STATE OF MICHIGAN

COURT OF APPEALS

LOCKWORKS, LTD.,

Plaintiff-Appellant,

v

ANNIE KEEGAN and COSME, INC., d/b/a HEAD ROOM,

Defendants-Appellees.

UNPUBLISHED
January 27, 2009

No. 279894
Ingham Circuit Court
LC No. 07-000062-CK

Before: Hoekstra, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order denying its motion for a preliminary injunction and dismissing its other claims per the parties' stipulations. We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant Annie Keegan[1] was previously employed by plaintiff as a hair stylist. On June 4, 2004, the parties signed a Confidentiality and Noncompetition Agreement for Salon Employees. The noncompetition terms of the agreement stated that after termination of employment, defendant would not work within a five-mile radius of plaintiff's location for a period of twelve months. Defendant terminated her employment with plaintiff on July 12, 2006. Shortly thereafter, she began working at the Head Room, which is located 4.16 miles from plaintiff's location.

Plaintiff wrote letters requesting that defendant cease her activity at the Head Room, and the instant lawsuit was filed on January 19, 2007. Plaintiff then requested a preliminary injunction to enjoin defendant from continuing her activities that were in violation of the agreement's five-mile geographic limitation. The trial court denied plaintiff's request for a preliminary injunction and held that 4.16 miles was far enough away from plaintiff's location. The trial court reformed the parties' agreement such that defendant was not in violation.

When relevant facts are not in dispute, the reasonableness of a non-competition provision is a question of law that is reviewed de novo. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 506; 741 NW2d 539 (2007).

[1] References to "defendant" in the singular throughout this opinion are to Annie Keegan.

Non-compete agreements between employers and employees in Michigan are governed by MCL 445.774a.

> An employer may obtain from an employee an agreement or covenant which protects an employer's reasonable competitive business interests and expressly prohibits an employee from engaging in employment or a line of business after termination of employment if the agreement or covenant is reasonable as to its duration, geographical area, and the type of employment or line of business. To the extent any such agreement or covenant is found to be unreasonable in any respect, a court may limit the agreement to render it reasonable in light of the circumstances in which it was made and specifically enforce the agreement as limited.

As a general matter, courts presume the legality, validity and enforceability of contracts. *Coates, supra* at 507. Noncompetition agreements, however, "are disfavored as restraints of commerce and are only enforceable to the extent they are reasonable." *Id.* "To be reasonable in relation to an employer's competitive business interest, a restrictive covenant must protect against the employee's gaining some unfair advantage in competition with the employer, but not prohibit the employee from using general knowledge or skill." *Id.*

The facts relevant to the reasonableness of the non-competition clause are undisputed: Defendant was a hair stylist; she signed the non-competition agreement on June 4, 2004; she left her employment with plaintiff on July 12, 2006; and she then began working as a stylist 4.16 miles from plaintiff's location. It is also undisputed that the agreement contains a geographic limitation of five miles from plaintiff's location for a period of twelve months after defendant leaves her employment with plaintiff.

The terms of the non-competition agreement sought to protect plaintiff's confidential information, including client lists and service information, and thereby sought to protect plaintiff's clients for its own business. Protection of such things is a reasonable competitive business interest as allowed under MCL 445.774a.

The question to determine reasonableness of the geographical limitation is whether defendant would gain an unfair competitive advantage over plaintiff if she worked within the five-mile limit stated in the agreement. See *Coates, supra* at 507. The client information and contacts defendant gained while working for plaintiff would give her an unfair advantage if she worked close enough to plaintiff's location so as to not create an inconvenience for the clients that she had served and with whom she had established a rapport while at plaintiff's salon. The normal base of clientele at either location or the number of salons in close proximity to plaintiff's location is irrelevant to whether defendant gained an unfair competitive advantage by getting to know plaintiff's clients and then leaving plaintiff to work less than five miles away.

Five miles is a modest distance and anything less would not deter plaintiff's clients from driving the extra mileage to work with defendant rather than working with a different stylist at plaintiff's salon. Therefore, the five-mile radius was reasonable to protect plaintiff's competitive business interests and prevent defendant from gaining an unfair advantage over plaintiff. As such, the five-mile limitation should not have been modified, the parties' non-compete agreement should be enforced as written, and defendant's new location breached the terms of

that agreement. The matter is remanded to the trial court to determine plaintiff's damages, if any, for defendant's breach of the non-competition agreement for the 12-month period after she left her employment with plaintiff, i.e., from July 12, 2006, to July 11, 2007.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra