

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-15-440

DSCI, LLC,

Plaintiff

v.

TODD WOLF,

Defendant

ORDER ON MOTION
FOR TEMPORARY
RESTRAINING ORDER

Before the court is plaintiff's motion for a temporary restraining order with notice. In the verified complaint filed on 9/29/15, plaintiff seeks damages and injunctive relief. Plaintiff alleges that defendant violated a non-competition and non-solicitation agreement between the parties by causing several of plaintiff's customers to cancel their contracts with plaintiff and enter into a business relationship with defendant's company. Defendant opposed the motion on 10/16/15.

DISCUSSION

A. Standard of Review

A party seeking a temporary restraining order has the burden of demonstrating that: "(1) it will suffer irreparable injury if the injunction is not granted; (2) such injury outweighs any harm which granting the injunctive relief would inflict on the other party; (3) it has a likelihood of success on the merits (at most, a probability; at least, a substantial possibility); and (4) the public interest will not be adversely affected by granting the injunction." Bangor Historic Track, Inc. v. Dep't of Agric., Food & Rural Res., 2003 ME 140, ¶ 9, 837 A.2d 129. Injunctive relief must be denied when the party fails to demonstrate any one of these criteria. Id. ¶ 10.

1. Irreparable Injury

Plaintiff has not demonstrated irreparable injury with respect to its alleged loss of future revenue. An irreparable injury is one for which there is no adequate remedy at law. Bar Harbor Banking & Trust Co. v. Alexander, 411 A.2d 74, 79 (Me. 1980). Plaintiff alleges that it has lost approximately \$300,000 in anticipated future revenue. (Compl. ¶ 21.) The fact that plaintiff is able to calculate approximate damages indicates that this alleged harm is not without an adequate remedy at law. See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bishop, 839 F. Supp. 68, 74 (D. Me. 1993) (holding that availability of money damages cuts heavily against a finding of irreparable harm).

Plaintiff also has not demonstrated irreparable injury with respect to its alleged loss of good will. See Everett J. Prescott, Inc. v. Ross, 383 F. Supp. 2d 180, 191-92 (D. Me. 2005). Speculative claims of loss of good will do not constitute irreparable injury. Bishop, 839 F. Supp. at 75. The record reveals only that defendant allegedly interfered with plaintiff's relationships with four companies. (Compl. ¶¶ 15-20.) In his affidavit, defendant states that he did not sell a phone system to one of these companies, (Wolf Aff. ¶ 19), and he has produced affidavits from the three other companies that provide that defendant did not solicit their business. (Skolnekovich Aff. ¶ 7; Janvrin Aff. ¶ 6; Wilson Aff. ¶ 6.) Plaintiff, in the 9/10/15 letter to defendant, addresses only damages, not loss of good will. (Pl.'s Ex. B.) Any allegation of loss of good will is speculative on this record.

2. Likelihood of Success

Plaintiff also has not demonstrated a likelihood of success on the merits. To prevail on a breach of contract claim, plaintiff must establish breach of a material contract term, causation, and damages. Me. Energy Recovery Co. v. United Steel Structures, Inc., 1999 ME 31, ¶ 7, 724 A.2d 1248. Plaintiff argues that: (1) defendant

breached the agreement by interfering with plaintiff's business relationships, and (2) defendant's obligation not to interfere with plaintiff's business relationships is not affected by any termination of the parties' agency agreement.

a. Interference

Section 3(A) of the agreement prohibits defendant from interfering with plaintiff's business relationships. (Pl.'s Ex. A 2.) Section 3(G) allows defendant to sell, service, install, and maintain premise-based systems. (Pl.'s Ex. A 4.) Plaintiff alleges that defendant sold premise-based systems to plaintiff's customers in violation of section 3(A). (Compl. ¶¶ 15-20.) Plaintiff argues that allowing defendant to sell premise-based systems under section 3(G) did not dispense with his obligation under section 3(A). (Pl.'s Reply 1-2.) The relationship between section 3(G) and section 3(A) is unclear. Section 3(A) establishes a general prohibition on defendant's interference with plaintiff's business relationships. (See Pl.'s Ex. A 2 (prohibiting defendant from interfering in any material respect with plaintiff's current and future business relationships).) But the plain language of section 3(G) does not impose any limits on defendant's ability to sell premise-based systems. If plaintiff was concerned that defendant's sale of premise-based systems could interfere with its business relationships, the parties could have specified restrictions in the agreement. Because they did not, it is unclear whether defendant violated the agreement. As a result, plaintiff has not demonstrated a likelihood of success on the merits.

b. Agency agreement

Section 3(G) requires the parties to enter an agency agreement and provides that termination of the agency agreement renders "the non-competition" void as to defendant. (Pl.'s Ex. A 4.) Plaintiff revoked the agency agreement by letter dated 9/8/15. (Def.'s Ex. D to Wolf Aff.) Defendant argues that plaintiff's revocation of the

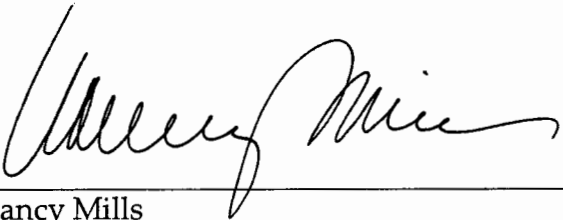
agency agreement terminated the entire agreement. (Def.'s Opp'n 8.) Plaintiff counters that the revocation terminated only defendant's obligation not to compete, and not his obligation not to interfere with plaintiff's business relationships. (Pl.'s Reply 2 n.1.) If the parties intended the term "non-competition" to refer to the entire agreement, they likely would have used the term "Agreement," as they did elsewhere. It is unlikely that the revocation of the agency agreement rendered the entire agreement void.

Plaintiff's argument that the revocation terminated only defendant's obligation not to compete is equally unpersuasive because the meaning of "non-competition" is unclear. The language of section 3(G) does suggest that the "non-competition" refers to defendant's obligation not to compete because the phrase "non-competition as so defined" immediately follows a description of defendant's prohibited business activities. (Pl.'s Ex. A 4.) Even if the revocation did terminate only defendant's obligation not to compete, plaintiff has not demonstrated a likelihood of success in establishing that defendant violated his obligation not to interfere with plaintiff's business relationships, as discussed above. As a result, plaintiff has not demonstrated a likelihood of success on the merits.

The entry is

Plaintiff's Motion for a Temporary Restraining Order is DENIED.

Dated: December 6, 2015



Nancy Mills
Justice, Superior Court

DSCI LLC VS TODD WOLF
UTN:AOCSSr -2015-0079862 CASE #:PORSC-CV-2015-00440

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Select A=Atty, B=Bail, D=DckPr, E=Evt, F=Fin, J=Jdgm, O=Ord, P=Prty, R=Review: