STATE OF MICHIGAN

COURT OF APPEALS

INDUSTRIAL CONTROL REPAIR, INC,

Plaintiff-Appellant,

v

McBROOM ELECTRIC CO., INC,

Defendant-Appellee.

UNPUBLISHED
October 10, 2013

No. 302240
Macomb Circuit Court
LC No. 09-2712-CK

Before: HOEKSTRA, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Plaintiff appeals by right from the order of the trial court granting summary disposition to defendant pursuant to MCR 2.116(C)(10) and dismissing plaintiff's claims. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff, Industrial Control Repair, Inc., ("plaintiff" or "ICR") is an industrial repair provider that specializes in asset management, which involves supplying repairs for machinery and equipment contained in large industrial facilities, such as electric industrial motors and spindles. Defendant McBroom Electric Company, Inc., ("defendant" or "McBroom") is an industrial repair company that provides certain repair services for electric motors and spindles (sometimes referred to as motor management), but has not traditionally provided asset management services.

David Young ("Young") worked for plaintiff from at 2002 until 2009. In 2003, Young executed a confidentiality and non-competition agreement with plaintiff ("Young Agreement").

On March 1, 2007, plaintiff and defendant entered into a Proprietary Information Agreement ("PIA"). The agreement contemplated a relationship between plaintiff and defendant where they would submit joint proposals for complementary business services to customers. The PIA contained language designed to protect the parties' confidential information. The PIA also contained a prohibition against either party soliciting the other's employees or independent contractors during the term of the agreement and for two years thereafter. The PIA provided for an initial two-year term, but was terminable by either party at any time upon written notice to the other party.

On June 18, 2008, the parties entered into a Strategic Sourcing Services Purchase Agreement ("Purchase Agreement"). This agreement provided the terms and conditions under which plaintiff would use defendant as a service provider for its asset management clients who required electric motor or spindle repair services. The Purchase Agreement also contained a lengthy section concerning confidential information, as well as a covenant prohibiting both parties from using "customer information" to solicit business from each other's customers. The Purchase Agreement provided for an initial three-year term, allowed plaintiff to terminate it at any time upon notification to defendant, and allowed defendant to terminate it upon the occurrence of specified conditions. The Purchase Agreement did not reference the PIA.

In late 2008 and into 2009, ICR reduced employee salaries by twenty percent and began "leaning out" the company in response to a market downturn. On April 30, 2009, Young resigned his position as vice president of sales with plaintiff during a lunch meeting with Paul Gutierrez ("Gutierrez"), the president of plaintiff. He did not inform Gutierrez at that time of the identity of any future employer. Young accepted a position with defendant on May 1, 2009 with a starting date of May 4, 2009.

During the week of May 4, 2009, Boris Noel ("Noel"), an employee of plaintiff, sent four spindle repair jobs from Cummins Rocky Mount, a customer of plaintiff, to defendant. Young stated that he "facilitated" this business by contacting Noel on site. Richard McBroom ("Richard")[1], the owner of defendant, stated that plaintiff was paid for this work according to the Purchase Agreement; however, Gutierrez denied that plaintiff was paid for these jobs.

On or around May 7, 2009, Young informed Gutierrez that he had begun working for defendant. Gutierrez initially did not object to Young's employment with plaintiff. To the contrary, Young agreed to a "hand-off" meeting at the Cummins headquarters with Gutierrez and other employees of plaintiff. Over the course of the next month, Young attended meetings with customers of plaintiff and defendant conducted pursuant to the Purchase Agreement.

In late May, defendant contacted plaintiff about renegotiating the Purchase Agreement; this proposal included having Young represent both plaintiff and defendant with certain customers and receiving part of his salary from plaintiff; the proposal would also eliminate the 10% paid by defendant to plaintiff for jobs on which the parties shared costs. The negotiations were not successful, and defendant informed plaintiff on June 1, 2009 that it would no longer be honoring the Purchase Agreement.

After the relationship between plaintiff and defendant fell apart, Young testified that Richard told him not have contact with any of plaintiff's customers. Bob Campbell ("Campbell"), president of defendant, and Richard both confirmed that Young was told not to contact plaintiff's customers. Between August and October of 2009, plaintiff continued to send work to defendant. Defendant terminated Young's employment on October 23, 2009. Richard

[1] For clarity, we will refer to Richard McBroom as "Richard" and will sometimes refer to defendant as "McBroom," since the lower court record referenced defendant as "McBroom."

stated that Young had not generated any significant new business for defendant during his employment with the company.

