

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

ED WILLIAMS,	:	
Plaintiff	:	
	:	
v.	:	NO. 99-01,524
	:	
NATHANIEL HENNIGAN,	:	
Defendant	:	

OPINION and ORDER

The plaintiff, Ed Williams, has asked this court to issue a preliminary injunction prohibiting Nathaniel Hennigan, his former employee, from violating a covenant not to compete that he signed when accepting a full-time job with Mr. Williams' jewelry making business. Mr. Hennigan and Mr. Williams have since parted ways and Mr. Hennigan is currently working for a competitor, in apparent violation of the agreement. Mr. Hennigan contends that the agreement is not enforceable.

Restrictive covenants are not favored by the law or by this court. Fierce marketplace competition keeps this country's economy vital and healthy, and is one of our most valued economic principles. Nonetheless, the law permits a certain amount of economic protectionism in limited circumstances. After a full hearing, we conclude that this is one of those limited circumstances.

Findings of Fact

Mr. Williams owns a custom jewelry making business located in Williamsport. Mr. Hennigan had been working as a part-time employee when, some time in mid to late September, Mr. Williams offered him a full time job on the condition that he sign a covenant not to compete. The agreement specified that Mr. Hennigan would not directly or indirectly own, manage, operate, control, be employed or retained by, participate and/or be connected in any manner with any business or practice that is in competition with Ed Williams within a 45-mile radius of any store or showroom where Williams' products are sold. Mr. Williams told Mr. Hennigan to take the agreement home, discuss it with his parents, an attorney, or whomever he liked, and think it over for a week. On 24 September 1997 Mr. Hennigan signed the agreement. He began full-time employment about that time.

In January 1999 Mr. Hennigan's employment was terminated. He worked for a sign company for a period of time, earning \$6.00 per hour, but recently accepted employment with Dorothy Fisher, one of Mr. Williams' competitors, for minimum wage. Mr. Hennigan performs his daily work at a location on Franklin Street, in Williamsport, although he sometimes works at her store in Eagles Mere, as well.

Discussion

A preliminary injunction is an interim measure designed to preserve the status quo and protect the parties until a final hearing is held. Dilucente Corp. v. Pennsylvania Roofing, 440 Pa. Super. 450, 655 A.2d 1035, 1037 (1995). The prerequisites for granting a preliminary injunction are: (1) it is necessary to prevent

immediate and irreparable harm which could not be compensated by damages, (2) greater injury would result by refusing the injunction than by granting it, (3) the injunction properly restores parties to their status as it existed immediately prior to the alleged wrongful conduct, (4) the activity sought to be restrained is actionable, (5) the injunction issued is reasonably suited to abate such activity, and (6) the injunction would not be contrary to the public interest. All-Pak, Inc. v. Johnston, 694 A.2d 347 (1997).

I. Actionable Activity

This element is sometimes expressed as requiring the moving party to demonstrate a clear right to relief, or to show that he or she is likely to prevail on the merits. The court must therefore determine whether it is likely that the covenant not to compete will be held enforceable after the final hearing. Covenants not to compete are enforceable if they satisfy the following requirements: (1) the covenant must be ancillary to the main purpose of a lawful transaction, (2) necessary to protect a party's legitimate interest, (3) supported by consideration, and (4) appropriately limited as to time and territory. Volunteer Firemen's Ins. V. Cigna Prop., 693 A.2d 1330 (Pa. Super. 1997). The defendant has not contested the existence of the first element. He argues, however, that the other three requirements have not been met. This court does not agree.

A. Necessary to Protect a Party's Legitimate Interest

In determining the necessity for a covenant not to compete a court must

consider whether the promisee's need for protection is outweighed by the hardship of the restriction to be imposed upon the promisor. Volunteer Firemen's Ins. v. Cigna Prop., 693 A.2d 1330 (Pa. Super. 1997).

The evidence clearly established Mr. Williams' need for protection. Mr. Williams testified that Mr. Hennigan gained valuable knowledge while working for him, which would harm his business if shared with his competitors. He explained how after almost fifteen years of working as a jewelry craftsman, he had developed certain procedures that made his business more efficient, and therefore more profitable. As an example, he described a device of his own invention he calls a "jig," which saves much time and effort in working with silver and thus enables him to produce silver jewelry that other goldsmiths decline to create because of the time and effort involved.

