COURT OF APPEALS
DECISION
DATED AND FILED

July 17, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP2370 **Cir. Ct. No. 2010SC38274**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

MILWAUKEE HANDYMAN.COM, LLC,

PLAINTIFF-RESPONDENT,

V.

TIM LAUR,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: PAUL R. VAN GRUNSVEN, Judge. *Affirmed*.

¶1 FINE, J. Timothy Laur, *pro se*, appeals the small-claims judgment awarding Milwaukee Handyman.com, LLC, $2,200. We affirm.

I.

¶2 The circuit court tried this case without a jury. *See* WIS. STAT. § 799.21 (trial by court or jury). As it recognized, and as we show in Part II, the material facts are not disputed.

¶3 Milwaukee Handyman is a matchmaker of sorts; it places painters and other trades-persons with customers. Laur signed with Milwaukee Handyman, and executed an independent-contractor agreement. The Agreement provided that Milwaukee Handyman would bill customers for whom Laur would work, and that Milwaukee Handyman would pay Laur out that money. Laur conceded at the trial that he and Milwaukee Handyman agreed to split 50-50 the fees generated by Laur's work under the Agreement. The Agreement also bound Laur for two years after the end of their relationship to not solicit customers introduced to him by Milwaukee Handyman.

> Contractor [Laur] understand [*sic*] that Company is obligated to protect the Proprietary Information of Milwaukee-Handyman. Accordingly, Contractor acknowledges that during the term of this Agreement, Company will provide Contractor with valuable Proprietary Information. Contractor also acknowledges that during the term of this Agreement, and solely as a result of the relationship created thereby, Contractor will generate goodwill for Company and gain contacts and relationships with customers tat [*sic*] Contractor would not otherwise have gained but for his or her relationship with Company. Accordingly, **as an express condition of this Agreement**, Contractor agrees that during the term of this Agreement and for a period of two (2) years after the termination or expiration thereof (for any reason, whether by Company or Contractor), Contractor will not, directly or indirectly: (i) solicit or attempt to solicit any consumer to whom Contractor provided any service during the term of this Agreement or with whom Contractor had contact as a result of its relationship with Company, or any consumer that became interested in Contractor based on services performed by Contractor in connection with this Agreement, for the purpose of providing any service

> offered by Company to such consumer on behalf of Contractor or any other person, firm, association or corporation; [non-material matter omitted]. The two (2) year period shall be extended by any period of noncompliance with this covenant.
>
> Nothing contained herein shall prohibit Contractor from conducting his or her customary trade, craft, vocation, or line of work for any consumer with whom Contractor had no contact with as a result of his or her relationship with Company during the term of this Agreement or that did not become interested in Contractor based on Services performed by Contractor in connection with this Agreement.

(Bolding in original.)

¶4 Laur signed with Milwaukee Handyman on April 15, 2010, and on the next day, April 16, negotiated with a person who had asked Milwaukee Handyman for a house painter. The homeowner signed a Milwaukee Handyman contract dated April 16 for the work. The contract directed the customer to: "Make All Labor Checks Payable to Milwaukee-Handyman.com." (Uppercasing, bolding, and italics omitted.) The "Labor Estimate" part of the contract indicated that the labor was "not to exceed" "6,000" but would be "no less than" "5,000." (Uppercasing and bolding omitted.) After application of "500" for "credit coupons[,]" the respective maximum and minimum charges were written as "5,500" and "4,400$^{\underline{00}}$" with the latter figure circled several times. (Uppercasing omitted.) A handwritten note under the "Labor Estimate" box indicates that the price "includes paint." (Uppercasing omitted.)

¶5 The homeowner had to go to the hospital and, as a result, the painting was delayed. The parties dispute whether Milwaukee Handyman cancelled the painting contract or whether Laur attempted to structure the job so he would not have to split the fee. Milwaukee Handyman's owner testified that

when he went to the homeowner's house to see why he had not heard about the painting project, he saw Laur painting the house. Laur testified that the homeowners paid him $4,400 for the painting. Milwaukee Handyman and Laur were unable to settle their dispute, and Milwaukee Handyman brought this small-claims action to recover $2,200.

¶6 The trial court determined that because Laur "gained contact with [the homeowners] through [his] affiliations with Milwaukee Handyman" he owed the company the agreed fifty-percent of the $4,400. The trial court also ruled that the non-solicitation agreement was valid.

II.

¶7 Laur contends on appeal that the non-solicitation clause violated WIS. STAT. § 103.465. He argues in, essence, that it and the two-year period was unreasonable, and the clause was overbroad because it was not necessary to protect Milwaukee Handyman's "legitimate business interest." Further, he claims that Milwaukee Handyman had "unclean hands."

¶8 WISCONSIN STAT. § 103.465 reads:

> A covenant by an assistant, servant or agent not to compete with his or her employer or principal during the term of the employment or agency, or after the termination of that employment or agency, within a specified territory and during a specified time is lawful and enforceable only if the restrictions imposed are reasonably necessary for the protection of the employer or principal. Any covenant, described in this subsection, imposing an unreasonable restraint is illegal, void and unenforceable even as to any part of the covenant or performance that would be a reasonable restraint.

¶9 We decide *de novo* the legal issue of whether a non-compete clause is reasonable. ***Techworks, LLC v. Wille***, 2009 WI App 101, ¶4, 318 Wis. 2d 488, 498, 770 N.W.2d 727, 731–732.

¶10 As the trial court recognized, Milwaukee Handyman's very business is the pairing of trades-persons with customers. It is certainly reasonable for a non-solicitation clause to prevent an independent contractor, who is introduced to a customer by a company, from evading a split-fee agreement by dealing with the customer behind the company's back. Significantly, the Milwaukee Handyman non-solicitation clause specifically does not encompass any customer *other than a customer* whose name and need for service *was* given to the trades-person by Milwaukee Handyman, and is limited to two-years following the termination of the contractor's business relationship with Milwaukee Handyman. The clause is thus wholly different than the offending clauses in ***Mutual Service Cas. Ins. Co. v. Brass***, 2001 WI App 92, ¶¶13–15, 242 Wis. 2d 733, 743–744, 625 N.W.2d 648, 654–655, on which Laur relies. Moreover, the supreme court overruled ***Brass*** in ***Star Direct, Inc. v. Dal Pra***, 2009 WI 76, ¶78 n.12, 319 Wis. 2d 274, 311 n.12, 767 N.W.2d 898, 916 n.12, and ***Brass*** is thus not precedential, *see* ***Blum v. 1st Auto & Cas. Ins. Co.***, 2010 WI 78, ¶¶42–56, 326 Wis. 2d 729, 750–756, 786 N.W.2d 78, 88–91.

¶11 The Milwaukee Handyman non-compete clause is valid here irrespective of whether, as Laur contends, Milwaukee Handyman cancelled the $4,400 contract before Laur started to paint. *See* ***Star Direct***, 2009 WI 76, ¶¶32–37, 319 Wis. 2d at 292–294, 767 N.W.2d at 907–908 ("Wisconsin courts and litigants have been untroubled by an employer's asserted interest in its recent past customers."). Moreover, two years is a reasonable restriction. *See* ***Techworks***, 2009 WI App 101, ¶3, 318 Wis. 2d at 498, 770 N.W.2d at 731.

¶12 Under our independent review of the statute and contract, we agree with the trial court that Laur breached his contract with Milwaukee Handyman when he did not turn over to Milwaukee Handyman fifty-percent of the fee, as he had agreed to do. Further, Laur's "unclean hands" argument is without merit; parties to a valid contract have a right to seek to enforce its terms. Accordingly, we affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.