Plaintiff filed suit against defendant in Macomb Circuit Court. Plaintiff alleged the following counts against defendant:[2]

Count I—Breach of Proprietary Information Agreement

Count II—Breach of Purchase Agreement

Count IV—Violation of Michigan Uniform Trade Secrets Act

Count VI—Tortious Interference with Contract

Count VII—Civil Conspiracy

Court VIII—Temporary, Interim, and Permanent Injunctive Relief

Plaintiff also filed a motion for preliminary injunctive relief. The motion sought an injunction broadly prohibiting defendant from using plaintiff's confidential information to solicit customers or other commercial relations of plaintiff, from employing Young, and from soliciting any of plaintiff's employees, and compelling defendant to provide a list of all "written and verbal communications and solicitation of Plaintiff's current and/or former customers, employees, and/or independent contractors that included use of Plaintiff's Confidential Information" in violation of the relevant agreements. Thereafter, a stipulated order entered, providing that defendant would not hire, or engage as independent contractors, Young or other employees or independent contractors of plaintiff through August 1, 2011. Further, following a hearing on plaintiff's motion for preliminary injunction, the trial court granted an injunction "narrowly tailored to address the solicitation, or preventing or enjoining McBroom from soliciting any of the Plaintiff's customers in . . . the asset management business."

On February 16, 2010, plaintiff moved for partial summary disposition against defendants on the issue of liability. The trial court took this motion under advisement at a motion hearing on April 19, 2010. On May 24, 2010, defendant filed a cross motion for summary disposition. The trial court addressed both motions at a hearing on June 28, 2010.

The trial court issued an opinion and order granting summary disposition to defendant pursuant to MCR 2.116(C)(10). This appeal followed.

II. STANDARD OF REVIEW

We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). "[Q]uestions involving the proper interpretation of a contract or the legal effect of a contractual clause are . . . reviewed de novo."

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[2] Plaintiff also made certain claims against Young; those claims were dismissed by stipulation.

Rory v Continental Ins Co, 473 Mich 457, 464; 703 NW2d 23 (2005). Issues of statutory interpretation are reviewed de novo. *Elba Twp v Gratiot County Drain Comm'r*, 493 Mich 265, 278; 831 NW2d 204 (2013). "The decision whether to grant injunctive relief is discretionary, although equitable issues are generally reviewed de novo, with underlying factual findings being reviewed for clear error." *Wayne County Retirement Sys v Wayne County*, 301 Mich App 1, 25; ___ NW2d ___ (2013).

III. VIABILITY OF THE PIA

Plaintiff first argues that the trial court erred in determining that the PIA was not operative because it was superseded by the Purchase Agreement. We disagree.

"When there are several agreements relating to the same subject matter, the intention of the parties must be gleaned from all the agreements." *Omnicom of Mich v Giannetti Investment Co*, 221 Mich App 341, 346; 561 NW2d 138 (1997). "When two agreements cover the same subject matter and include inconsistent terms, the later agreement supersedes the earlier agreement." *CMI Internat'l, Inc v Intermet Internat'l Corp*, 251 Mich App 123, 130-131; 649 NW2d 808 (2002). Agreements may relate to the same subject matter when a subsequent agreement covers a broader range of topics than the earlier agreement, but includes the subject matter of the earlier agreement. *Omnicom*, 221 Mich App at 347.

Here, the PIA and the Purchase Agreement both contain provisions encompassing the protection of confidential and/or proprietary information, and provide inconsistent terms on that subject, including different definitions and remedies for breach. The trial court found that both agreements covered the topic of confidentiality, that the terms were inconsistent on this issue, and that therefore the Purchase Agreement superseded the PIA under the rule of *Omnicom* and *CMI Internat'l*. We agree with the trial court.

Plaintiff further argues that the Purchase Agreement has no equivalent provision to Paragraph 10 of the PIA, concerning non-solicitation of employees. Therefore, plaintiff argues, like the agreements in *Omnicom*, this Court should find that the specific issue of non-solicitation of employees was not covered by the Purchase Agreement and should be controlled by the PIA. See *Omnicom*, 221 Mich App at 347. We disagree. While the Purchase Agreement does not contain a section entitled "Non-solicitation of Employees", paragraph 10, titled "CONFIDENTIALITY" does contain a reference to "knowledge or data relating to . . . employees" in the definitional section (a) of that paragraph, and then provides in section (c) that the parties agree to use such information "only for the purpose of evaluating, negotiating, or documenting the proposed business relationship between them and, to the extent such business relationship is consummated, only as contemplated by the parties in the definitive agreements entered into by them in connection with such relationship . . . ."

