



IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

SCOTT JOHNSON,

CASE NO. CI 19-378

Plaintiff,

vs.

**ORDER GRANTING TEMPORARY
RESTRAINING ORDER**

WORLD WIDE WARRANTY LIFE
SERVICES, INC.,

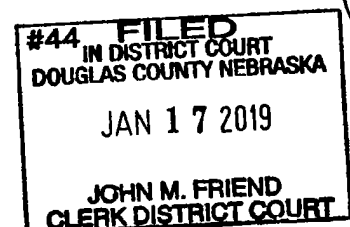
Defendant.

This matter is before the Court pursuant to Plaintiff's Motion for Temporary Restraining Order and Temporary Injunction. Hearing was held on January 17, 2019, at which time Plaintiff was represented by Patrick Cooper. The Court reviewed the pleadings and accepted into evidence the Affidavit of Scott Johnson. Having considered the evidence presented in support of the Motion, and having considered well-established Nebraska regarding the permissible scope of covenants not to compete, the Court will grant Plaintiff's Motion for Temporary Restraining Order.

STANDARD

Injunctive relief is authorized by Neb. Rev. Stat. 25-1063. In determining whether a preliminary injunction should issue, the Court considers the following factors: (1) the probability that plaintiff will succeed on the merits; (2) the threat of irreparable harm to the plaintiff; (3) the state of balance between such harm and the injury that granting the injunction will inflict on other parties; and (4) the public interest. Dataphase Systems, Inc. v. C L Systems, Inc., 640 F.2d 109, 113 (8th Cir. 1981) (en banc). The Court weighs the same factors to determine whether a temporary restraining order should issue as it does to determine whether a preliminary injunction should issue. See Planned Parenthood of the Heartland v. Heineman, 2010 WL 2773437 at *8 (D. Neb. 2010).

"No single factor in itself is dispositive; in each case all of the factors must be considered to determine whether on balance they weigh towards granting the injunction." Baker Elec. Co-op v. Chaske, 28 F.3d 1466, 1472 (8th Cir. 1994) (quoting Calvin Klein Cosmetic Corp. v. Lenox Labs, Inc., 815 F.2d 500, 503 (8th Cir. 1987), and



also citing Dataphase). A trial court's grant of preliminary injunction will be reversed "only if the issuance is the product of an abuse of discretion or misplaced reliance on an erroneous legal premise." Pottgen v. Mo. State High Sch. Activities Ass'n, 40 F. 3d 926, 929 (8th Cir. 1994); see also Pruco Secs. Corp. v. Montgomery, 264 F.Supp. 2d 862, 866 (D.N.D. 2003).

ANALYSIS

Based on the evidence presented to the Court, this Court finds that Plaintiff has demonstrated a likelihood of success on the merits of his declaratory judgment claim. It is questionable whether the parties had a meeting of the minds with respect to the covenant not to compete. Ultimately, however, it does not matter whether the parties agreed to the covenant not to compete set forth in the employment agreement because that non-compete provision is substantially overbroad and unenforceable, as it is greater than necessary to protect Defendant's legitimate interests and it is not limited to a customer-specific restraint as required by Nebraska law. See, e.g., Presto-X-Company v. Beller, 253 Neb. 55, 64-65, 568 N.W.2d 235, 240-41 (1997); Controlled Rain, Inc. v. Sanders, No. A-04-858, 2006 Neb. App. LEXIS 77, at *24-25 (Ct. App. May 9, 2006).

The Court finds that the balance of harms weighs in favor of Plaintiff, that Plaintiff has no adequate remedy at law, and that issuance of this temporary restraining order is not contrary to the public interest. Plaintiff would be irreparably harmed and would have no adequate remedy at law if required to take a traditional litigation path because such litigation could take the entire year, thus mooting Plaintiff's case and preventing Plaintiff from securing any of the relief sought in this case. This is an action for declaratory judgment, not money damages, so money damages are unavailable to make Plaintiff whole in this action at the conclusion of the case. This Order alerts the parties and Plaintiff's prospective employers of the Court's preliminary finding that the covenant not to compete is invalid so that Plaintiff may seek employment in these industries prior to a final determination on the merits in this action.

IT IS THEREFORE ORDERED AS FOLLOWS:

1. Plaintiff's Motion for Temporary Restraining Order is granted on this 17th day of January, 2019, at 1:20 p.m.

2. Defendant is restrained from attempting or threatening to enforce the covenant not to compete against Defendant or from telling Plaintiff's prospective or future employer(s) that Plaintiff is bound by a valid covenant not to compete.


3. The hearing on Plaintiff's Motion for Temporary Injunction shall be held on January 25, 2019, at 1:00 p.m.

4. Plaintiff shall post bond in the amount of One Thousand Dollars (\$1,000.00).

5. Plaintiff shall promptly provide notice to Defendant of this Order Granting Temporary Restraining Order.

Dated this 17th day of January, 2019.

BY THE COURT:



Hon. Leigh Ann Retelsdorf
Douglas County District Court Judge