IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HEARING LAB TECHNOLOGY, INC., a Texas Limited Liability Corporation,	)	CIVIL ACTION NO. 16-221
Plaintiff,	)	JUDGE KIM R. GIBSON
vs.	)	
HEARING INSTRUMENTS, INC., a Pennsylvania Corporation	)	
Defendant.	)	

MEMORANDUM OPINION

Before the Court is a motion to dismiss filed by Defendant Hearing Instruments, Inc. ("Hearing"). The motion seeks to dismiss the complaint filed against it by Plaintiff, Hearing Lab Technology, Inc. ("HLT"), for failure to join indispensable parties pursuant to Federal Rule of Civil Procedure 12(b)(7). [ECF No. 7]. The pith of Defendant's argument for dismissal is that the necessary parties, which Plaintiff failed to name, are the contracting employees subject to the restrictive covenants upon which Plaintiff seeks relief. [ECF No. 8]. In the alternative, Defendant asks this Court to decline to exercise its jurisdiction over Plaintiff's sole claim, which seeks a declaratory judgment. For the reasons that follow, the Court will grant Defendant's motion and dismiss the complaint.

Factual Background

Plaintiff HLT is a Texas limited liability corporation and its sole member is HLT Holding Company, LLC.; a Delaware limited liability company. [ECF No. 1] at ¶ 1. HLT manufacturers hearing aids and provides licensed hearing aid services. Ibid. at ¶ 28. Defendant Hearing is a

Pennsylvania corporation that provides hearing aid services and products under the Hearing Instruments and Miracle-Ear® brand. Id. at ¶¶ 2 and 29.

Josh Strickland ("Strickland") is an HLT employee at its Sam's Club Hearing Center location in Altoona, Pennsylvania where he serves as a District Manager. Id. at ¶ 50. Previously, Defendant employed Strickland at its Hearing Instruments in Greensburg, Pennsylvania, approximately seventy-five miles from Altoona, Pennsylvania. Id. at ¶ 40. Strickland also worked for Defendant at its Monroeville, Pennsylvania and Pittsburgh, Pennsylvania locations, approximately eighty-six to ninety-seven miles from Altoona. Id. On August 2, 2010, Strickland signed an Employment Agreement ("Strickland Agreement") with Defendant agreeing that upon termination of his employment and two years thereafter, he would not

> directly or indirectly recruit or hire any employee of the Company, or otherwise induce such employee to leave the employment of the Company, to become an employee of or otherwise be associated with me or any company or business with which I am or may become associated, nor will I directly or indirectly solicit present or former clients or customers of the Company.

Id. at ¶ 44 (quoting Exhibit D, ¶ 15). On November 15, 2013, Strickland terminated his employment with Defendant and began employment with Plaintiff. Id. at ¶¶ 41 and 49.

Williams M. Evans ("Evans") is an HLT employee at its Sam's Club Hearing Center location in Altoona, Pennsylvania. Id. at ¶ 27. Previously, Defendant employed Evans at its Hearing Instruments location in Bedford, Pennsylvania, approximately forty miles from Plaintiff's Sam's Club location. Id. at ¶¶ 11-12. On May 16, 2011, Evans signed an Employment Agreement ("Evans Agreement") with Defendant agreeing that upon termination of his employment and two years thereafter, he would not

> own, maintain, engage in, be employed by, advise, assist, invest in, make loans to, or have any interest whatsoever in any business which is the same as or substantially similar to the Company's business, or that of any Company affiliate or parent, and which is located within the non-exclusive area served by Employee or within a radius of 20 miles thereof.

Id. at ¶ 20 (quoting [ECF No. 1] Exhibit A, ¶ 15). On February 2, 2016, Evans terminated his employment with Defendant and began employment with Plaintiff. Id. at ¶¶ 11 and 27.

On March 1, 2016, Defendant sent Strickland, Evans, and Plaintiff a cease and desist letter. [ECF No. 1] Exhibit B and C. The Evans letter requested confirmation in writing that

> (1) [Evans] will immediately stop working at HLT/Sam's Club Altoona, (2) [Evans] will not work at any HLT/Sam's Club location within a 20 mile radius of where you worked at Hearing Instruments from February 12, 2016 to February 12, 2018. This includes within a 20 mile radius of Hearing Instruments' Altoona, Greensburg, Bedford, Indiana, Somerset, Johnstown and Camp Hill locations.

[ECF No. 1] Exhibit B at 2. The Strickland letter alleged that Strickland's solicitations "to induce current or former employees of Hearing Instruments to work for HLT in breach of their Employment Agreements, including Mr. Evans, are actionable as tortious interference with contract and unfair competition." [ECF No. 1] at ¶ 51. The letter addressed to HLT demanded "HLT employees [] refrain from further soliciting Hearing Instruments' employees and former employees to work for HLT in violation of their Employment Agreements." [ECF No. 1] Exhibit C at 2.

