

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

QUIXTAR, INC
a Michigan corporation,

Plaintiff,

v.

ORRIN WOODWARD, LAURIE
WOODWARD, CHRIS BRADY,
and TERRI BRADY, individuals,

Defendants.

File No. 07-08413-CK

Hon. Paul J. Sullivan

OPINION & ORDER

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Before the Court are two motions: plaintiff's motion for preliminary injunction pending arbitration and defendants' motion to stay proceedings pending outcome of related case and dissolve temporary restraining order.

The individual defendants are former Independent Business Owners [“IBOs”] of plaintiff. It is alleged that in their respective positions as IBOs, the defendants became privy to confidential and proprietary information of plaintiff. This information included plaintiff’s Line of Sponsorship [“LOS”] which is the exclusive channel through which plaintiff’s products are marketed and includes customer lists, the architecture and structure of plaintiff’s independent sales force, as well as plaintiff’s sales commission structure. As IBOs, defendants were contractually required to abide by plaintiff’s Rules of Conduct which, among other things, contained confidentiality and non-competition clauses. Due to a dispute which arose between plaintiff and defendants, defendants’ affiliation with plaintiff ultimately ceased on August 9, 2007. That same day, defendants filed a class action suit in federal court in California. *See Woodward v Quixtar, Inc*, No CV07-05194 (C D Cal). On August 10, 2007, plaintiff filed a demand for arbitration as provided by its Rules of Conduct and also sought a Temporary Restraining Order from this Court.

In its Verified Complaint for Temporary Restraining Order and Preliminary Injunctive Relief, plaintiff alleges that defendants violated several of the Rules of Conduct by, in part, (1) using plaintiff’s LOS to sell, distribute, or promote competing products, services, or products or otherwise interfering with the businesses of other IBOs; (2) using or disclosing plaintiff’s proprietary information to compete with plaintiff; (3) soliciting other IBOs to resign from plaintiff and compete with plaintiff’s business and (4) disparaging plaintiff’s reputation. Based upon the allegations contained in the Verified Complaint, on August 10, 2007 a temporary restraining order [“TRO”] entered against defendants. Thereafter, pursuant to MCR 3.310(A), a hearing was held to determine whether a preliminary injunction ought enter.

PRELIMINARY INJUNCTION

A grant of injunctive relief is an extraordinary remedy. *Kernen v Homestead Development Co*, 232 Mich App 503, 509 (1998). In order to justify the imposition of a preliminary injunction, the Court must weigh four factors: (1) the likelihood that the party seeking the injunction will succeed on the merits; (2) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief; (3) the harm to the public interest if the injunction is issued; and (4) demonstration that the applicant will suffer irreparable injury if the injunction is not issued. *Fruehauf Trailer Corp v Hagelthorn*, 208 Mich App 447, 449 (1995). The party seeking a preliminary injunction has the burden of establishing that the relief should be granted. MCR 3.310(A)(4); *Campau v McGrath*, 185 Mich App 724, 727-728 (1990).

Success on the Merits. At this early stage in the proceedings, the Court is unable to know whether defendant’s federal court claims that Quixtar is an illegal pyramid organization have any reasonable likelihood of success. What the Court does know, however, is that the relationship between plaintiff and defendants is governed by written contracts clearly defining the rights and responsibilities of each party, and the methods by which disputes between the parties are to be addressed and resolved. There is no

question that plaintiff and defendants are involved in a legal dispute. Similarly, there is no question that such disputes must be resolved through arbitration. Michigan law favors arbitration provisions, and enforcement of the same. *Jozwiak v Northern Michigan Hospitals, Inc*, 231 Mich App 230, 236 (1998). Failure to provide injunctive relief pending said arbitration would frustrate the intent of the parties, as clearly evidenced by written agreements signed by these parties.

The contract on its face appears to contain reasonable provisions governing the conduct of IBOs and former IBOs regarding competing with plaintiff, soliciting IBOs to compete with plaintiff, and protecting confidential and otherwise proprietary information. The California litigation notwithstanding, plaintiff's contractual claims appear to have merit, and good likelihood of success. This factor favors plaintiff.

Harm to Plaintiff versus Harm to Defendants. The Court acknowledges that its decision on whether or not to issue a preliminary injunction will impact all parties. The question is upon whom the greater harm will fall.

It is the Court's opinion that plaintiff will bear the burden of harm if the injunction fails to enter. Plaintiff has alleged and argued that the loss of its proprietary information, which has been developed over the past 40 years, would aid competitors and provide them with a business advantage that they would otherwise not have. Further, without a preliminary injunction, there remains the potential for defendants to utilize their LOS to recruit and solicit other IBOs to disassociate from plaintiff. Due to the very nature of the business in which plaintiff operates, the loss of the proprietary information and IBOs would nullify any potential remedy which could ultimately be issued from the arbitrator.

It is important to remember that this case is not about First Amendment rights. Rather, it is one of contractual obligations. Thus, to the extent that defendants' freedom of speech may be stifled, their signatures to the contract demonstrate knowledge that such was a possibility through enforcement of that contract. Any preliminary injunction which issues would merely require defendants to abide by the Rules of Conduct which they previously agreed to do. In reality, the harm to defendants is to require them to follow their contractual obligations until such time as arbitration is allowed to proceed and the issues submitted therein are resolved. Comparing the harms, this factor weighs heavily in plaintiff's favor.

