

CLIENT ALERTS

Non-Competes, the Public Interest, and Substantial Harm to Others

12.3.2019

When any court is asked to grant a temporary restraining order or preliminary injunction against a defendant—whether based on a non-compete, based on trade secret misappropriation, or any other basis—the court weighs and evaluates several factors. Two of those factors are the harm such an injunction may have to others (though some courts look at this prong as a balance of harm between the parties themselves), as well as the public interest in the injunction being granted. Often parties make the mistake of giving these two factors little attention, thinking that if they can establish that they are likely to win on the merits of their arguments, then the injunction should automatically be granted. A recent opinion from the Federal Court for the Eastern District of Michigan, however, reminds us that that is not necessarily true.

In *DetailXperts Franchise Systems, LLC v. Deck, Inc.* (Case No. 19-cv-10037; 2019 WL 5294354), the plaintiff sought an injunction against the defendant and its principals for violating a non-compete agreement that the principals had with the plaintiff prior to starting their own business. The Plaintiff provided franchisees with the equipment and training to run a vehicle-detailing business. The principals of the Defendant company entered into a Franchise Agreement with the Plaintiff. That Franchise Agreement included a non-compete provision. Eventually, the Defendants rescinded the Franchise Agreement, though continued to compete in the same space. This led to the Plaintiff seeking an injunction to enforce the non-compete.

The Court, in a well-reasoned opinion by Judge Matthew F. Leitman, first noted that “[a] district court balances four factors when considering a motion for a preliminary injunction or a temporary restraining order” Those four factors are:

(1) Whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent the injunction; (3) whether the injunction would cause

Related People

Phillip C. Korovesis
Of Counsel

Ivonne M. Soler
Senior Attorney

Related Services

Non-Compete & Trade Secret

Trade Secret & Non-Compete
Specialty Team

CLIENT ALERTS

substantial harm to others; and (4) whether the public interest would be served by the issuance of an injunction.

Id.; quoting *S. Glazer's Distribs. of Ohio v. Great Lakes Brewing Co.*, 860 F.3d 844, 849 (6th Cir. 2017).

The Court first held that neither of the first two factors was met. The Court continued, however, and reviewed the last two factors. “Finally,” the Court held, “granting the requested injunction could harm both third parties and the public interest.” This was so because, the Court found, “[t]he injunction will effectively put [Defendant] out of the vehicle-washing business within a reasonable distance of its home base. That, in turn, could well lead to the layoff of [Defendant’s] four employees and will cause [Defendant] to default on its Small Business Administration loan.” Because of these realities, the “Court concludes, at a minimum, that [Plaintiff] has failed to show that granting the requested injunction would benefit third parties and serve the public interest.” *Id.* “Accordingly, the third and fourth injunction factors do not weigh in favor of granting the injunction.” *Id.* For those reasons as well as others, the Court denied the motion for injunctive relief.

This case should be instructive to all litigants and parties seeking injunctive relief. Often times litigants will treat this very last factor as a “give me.” Litigants argue generic things such as “the public has an interest in contracts being enforced,” or “the public has an interest in trade secrets remaining confidential.” These are valid and indeed strong arguments. But they do not, however, necessarily address all of the specific facts that may be relevant in any given case.

Will an injunction effectively shut a business down? Will it cause a default on a loan? Will it leave customers without adequate options to obtain the services or products in question? Could an injunction have an economic impact on a small community? These are things that should be considered when drafting a motion for injunctive relief or in defending against one as well. Plaintiffs should be prepared to rebut such arguments and to forcefully argue why an injunction will *not* cause such harm. Or, even if it will cause such effects, why such outcomes are justified given the circumstances. Any request for injunctive relief is going to be fact-intensive and particularized to the situation actually at hand. Litigants should make sure their motions address those particularized facts with detail.

But this case makes clear that the Public Interest factor of the four-factor test is not a “give me” and should be treated seriously.

Paul Mersino

313.225.7015

mersino@butzel.com