On October 20, 2016, HLT filed a complaint for declaratory judgment alleging that the restrictive covenants in the Strickland Agreement and Evans Agreement are, as a matter of law, void and unenforceable pursuant to 28 U.S.C. § 2201(a). [ECF No. 1] at ¶¶ 38 and 55. Plaintiff

further alleges the agreements do not prohibit HLT from employing Strickland and Evans.[1] Id. Plaintiff's declaratory judgment claim is the only claim brought.

On December 19, 2016, over nine months after sending its cease and desist letter, Defendant filed the following complaints in the Court of Common Pleas of Cumberland County, Pennsylvania: (1) Breach of Contract against Evans; (2) Violation of the Pennsylvania Uniform Trade Secrets Act against HLT and Evans; (3) Tortious Interference with Contract against HLT and Strickland; (4) Tortious Interference with Current and Prospective Business Relationships against HLT, Evans, Strickland; and (5) Unfair Competition against HLT, Evans, and Strickland. [ECF No. 8] at 4. Notably, one day after filing its state court claims, Defendant filed the instant motion to dismiss Plaintiff's declaratory judgment claim on December 20, 2016. [ECF No. 7]. The parties have fully briefed the issues and this matter is ripe for disposition.

Failure to Join an Indispensable Party

A party may seek to dismiss a complaint for failure to join a required party under Federal Rule of Civil Procedure 12(b)(7). As with (12)(b)(6) challenges, in analyzing a motion under Rule 12(b)(7) the court must accept as true all factual allegations in the complaint and draw all inferences from the facts alleged in the light most favorable to the non-moving party. See Jurimex Kommerz Transit G.M.B.H. v. Case Corp., 65 Fed.Appx. 803, 805 (3d Cir. 2003). In evaluating a 12(b)(7) motion, the court applies the two-part test found in Federal Rule of Civil Procedure 19. Rule 19(a) provides that an absent person is a necessary party if he is subject to service of process and either: (1) in his absence, complete relief cannot be accorded

[1] Notably, Defendant did not allege that Strickland breached his employment agreement presumably because the two-year time restraint on the covenant not to compete expired November 15, 2015.

among the parties; or (2) the absent person claims an interest in the subject matter of the case and his absence will, as a practical matter, prejudice his ability to protect that interest or result in multiple or otherwise inconsistent obligations. Evidence outside the pleadings may be considered. See Cummings v. Allstate Ins. Co., CIV.A. 11-02691, 2011 WL 6779321, at *3 (E.D.Pa. Dec. 27, 2011) (citations omitted).

If a person is necessary under Rule 19(a) but cannot be joined, the court must determine whether the case should proceed among the existing parties or be dismissed. Fed. R. Civ. P. 19(b). In making this determination, the court must consider the extent to which prejudice will result to the non-party or the current parties as a result of the non-party's absence, the extent to which any such prejudice could be lessened, whether a judgment rendered in the non-party's absence would be adequate, and whether the plaintiff has an adequate remedy if the case were to be dismissed. Fed. R. Civ. P. 19(b)(1)-(4). If a party is deemed necessary under Rule 19(a)(1), that party must be joined if feasible. Pittsburgh Logistics Sys., Inc., 669 F.Supp.2d at 617. Otherwise, if the party is not deemed necessary under Rule 19(a)(1), the court's analysis is finished. See Id. at 617.

A. Analysis

Defendant moves to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(7) for failure to join necessary and indispensable parties. [ECF No. 7]. The Court must decide whether it can accord meaningful relief to the parties absent joinder of Strickland and Evans. After review, the Court answers the question in the negative. Defendant argues, "Evans and Strickland are the employees subject to the restrictive covenants upon which [Plaintiff] bases its request for declaratory judgment." [ECF No. 8] at 7. Plaintiff responds that it merely

"seeks a judicial declaration regarding its right [to] employ individuals as it chooses." The judicial declaration, however, involves construing the restrictive covenants of Defendant's employment contracts. [ECF No. 16] at 11.

Defendant asserts that the employment relationship between the nonparties and Plaintiff will be directly affected by the outcome of Plaintiff's claim. [ECF No. 8] at 9. Defendant attached the Evans agreement and Evans cease and desist letter to the HLT cease and desist letter. Plaintiff presented these documents, and included the Strickland agreement, praying that this court construe them in its favor. Specifically, Plaintiff seeks a declaration that the "two-year restriction" and "purported designated territory" in the covenants are "far greater than necessary." [ECF No. 1] at ¶¶ 22 and 23. Defendant, Evans, and Strickland are the only parties to the contracts at issue. [ECF No. 1] at Exhibit A and D. Parties to a contract at the heart of a dispute are considered necessary parties. See PNC Fin. Servs. Grp., Inc. v. Daly, No. 14CV0335, 2014 WL 2154968, at *4 (W.D. Pa. May 22, 2014) (holding the nonparty was not necessary because, inter alia, it was a non-signatory to employment agreement). Although Plaintiff cites authority to support its assertion that restrictive covenants can be construed without joining the employees at issue, the cases cited are generally not applicable. [ECF No. 16] at 6.[2]

