

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

PROCTOR & GRAVES SERVICE)
COMPANY, LLC,)
)
Plaintiff,)
)
v.)
)
ODDIE GRAVES,)
)
Defendant.)

Case No. 23-0116-BC

MEMORANDUM AND ORDER

This matter came before the Court on February 13, 2023 upon Plaintiff’s Motion to convert a temporary restraining order into a temporary injunction, with additional terms included from the original injunction request. Defendant is a former employee and manager, and current member, of Plaintiff LLC. This lawsuit includes contract, tort, common law and statutory claims against Defendant based upon his conduct while employed by Plaintiff, and as a member and manager of an LLC, and his post-employment activities. With the injunction motion, Plaintiff seeks to enforce post-employment restrictions included in Defendant’s employment agreement.

Prior to designation to the Business Court, this case was assigned to the Part IV Chancellor, who issued a temporary restraining order on January 26, 2023 (the “TRO”). The TRO restricts Defendant from: (a) soliciting, aiding or encouraging any current or past customers of Plaintiff to discontinue their business with it or to obtain HVAC system or mechanical services from a person or entity other than Plaintiff; (b) inducing, aiding or influencing any Plaintiff employee or contractor to terminate their employment or contract arrangement with it; (c) entering the Market Place Lease premises¹; or (d) accessing any of Plaintiff’s business computer, internet, or other

¹ The limited information provided to the Court regarding this site is discussed herein.

electronic systems, networks, databases or platforms. Plaintiff also sought an injunction barring Defendant from engaging, directly or indirectly, in the HVAC system or mechanical services business similar to its business within a 100-mile radius of Davidson County, Tennessee. The Part IV Chancellor denied this last component of the relief requested.

Defendant filed a response agreeing, in part, to the requested injunction. Specifically, Defendant will agree to an injunction barring him from: (a) soliciting any current Plaintiff customers to discontinue their business relationship; (b) inducing any Plaintiff employee from terminating his or her employment relationship; (c) entering the Market Place Lease premises except for agents of the lessor, with notice; and (d) accessing any computer, internet, or other electronic system, network, databases or platforms used by Plaintiff for its business except for “read only” access to financials. These are modifications of the TRO and do not include the non-competition prong of Plaintiff’s request.

At the hearing, both parties were represented by counsel who appeared to make oral arguments in support of their written submissions. Based on these arguments, submissions, and the relevant law, the Court makes the following findings of fact and conclusions of law.

Findings of Fact

Plaintiff is a limited liability company providing HVAC system and mechanical services for both commercial and residential customers in the Middle Tennessee area (“Plaintiff” or the “Company”). Its principal place of business is 2131 Utopia Avenue, although it also has operations at the location known as the Market Place Lease. Plaintiff was formed by Anderson Piping, Inc., as the 100% owner, through the filing of Articles of Organization with the State of Tennessee on December 17, 2002 pursuant to the Tennessee Limited Liability Company Act, Tenn. Code Ann. § 48-201-101, *et seq.* (the “LLC Act”). Anderson Piping, Inc. also executed an Operating

Agreement that is the governing document for the Company (the “Operating Agreement”). The Operating Agreement provides that the Company is member-managed by a Board of Managers (§7.1), which Board has the authority for day-to-day operations (§8.1) with a Chief Manager having those primary responsibilities to act as a Chief Operating Officer (§8.3(a)). Additionally, all Members are entitled to access to Plaintiff’s books and records upon five (5) days’ notice (§11.2).

Defendant was apparently involved with the Company at its inception, although his prior relationship with the Anderson Piping, Inc. principals and how he became involved is not in the record. Defendant became a Member of the Company’s Board on December 31, 2002. On April 16, 2004 the parties executed an Equity Employment Agreement (the “Employment Agreement”) with a set duration that was automatically renewable for one-year terms unless terminated by either party with or without cause, as defined therein, or Defendant’s death or disability. (¶¶1, 13). Defendant’s title was Manager, without reference to the Operating Agreement and the term “Manager” therein. The Employment Agreement provides Defendant an opportunity to purchase ownership of the Company up to 20% (¶¶3, 6), and for his employment relationship to continue after the acquisition of ownership. (¶3(c)). Ownership is not identified as a trigger for termination. (¶13). The Employment Agreement also has post-employment restrictions as follows:

11. Non-Competition. At all times during the Term of this Agreement and for a period of Two (2) year thereafter, Employee shall not, directly or indirectly:

