



STANDARD FORMS CO. v. NAVE

422 F. Supp. 619 (1976) | Cited 0 times | E.D. Tennessee | April 1, 1976

MEMORANDUM OPINION AND ORDER

This is a removed, 28 U.S.C. § 1441 (a), diversity action, 28 U.S.C. §§ 1332 (a) (1), (c), for injunctive relief and the enforcement of a covenant-not-to-compete provision of a contract of the parties. Prior to such removal, the state court of origin herein granted the plaintiff an order restraining the defendant*from violating further such covenant. Rule 65.03 (1), (2), (3), Rules of Civil Procedure for the state of Tennessee. The plaintiff moved this Court after removal for a temporary restraining order, Rule 65(b), Federal Rules of Civil Procedure, to restrain the defendant in like manner pending a hearing in this Court on the plaintiff's application for a preliminary injunction.

It is provided, inter alia, by 28 U.S.C. § 1450: " * * * All injunctions, orders, and other proceedings had in such action [removed from a state court to a district court of the United States] shall remain in full force and effect until dissolved or modified by the district court." A restraining order, granted by a Tennessee judge at the commencement of an action without notice, " * * * [unless] it provides an earlier termination date, * * * shall remain in force until otherwise ordered by the court." Rule 65.03 (5), Rules of Civil Procedure of the state of Tennessee. " * * * [Pleadings] filed in state court * * * need not be duplicated in federal court. * * * [The] statute [i. e., 28 U.S.C. § 1450] ensures that interlocutory orders entered by the state court to protect various rights of the parties will not lapse upon removal. Thus, * * * injunctions * * * and other orders obtained in a state court all remain effective after the case is removed to federal court. [Footnote reference omitted.] * * *" *Granny Goose Foods v. Teamsters* (1974), 415 U.S. 423, 435-436, 94 S. Ct. 1113, 39 L. Ed. (2d) 435, 448[6].

It is patent that the ex parte restraining order issued by the judge of the Chancery Court at Johnson City, Tennessee herein was not a "temporary" restraining order, issued by a state court prior to removal, so as to come within the rule fashioned by Mr. Justice Marshall in the cited decision. *Ibid.*, 415 U.S. at 439, 39 L. Ed. (2d) at 451[12]. Although, " * * * once a case has been removed to federal court, it is settled that federal rather than state law governs the future course of proceedings, notwithstanding state court orders issued prior to removal * * * ", *ibid.*, 415 U.S. at 437, 39 L. Ed. (2d) at 449[9], the evident remedy of the defendant, if he is dissatisfied with the continuation in its present form of the state restraining order granted by the state court before removal, is to apply to this Court under 28 U.S.C. § 1450 for its dissolution or modification. In its present posture, the restraining order, granted to protect the rights of the plaintiff, is restricted to its " * * * underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing [on any such application by the defendant for a dissolution or modification thereof], and no longer. [Footnote reference omitted.] * * * " *Ibid.*, 415 U.S. at 439, 39 L. Ed. (2d) at 450[11].



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This Court, being of the opinion that the restraining order of February 19, 1976 has not lapsed but remains effective after removal, the application of the plaintiff for a temporary restraining order hereby is

DENIED as moot. However, as an ex parte restraint of the defendant has been ordered and is in effect without his having been accorded a hearing thereon, he shall answer or present other defenses in the manner prescribed by Rule 81 (c), Federal Rules of Civil Procedure, after which the clerk will advance this action in the assignment of a pretrial conference, and trial of this action shall be expedited. Rule 65 (a) (2), Federal Rules of Civil Procedure.

ENTER:

(C. G. Neese) United States District Judge