Construing the employment agreements may necessarily affect the rights of the contracting parties because Evans and Strickland have a "substantial interest in the subject matter of this action". Glades Pharm., LLC v. Call, Inc., 2005 WL 563726, at *3 (E.D. Pa. Mar. 9,

[2] Plaintiff offers Marchionda v. Precision Kidd Steel Co. to support this theory but the court in that case held that Defendant did not show the nonparty was indispensible because, inter alia, the nonparty was a party to an irrelevant agreement. Marchionda v. Precision Kidd Steel Co., 2015 WL 3825420, at *2 (W.D. Pa. June 19, 2015). Thus, this case is not on point here, where Strickland and Evans are parties to agreements that are very much relevant.

2005). The interests of both Evans and Strickland will be affected if this court adjudicates their rights under their employment agreements as Plaintiff is praying the time, geographical restraints, and non-solicitation provisions are deemed unreasonable. The result would potentially allow the nonparties to remain employed and protect them from claims of tortious interference. Alternatively, were Plaintiff to ultimately lose, the employment of Strickland and Evans would potentially be jeopardized.

The Court exercises diversity jurisdiction over this case pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds $75,000, exclusive of interests and costs, and the suit is between citizens of different states. [ECF No. 1] at ¶ 3. Both Evans and Strickland are citizens of Pennsylvania, the state in which the Defendant is incorporated. [ECF No. 1] at ¶ 2, Exhibit C, Exhibit E. Joining Evans and Strickland as Plaintiffs is not feasible under Rule 19(a) inasmuch as it would defeat diversity citizenship. Gen. Refractories Co. v. First State Ins. Co., 500 F.3d 306, 312 (3d Cir. 2007).

B. Rule 19(b) Factors

The court must now determine if the complaint should be dismissed or continued under the four Rule 19(b) factors. As stated above, once a court concludes that a nonparty is necessary, it then must weigh the following factors to determine if the case can proceed without the nonparty: (1) the extent to which prejudice will result to the non-party or the current parties as a result of the non-party's absence, (2) the extent to which any such prejudice could be lessened, (3) whether a judgment rendered in the non-party's absence would be adequate, and (4) whether the Plaintiff has an adequate remedy if the case were to be dismissed. Fed. R. Civ. P. 19(b)(1)-(4).

Under the first factor, the outcome of this proceeding may prejudice Evans and Strickland because the "adjudication of [their] rights...may impair or impede [their] ability to" remain employed. Glades Pharm., LLC, 2005 WL 563726 at 4. Under the second factor, the court cannot lessen the prejudice because Evans and Strickland are parties to the contracts at issue. Id. Although Plaintiff claims it "did not bring this action to determine whether it needs to terminate either employee," its prayer for relief, nonetheless, asks the court to declare their employment covenants "void and unenforceable". [ECF No. 16] at 8; [ECF No.1] at ¶¶ 38 and 55. Despite its intent to further employ Evans and Strickland, relief rests in adjudicating their rights. The Court cannot conclude that Plaintiff's nonbinding assertion that it does not intend to terminate their employment is sufficient to eliminate their interest in the matter.

Under the third factor, a judgment in the absence of Evans and Strickland may or may not be adequate. Although Plaintiff may be afforded declaratory relief in the instant action, Defendant has already commenced a state action under the same facts against Plaintiff, Evans, and Strickland that also alleges violation of the Pennsylvania Uniform Trade Secrets Act, tortious interference with contract, tortious interference with current and prospective business relationships, and unfair competition. [ECF No. 8] at Exhibit A. Relief here may not resolve the dispute or completely protect Plaintiff's interests as to those state claims. Any results here may also adversely affect the litigation interest of Plaintiff, Evans, and Strickland.

Plaintiff asserts this factor is not in favor of indispensability because this court could settle the geographical dispute in the covenant. [ECF No. 16] at 9. This position fails to address how such a holding would adequately address the remaining claims in the instant dispute or

related state action in the absence of Evans and Strickland. The third factor, therefore, is neutral as to indispensability.

Under the fourth and final factor, Plaintiff would have an adequate remedy in a Pennsylvania state court. Although Plaintiff alleges Defendant commenced its state action as a litigation tactic, Defendant's cease and desist letters put Plaintiff on notice that these state claims were likely. The tort and breach of contract claims at issue here are well suited for a state forum. Plaintiff asserts it would "lose the right to an unassailably impartial forum." [ECF No. 16] at 9. This position fails to address if the state court would or would not have adequate remedy. The fourth factor, therefore, weighs highly in favor of indispensability of Evans and Strickland. Therefore, the Court finds Strickland and Evans to be indispensable parties, which requires dismissal of the case.