(a) As an individual proprietor, partner, stockholder, director, officer, employee, joint venturer, or otherwise (other than the owner of less than One (1) percent of any class of publicly traded equity securities) participate or engage, directly or indirectly, in the same or substantially the same business as the Company or in any business, firm, or company providing HVAC system or mechanical system services which are similar to those provided by the Company within one Hundred (100) miles of Davidson County, Tennessee;

(b) Solicit, aid, or encourage any person or entity who at any time during his employment by the Company (i) was a customer or (ii) was a potential customer of the Company during the period of his employment hereunder which the Company had made a selling effort, to seek and/or obtain services offered by the Company or to terminate such customer's relationship with the Company or to conduct any business or activity which such customer then conducts or could conduct with the Company with any other person or entity; or,

(c) Employ, attempt to employ, recruit, or otherwise solicit, induce, aid, or influence any employee or contractor of the Company to terminate his or her employment or contract arrangement with the Company.

12. Confidential Information. Employee agrees that all information pertaining to the prior, current, or contemplated business of the Company, excluding only publicly available information in substantially the form in which it is publicly available, unless such information becomes publicly available through unauthorized disclosure by Employee, constitutes a valuable and confidential asset and is the exclusive property of the Company. Such information includes, without limitation, information related to trade secrets, business strategies, customer lists, financing techniques, financing sources, and financial statements of the Company. Employee shall at all times hold all such information in trust and confidence and shall not, except as required by applicable law, use, disclose, or otherwise divulge any such information to any person whatsoever, other than in good faith in furtherance of the Company's business, either during the term of employment or thereafter.

As of a January 1, 2007 Amendment to the Operating Agreement, Defendant owned 40% of the Company (the "Amendment"). The Amendment does not mention the Employment Agreement, and there is nothing in the record to indicate it had terminated.

Plaintiff alleges Defendant engaged in various inappropriate acts that constitute breaches of his duties as an employee, Member and Board Manager. One of those include entering a lease for property, the location of which is not described in the Verified Complaint other than as the Market Place Lease, owned by Graves Property, LLC, of which Defendant is a 50% owner. Plaintiff has some operations at that location.

Defendant resigned and/or was terminated on November 28, 2022. He retains 40% ownership in the Company but is no longer an employee or a Manager. The un rebutted allegations

in the Verified Complaint are that prior to leaving and since, Defendant has helped his son Dustin, a former Company employee, set up a competing residential HVAC company, appropriated the Company's phone number and website access so that its residential business would be diverted to him, and converted equipment and vehicles for its use. Further, that Defendant has solicited employees to leave the Company and either work for his son's new business or work at a start-up to compete with the Company's commercial business, all in violation of contractual, statutory and common law duties. For the purposes of the injunction request, the important issue is the current, or pending, competition with Plaintiff that Defendant is engaging in or planning to engage in, and his solicitation of employees.

These are the facts the Court finds and takes into consideration in evaluating Plaintiff's request for a temporary injunction.

Conclusions of Law

In considering a request for a temporary injunction, a trial court must apply a four-factor test, adopted from the standard applied in federal courts. Those factors are: (1) the likelihood that the plaintiff will succeed on the merits; (2) the threat of irreparable harm to the plaintiff if the injunction is not issued; (3) the balance between the harm and the injury that granting the injunction would inflict on the defendant; and (4) the public interest. *Fisher v. Hargett*, 604 S.W.3d 381, 394 (Tenn. 2020). To demonstrate the factor of likelihood of success on the merits, the quantum of proof is that the movant must "clearly show . . . that its rights are being or will be violated." Tenn. R. Civ. P. 65.04(2); *Moody v. Hutchinson*, 247 S.W.3d 187, 199 (Tenn. Ct. App. 2007).

Additionally, the Court recognizes that an injunction is an extraordinary and unusual remedy that should only be granted with great caution, *Malibu Boats, LLC v. Nautique Boat Co.*, 997 F.Supp.2d 866, 872 (E.D. Tenn. 2014), and that no irreparable injury exists to justify a

temporary injunction if the movant has a full and adequate remedy, such as monetary damages, available for an injury. *Tennessee Enamel Mfg. Co. v. Hake*, 194 S.W.2d 468, 470 (Tenn. 1946); *Fort v. Dixie Oil Co.*, 95 S.W.2d 931, 932 (Tenn. 1936).