Mr. Williams also testified that he has developed unique approaches and techniques to the jewelry making craft, which he believes are tremendously important to the quality of the final jewelry product. He stated his firm conviction that the method of training one receives in the basic techniques has a lasting impact on the quality of jewelry an employee produces. For that reason, Mr. Williams never hires anyone with prior jewelry experience. Instead, he prefers to personally train all his employees from the start, so that they can learn his own unique approaches to the basic skills of jewelry making.

Mr. Williams further testified that he markets certain designs that are unique to his business, and his employees are taught to create these designs. If that information were shared with his competitors, they might ape his work, reducing his profits and eliminating his unique niche.

Mr. Williams stated unequivocally that Mr. Hennigan had learned some of these unique techniques and trade secrets while working for him. Mr. Williams explained that although Mr. Hennigan was occupied with minimal, menial tasks while he worked part-time, once he was hired full-time he began receiving the in-depth training previously described. This is in keeping with Mr. Williams' approach of hiring individuals initially on a sort of trial basis, to determine whether they are the kind of employee he wishes to invest his time, effort, and money in training. Only after an employee is offered full-time employment does he or she begin to receive in-depth training in the jewelry making business. Mr. Williams testified that he then openly shares his knowledge with his employees. Presumably, the signing of a restrictive covenant gives him the confidence to do so.

Mr. Williams was a credible witness, and his testimony was convincing enough to lead this court to conclude that he does indeed have trade secrets that deserve to be protected, and that a restrictive covenant may be reasonably necessary to protect that interest. By contrast, Mr. Hennigan appeared to be a novice in the business, who spoke without authority or experience when he claimed that all jewelers perform their work the same way. In fact, Mr. Hennigan even admitted that the "jig" was an important time saving innovation that other jewelers had not thought of.¹

As to the hardship imposed on Mr. Hennigan, enforcing the covenant will certainly cause him disruption and inconvenience. He will have to resign from his

¹ Mr. Hennigan insisted, however, that he would never tell his current employer about the jig because he was paid by the hour, and therefore had no incentive to make the work more efficient.

current position. However, he is currently earning only minimum wage. It is highly likely that he could obtain another job for the same salary or even higher. After all, he previously earned \$6.00 working for a sign company.

Even if jewelry making is the desire of his heart, Mr. Hennigan can certainly find employment outside the 45-mile radius for the next year and one-half and then return to the area if he so desires. Mr. Hennigan is a young man of twenty, apparently unburdened with the responsibilities of property or dependants. Although it would be a blow to him if the covenant is enforced, the court finds that there is potentially a greater hardship to Mr. Williams, who has spent considerable time and money building up his business. And finally, the court notes that Mr. Hennigan had the choice not to sign the agreement. If he thought it would be too great a hardship, he could have found employment elsewhere.² Having signed it, he will be held to his commitment.

B. Supported by Consideration

Mr. Hennigan's counsel argued that there was no consideration for the covenant not to compete because prior to Mr. Hennigan's official full-time employment he had already worked 40 hours for Mr. Williams during some weeks. The general rule is that when a restrictive covenant is entered into subsequent to employment it must be supported by new consideration, which may be in the form of

² During her closing argument, counsel for the defendant appeared to be arguing that the contract was not entered into voluntarily, and should be declared void for that purpose. The court will not address this issue—not only because it was not properly raised, but also because there was no testimony to support it.

a corresponding benefit to the employee or a beneficial change in employment status. Modern Laundry & Dry Clean v. Farrer, 536 A.2d 409 (Pa. Super. 1988).

Although the testimony indicated that Mr. Hennigan worked forty hours during as many as half the weeks between mid-July and 24 September 1999, there is quite a difference between sometimes working forty hours a week and being hired as a regular full-time employee. When hired full-time, Mr. Hennigan gained the benefit of a steady job, with predictable income.