We conclude that both agreements address the parties' obligations regarding the other's employees, and include inconsistent limitations. The PIA contains a prohibition on hiring and soliciting employees and independent contractors for the length of the agreement and two years after expiration, without written permission. The Purchase Agreement prohibits the use of information relating to "employees" for any purpose other than "evaluating, negotiating, or documenting the proposed business relationship between" the parties and contains no temporal limitation. The trial court found that the Purchase Agreement's coverage of the issue of confidential information in much greater detail, including the adoption of more stringent confidentiality restrictions, indicated that that the parties intended that the Purchase Agreement supersede the PIA. We agree; we therefore do not address plaintiff's other allegations of error related to an alleged breach of the PIA.

IV. BREACH OF THE PURCHASE AGREEMENT

Plaintiff argues that defendant breached the Purchase Agreement in several ways. First, plaintiff alleges that defendant violated Paragraph 10(i) of the Purchase Agreement, which provides:

> In addition to the preceding terms of this agreement the neither party [sic] will utilize customer information gained from the other to solicit, induce, or otherwise take business away from the other during the term of this agreement and any extensions thereof and for a period of one year thereafter [sic]

This clause is distinct from the earlier clause addressing "confidential information." The phrase "customer information" is not defined in the contract. Plaintiff argues, in addition to its argument that the identity of plaintiff's customers was confidential, that this information was "customer information" and that defendant, through Young, used this information to solicit seven of plaintiff's customers.

Plaintiff supports this allegation with several citations to the record; however, even viewed in the light most favorable to the plaintiff, the evidence cited by plaintiff merely demonstrates that Young met with customers of plaintiff, not that he "utilize[d] customer information gained from" plaintiff. The evidence also demonstrates that such customers were also longstanding customers of defendant. Thus, even assuming that the identity of plaintiff's customers was "customer information", the identity of *defendant's own* customers is not information "gained from" plaintiff. In sum, plaintiff has not identified any "customer information" that was "utilized" by Young or any other agent of defendant, and the trial court correctly granted summary disposition on this issue.

Next, plaintiff argues that the trial court erred in determining that the identity of customers and contacts was not "confidential information" under Paragraph 10 of the Purchase Agreement, and further erred in ruling that plaintiff failed to produce evidence that defendant disclosed or otherwise used plaintiff's confidential information. We disagree.

Paragraph 10 of the purchase agreement provides in relevant part:

> 10. <u>CONFIDENTIALITY</u>
>
> (a) Both Buyer and Seller acknowledge and agree that during their confidential negotiations they may learn of, or obtain access to, information or technology of the other which may include, without limitation, information, knowledge or data containing or relating to managerial or operating methods, manuals, procedures, techniques, technical specifications, formulas, customers, customer lists, customer needs and wants, suppliers, research, equipment, products, product designs,

> services, marketing, facilities, employees, ideas, inventions, patents, patent applications, trade secrets, discoveries, object code, source code, software, firmware, processes, specifications, developments, test fixtures, know-how, failure and repair data concerning products, strategic plans, advertising, and any other information, knowledge or data concerning or relating to the business affairs of the other, whether in written, oral or electronic form, or embodied in any technology (collectively, "Confidential Information) [sic]

We note at the outset that, contrary to plaintiff's contention, the trial court did not actually hold that the identity of plaintiff's customers and contacts was not confidential information; rather, after stating plaintiff's contention that such information was "confidential information," the trial court continued: "However, even assuming such information is confidential and subject to the protections and limitations set forth in Paragraph 10 of the Purchase Agreement, ICR has failed to identify any specific instances in which Defendant utilized or disclosed confidential information in violation of the agreement."

We conclude that the trial court correctly determined that, even assuming the identity of plaintiff's customers was confidential information, there is no evidence that defendant disclosed or otherwise used this information. Plaintiff makes reference on appeal to "admissions" by Richard and Young that "it was Young's time spent working for plaintiff that afforded Young the ability to solicit and/or obtain for Defendant McBroom business from Plaintiff's customers Cummins and ABB." However, Gutierrez testified that he actually invited Young, while Young was employed by defendant, to a meeting with Cummins in order to "hand off" that relationship. Defendant was also a distributor for ABB. Thus, plaintiff has not demonstrated that the identity of either Cummins or ABB, or their contact personnel, was information learned during the parties' confidential negotiations under the Purchase Agreement. Plaintiff's other citations to the record are similarly unavailing, as discussed above.