Discretionary Jurisdiction Under the Declaratory Judgment Act

Defendant also argues in the alternative that the Court should decline to exercise its jurisdiction over Plaintiff's claim since the only relief sought is a declaratory judgment. Although the Court's conclusion that Strickland and Evans are indispensable parties is sufficient to dismiss the complaint, the Court will discuss Defendant's second argument for the sake of completeness.

Under the Declaratory Judgment Act ("Act"):

> [i]n a case of actual controversy within its jurisdiction, ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201(a).

The Act is not a mandate but, rather, a discretionary tool which courts can use to exercise jurisdiction. Allstate Ins. Co. v. Seelye, 198 F.Supp.2d 629, 630 (W.D.Pa. 2002). District courts are not required to exercise jurisdiction under the Act unless issues include "federal statutory interpretation, the government's choice of federal forum, an issue of sovereign immunity, or adequacy of the state proceeding." State Auto Ins. Co. v. Summy, 234 F.3d 131, 134 (citing United States v. Commonwealth of Pennsylvania, Dep't of Envtl. Res., 923 F.2d 1071, 1076-79 (3d Cir. 1991)); accord Wilton v. Seven Falls Co., 515 U.S. 277, 287-88 (1995) (holding that the Declaratory Judgment Act affords district courts "unique and substantial discretion in deciding whether to declare the rights of litigants"). Furthermore, the United States Court of Appeals for the Third Circuit has held that "federal courts should hesitate to entertain a declaratory judgment action where the action is restricted to issues of state law." Gula, 84 Fed. App'x 173, 174 (3d Cir. 2003) (citing Summy, 234 F.3d at 134-135).

The issues here involve construing restrictive covenants in an employment contract. Generally, the "interpretation of contracts is a matter of state law." Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ., 489 U.S. 468, 482 (1989) (holding that although "interpretation of contracts is a matter of state law," this generality alone is insufficient when determining whether a state court's contract construction precludes the enforcement of federal rights).

Plaintiff has not alleged claims that would require this court to exercise jurisdiction due to a federal question or federal interest. See Encompass Indem. Co. v. Rutherford, 2012 WL 443355, at *2 (W.D. Pa. Feb. 10, 2012). An employment contract drafted in Pennsylvania between

a Pennsylvania resident and Pennsylvania company is undoubtedly an issue of state law. The Court agrees with Defendant that the claims presented are narrow. The pending state court action gives Plaintiff and Defendant the opportunity to fully address the contract issues between them. Pennsylvania state courts have an interest in deciding contract enforcement in the state. Ultimately, "the state's interest in determining issues of state law also weighs against exercising jurisdiction in declaratory judgment actions." Id.; Atl. Mut. Ins. Co. v. Gula, 84 Fed. App'x 173, 175 (3d Cir. 2003) (quoting State Auto. Mut. Ins. Co. v. Toure, 2003 WL 22100875 (E.D.Pa. Aug. 7, 2003)). Likewise, the state law surrounding non-compete contracts is fairly well-settled, another factor that often weighs in favor of declining to exercise jurisdiction in a state law declaratory judgment case. See Allstate Property and Cas. Ins. Co. v. Owens, 2011 WL 94412, at *2 (W.D. Pa. Jan. 11, 2011) (citing Seelye, 198 F.Supp.2d at 631). Accordingly, even if dismissal was not required under FRCP 12(b)(7), the Court would likely decline to exercise its jurisdiction over this state law declaratory judgment action.

Conclusion

For the foregoing reasons, Defendant's motion to dismiss is **GRANTED** and the complaint will be dismissed without prejudice to the parties' right to fully litigate this matter in state court. An appropriate order follows.

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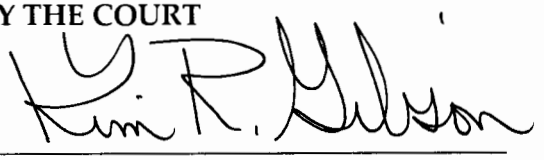
vs.	)	
HEARING INSTRUMENTS, INC., a Pennsylvania Corporation	)	
Defendant.	)	

ORDER

AND NOW, this 27th day of July, 2017, upon consideration of the Defendant's motion to dismiss Plaintiff's complaint [ECF No. 7], and for the reasons set forth in the accompanying memorandum, **IT IS HEREBY ORDERED** that Defendant's motion is **GRANTED** and the case is dismissed without prejudice to the parties' right to fully litigate this matter in state court.

BY THE COURT



KIM R. GIBSON
UNITED STATES DISTRICT JUDGE