the fourth contingency of the proposal isthe "completion of a formal Employment Application." Culhane Decl. Ex. Aat 2.