The enforceability of the non-compete and non-solicit restriction is the key to this injunction request as it is central to the analysis of Plaintiff's likelihood of success on the merits of the breach claim. Defendant asserts that the Employment Agreement and its restrictions are not applicable to him because he became an owner and thus it was terminated or ended both because he was no longer classified as an employee and because of the provisions of the LLC Act. The Court does not find this argument persuasive. First, the Employment Agreement contemplates Defendant continuing his employment *and* being an owner. It sets out specific provisions regarding how that would occur. Second, events of automatic termination and termination by choice are set out therein and becoming an owner is not listed. Third and finally, Defendant's counsel cited no authority and the Court cannot find any provision in the LLC Act that bars an LLC member from also being an employee.

Defendant also argues that the LLC Act bars this action, which he described as derivative in nature, pointing to Tenn. Code Ann. § 48-230-105. The Court does not find this to be a derivative action, but rather an action filed by the LLC, as verified by one of the Managers and 60% LLC owner. It is not an action being brought by a member on his own behalf for his own benefit. Rather, it is a claim of the LLC brought by the LLC.

Turning to the post-employment restrictions themselves, in order to justify imposing them on Defendant, Plaintiff must demonstrate that it has a legitimate business interest in the protection it seeks, and that the time and territorial limitations are reasonable. *Murfreesboro Med. Clinic, P.A. v. Udom*, 166 S.W.3d 674, 678 (Tenn. 2005). In evaluating the legitimacy of the business

interest claimed, the Court is required to consider facts that may give the former employee or business owner an unfair competitive advantage in his new business but will not enforce an agreement that restrains ordinary trade. The typical considerations related to whether there is an unfair competitive advantage is whether the employee received specialized training, had access to confidential proprietary information, and whether there were specialized customer relationships. Those principles come from a number of cases, including *AmeriGas Propane, Inc. v. Crook*, 844 F.Supp. 379 (M.D. Tenn. 1993), *Udom*, and *Vantage Technology, LLC v. Cross*, 17 S.W.3d 637 (Tenn. Ct. App. 1999).

Although it is unclear to the Court whether Defendant's manager role as set out in the Employment Agreement was the equivalent of the Chief Manager as defined in the Operating Agreement, it is apparent that Defendant was essentially running the Company. Both in that role, and/or as an owner, he had access to the highest level of company information, was the face of the company to customers, and was knowledgeable of all processes and operating procedures. The Court finds that these facts gave him an unfair competitive advantage and that the post-employment restrictions in his Employment Agreement are enforceable as to him—with one caveat. The 100-mile radius is excessive and not narrowly tailored to the business that describes itself as operating in Middle Tennessee. The Court exercises its authority to “blue pencil” or edit the restriction to a 25-mile radius. *Central Adjustment Bureau, Inc. v. Ingram*, 678 S.W.2d 28, 37 (Tenn. 1984). The two-year time limitation is also reasonable given the totality of the circumstances and the Court declines to modify that term.

The Court therefore GRANTS the motion for a temporary injunction, CONVERTING the terms of the TRO to the temporary injunction and ADDING the originally requested language, such that the temporary injunction terms are as follows:

Defendant Oddie Graves is enjoined, until further order of this Court, from the following:

1. Engaging, directly or indirectly, in the HVAC system or mechanical services business similar to Plaintiff's business within a 25-mile radius of Davidson County, Tennessee;
2. Soliciting, aiding or encouraging any current or past customers of Plaintiff to discontinue their business with it or to obtain HVAC system or mechanical services from a person or entity other than Plaintiff;
3. Inducing, aiding or influencing any Plaintiff employee or contractor to terminate their employment or contract arrangement with it;
4. Entering the Market Place Lease premises²; or
5. Accessing any of Plaintiff's business computer, internet, or other electronic systems, networks, databases or platforms.

The Court notes the non-compete and non-solicitation provisions of the Employment Agreement are for two years. It anticipates resolving this matter prior to the conclusion of that period based off of Defendant's November 28, 2022 separation date. However, Defendant is entitled to seek relief from this Order as of that date if this litigation is continuing beyond the two-year period.

The \$15,000 bond that was posted will remain in the registry of the Court to secure the temporary injunction.

Case Management

As discussed at the conclusion of the hearing, the parties are to either confirm March 9, 2023 at 9:00 a.m. as the date and time for the Rule 16 Conference, or if unavailable on that date, March 23, 2023 at 9:00 a.m., with the Calendar Clerk, Megan Broadnax, at 615.862.5720 within ten (10) days of this Order.

² The limited information provided to the Court regarding this premises is discussed herein.

IT IS SO ORDERED.

s/ Anne C. Martin

**ANNE C. MARTIN
CHANCELLOR
BUSINESS COURT DOCKET
PILOT PROJECT**

cc by U.S. Mail, email, or efile as applicable to:

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