Moreover, as discussed above, upon beginning full-time employment Mr. Hennigan also received the benefit of specialized training in the jewelry making business. Mr. Williams' testimony, which the court finds credible, established that while Mr. Hennigan was employed part-time he was not yet receiving in-depth training to acquire the necessary skills. Mr. Hennigan himself testified that while employed part-time he sometimes performed tasks that had nothing to do with jewelry-making, such as cleaning or painting. Mr. Williams explained that only after beginning full-time employment did Mr. Hennigan start to receive significant and meaningful training in the business.

Gratuitous promises are not, for the most part, enforceable. The purpose of the consideration requirement is to ensure that a party received a benefit in return for his or her promise. Mr. Hennigan did not sign the agreement out of the goodness of his heart; he received a steady full-time job and specialized training in return for his promise. Therefore, the consideration requirement is satisfied.

C. Appropriately Limited to Time and Territory

The agreement covers a period of two years and a distance of 45 miles. The

court finds no reason to conclude that either of these provisions is unreasonable. Two years is not an excessively long period of time in one's career, and Pennsylvania case law is filled with appellate decisions upholding agreements for longer than that. The geographical limitation of 45 miles is also highly reasonable, especially in light of Mr. Williams' testimony that he draws customers from far greater distances.

II Additional Preliminary Injunction Requirements

Having found that the case is actionable, the court must now determine whether the remaining preliminary injunction requirements have been satisfied.

Necessary to Prevent Immediate and Irreparable Harm

As discussed above, Mr. Williams has developed trade secrets and jewelry making techniques which, if disclosed to a competitor, could result in immediate and irreparable harm. Money damages would be inadequate to compensate him, for he could lose customers as well as his particular niche in the jewelry making business if his competitors are able to benefit from the knowledge of his techniques and designs. Mr. Hennigan's statement that he will not disclose these things does not eliminate the danger, for there is no guarantee he will follow through on this promise, nor is there any practical way to enforce it.

Greater Injury Will Result by Refusing the Injunction than by Granting It

If Mr. Hennigan wins at the permanent injunction hearing he will have lost several months of employment, and will be entitled to the wages he would have

earned. That money will be there for him to draw upon due to the bond this court is ordering. If the court does not grant the injunction, however, and valuable trade secrets are lost in the meantime, Mr. Williams will be harmed and will have no adequate remedy.

Injunction Restores the Status Quo

Granting the injunction will clearly return the parties to their positions before the dispute arose.

Injunction is Reasonably Suited to Abate the Activity

Granting the injunction will mean that Mr. Hennigan must stop working for Mr. Williams' competitor. It will thus stop the activity complained of, until such time as a full hearing can be held.

Not Contrary to the Public Interest

Before granting an injunction a court must consider the potential impact upon the public. Superficially, it might appear that the public would benefit from allowing Mr. Hennigan to share everything he learned from Mr. Williams with any jeweler who cares to listen, because that would result in lower prices and perhaps greater consumer choice. However, in the long run refusing to enforce this covenant and others like it would eliminate the incentive for entrepreneurs to use their ingenuity, time, and talents to create extraordinary products and invent clever techniques. One of the things that has made this country great is good old Yankee ingenuity and ambition, which is well rewarded in our free enterprise system.

Individuals who excel because of their brains, energy, or hard work deserve a certain amount of protection, to encourage them to continue their efforts. The requirements for enforcement of a restrictive covenant have been carefully designed to protect these interests without unduly stifling competition. Therefore, when an individual presents this court with a covenant that meets the requirements, we are obliged to enforce it.

ORDER

AND NOW, this _____ day of October, 1999, for the reasons stated in the foregoing opinion, the petition for preliminary injunction filed by the plaintiff is granted and Nathaniel P. Hennigan is ordered to comply with the provisions of the document entitled "Confidentiality, Non-Competition and Property Rights Agreement." Among other things, Mr. Hennigan is specifically prohibited from working for Dorothy Fisher or another competitor within a forty-five mile radius of any store or showroom where Ed Williams products are sold, and from disclosing any confidential or proprietary information gained during his employment with Mr. Williams.

This order is conditioned upon the plaintiff's filing an approved bond in the amount of \$10,000.00.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Andrea Myers, Esq.
Michael Zicolello, Esq.
Gary Weber, Esq.