Harm to the Public Interest if Injunction Issues. Agreements can be entered into orally, at least in many cases, and the law can and often does enforce those agreements. However, oral agreements present more challenges than do written contracts. It is much easier for a party to determine confidently its contractual obligations, and for a judge to understand and enforce same, when they are clearly set forth in a writing, especially one that has been agreed to by the various parties, as evidenced by their signatures.

It is not in the public interest for a judge to lightly disregard and set aside the terms of written agreements such as those before it in the case at hand. Defendants'

argument that the entry of a preliminary injunction is against the public interest is based upon the premise that the contractual agreement is unenforceable as the non-compete agreements and non-solicitation provisions force distributors to continue in an “illegal pyramid scheme” which is repugnant to public policy. However, whether or not plaintiff’s business practice is what defendants claim has yet to be established, and that issue is not before the Court. There are times when all or part of a contract, written or oral, might be deemed unlawful as sufficiently against public policy and result in a court decision not to enforce it. Similarly, however, such determinations are not lightly made, and require far more factual development and legal analysis by the Court than has been possible since the filing of this case only a few days ago.

What the Court has in front of it are written agreements, signed by the defendants, in which they agreed to abide by plaintiff’s Rules of Conduct. The enforcement of such an agreement, until a determination is made following sufficient discovery and presentment of factual proofs, is clearly in the interest of the public.

Irreparable Injury to Plaintiff. To establish irreparable injury, plaintiff must demonstrate an injury for which there is no legal measurement of damages or where damages cannot be determined with a sufficient degree of certainty. *Thermatool Corp v Borzym*, 227 Mich App 366, 377 (1998). Economic injuries can be remedied by damages at law and are therefore not irreparable. *Acorn Building Components, Inc v Local Union No. 2194 UAW*, 164 Mich App 358, 366 (1987).

Especially relevant on the issue of irreparable injury to plaintiff is the language of the contractual agreement entered into by the parties. Section 6.5.10 and 4.27 of the Rules of Conduct provide that competing with other IBOs, raiding other IBOs by soliciting them to compete with plaintiff, or the use or disclosure of proprietary information will cause irreparable harm to plaintiff. By forming an IBO and agreeing to comply with the Rules of Conduct, defendants agreed that the very actions which plaintiff alleges they have taken would cause irreparable injury to plaintiff.

Nevertheless, even without such a provision in the written agreement between the parties, the damages complained of by plaintiff do not have an adequate remedy at law. It has been alleged that defendants have been utilizing plaintiff’s proprietary information in an effort to solicit other IBOs to join defendants’ organization Signature Management Team, LLC [“TEAM”], and also to disparage plaintiff’s reputation. If such allegations are true, it would be impossible to determine with any certainty the amount of monetary compensation necessary to alleviate the harm caused. Plaintiff’s business competitors would have gained an advantage over plaintiff by having gained access to proprietary and confidential business information which had been developed over several decades. Further, there is no adequate remedy to compensate for the loss of reputation, especially in a competitive business field. Accordingly, this factor weighs in plaintiff’s favor.

Weighing of the Factors. Michigan case law provides for injunctive relief to maintain the status quo pending resolution of the issues through arbitration in an effort to prevent the ultimate arbitration award from being rendered a nullity. *UAW Local 6000 v*

State, 194 Mich App 489, 506-507 (1992). It is the opinion of the Court that until arbitration is commenced and the issues between the parties resolved, the status quo would best be maintained by the imposition of a preliminary injunction. Defendants, as IBOs of plaintiff, signed written agreements requiring them to abide by the Rules of Conduct issued by plaintiff. Until such time as a determination is made regarding defendants' obligations under that contract, the agreement entered into should be enforced as written.

The Court finds that plaintiff has established that it will be irreparably injured without the issuance of an injunction, that plaintiff will be harmed more without injunctive relief than defendants will be harmed by its entry, and that public policy favors the enforcement of this agreement as written. Considering all of these factors and weighing them accordingly, defendants ought be required to comply with the contractual obligations originally agreed to. As a result, plaintiffs are entitled to entry of a preliminary injunction pending the outcome of arbitration. However, the entry of such an injunction is not a final decision on the merits of this case and should not be interpreted as the Court's opinion as to what the ultimate decision will be.

MOTION TO STAY

The issues in the case before the Court, as well as those being submitted to arbitration, are issues of contract. These issues are independent from the allegations and claims made in the federal class action suit filed in California which involves plaintiff's business practice as a whole. Due to the separation of issues in the two cases, the Court believes that there is no basis upon which to stay the instant matter pending resolution in California. As such, defendant's request is denied.

CONCLUSION

After reading both briefs, attached and referenced materials, and giving due consideration to the arguments of both sides, the Court is convinced that plaintiff has established the requisite elements to support injunctive relief and that request is hereby GRANTED. Defendants are enjoined from (1) using their Line of Sponsorship to sell, distribute, promote competing products, services, or other business, ventures, or otherwise interfere in the business of Quixtar or its IBOs; (2) soliciting, recruiting, or attempting to recruit other IBOs to Compete with Quixtar's business or take actions not in conformity with its Rules of Conduct; and (3) disparaging or intentionally diminishing the reputation of Quixtar.

Additionally, as it is the opinion of the Court that a preliminary injunction ought enter against defendants, defendants' motion to dissolve the TRO is moot and therefore DENIED. Finally, due to the distinct issues before this Court as compared to that in California, defendant's motion to stay proceedings ought be and respectfully is DENIED.
DATED: August 24, 2007

Paul J. Sullivan, Circuit Judge (P24139)