We conclude that the trial court did not err in determining that plaintiff had not demonstrated a breach of the Purchase Agreement; we therefore find it unnecessary to determine if customer information and contacts are "confidential information" under the agreement; as indeed the trial court did not determine.[3] We also decline to address plaintiff's contention that the trial court erred in determining that plaintiff had suffered no damages in this matter. The trial court stated as an alternate grounds for dismissal of plaintiff's claims that plaintiff's "claim still fails because it admits that it has not lost any business as a result of the meetings and has therefore not suffered any damages." Because the trial court correctly determined that no breach of the Purchase Agreement occurred, we affirm the trial court's conclusion on that ground, and decline to address this alternate ground for affirmance. See *Biomendaal v Town & Country Sports Center*, *Inc*, 255 Mich App 207, 216; 659 NW2d 684 (2002).

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[3] The trial court did determine that such information was not a trade secret, as discussed *infra*.

V. TRADE SECRETS

Next, plaintiff argues that the trial court erred in dismissing its claims under the Michigan Uniform Trade Secrets Act, MCL 445.1901 *et seq*. ("MUTSA"). We disagree.

Under MUTSA:

> "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that is both of the following:
>
> (*i*) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
>
> (*ii*) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. [MCL 445.1902(d).]

A claim for misappropriation of trade secrets under this act requires the following:

> (i) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means.
>
> (ii) Disclosure or use of a trade secret of another without express or implied consent by a person who did 1 or more of the following:
>
> (A) Used improper means to acquire knowledge of the trade secret.
>
> (B) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was derived from or through a person who had utilized improper means to acquire it, acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or derived from or through a person who owed a duty to the person to maintain its secrecy or limit its use.
>
> (C) Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake. [MCL 445.1902(b); see also *McKesson Medical-Surgical, Inc v Micro Bio-Medics, Inc.*, 266 F Supp 2d 590, 596-597 (ED Mich 2003).]

A list of customers compiled by a former employee from personal and public sources available to that employee is not protectable as a trade secret. *McKesson Medical-Surgical Inc*, 266 F Supp 2d at 594; see also *Raymond James & Associates, Inc v Leonard & Co*, 411 F Supp 2d 689, 695 (ED Mich 2006). This is true even if the former employee has learned about the "peculiar needs of particular clients" from his employment; although such information may be protectable by a non-competition agreement, such information is a not a trade secret. *Id*. at 595, quoting *Hayes-Albion v Kuberski*, 421 Mich 170, 183-184; 364 NW2d 609 (1984).

Here, plaintiff alleged in its complaint that "Defendants combined and conspired, and may have contracted to use and/or obtain wrongfully Plaintiff's trade secrets, including, but not limited to, Plaintiff's customers, customer contacts, customer lists, bid and pricing information, supplier prices and information, and employees, among other Confidential information." In responding to defendant's motion for summary disposition, plaintiff merely contended that its claim "remains viable" because defendant did not support its position that "there is no piece of information identified by the Plaintiff in discovery that constitutes a trade secret under the [MUTSA]."

The trial court noted in its opinion that "[t]he gravamen of ICR's MUTSA claim is that McBroom misappropriated Plaintiff's trade secrets when it hired Young, and allowed him to solicit business on behalf of McBroom utilizing certain information he obtained while employed by ICR, including the identity of ICR's customers, and the contacts at those customers." The trial court concluded that "the customer information compiled by Young simply does not qualify as a 'trade secret' under the MUTSA."

We agree with the trial court. To sustain a claim under MUTSA, it is incumbent on the plaintiff to identify with specificity the "trade secret" allegedly misappropriated. See *Dura Global Technologies, Inc v Magna Donnelly Corp*, 662 F Supp 2d 855, 859 (ED Mich 2009). Plaintiff failed to do so. To the extent that plaintiff identified any specific information it believes was a trade secret, such information falls into the category of customer identity, customer information, and customer lists. Such information, although protectable by a confidentiality agreement, is not a trade secret under MUTSA. *McKesson Medical-Surgical Inc*, 266 F Supp 2d at 594; see also *Hayes-Albion v Kuberski*, 421 Mich at 183-184 (applying the common law of trade secrets). Although plaintiff made brief references to "pricing" and "software" at motion hearings, it did not support these claims with documentary evidence, as required in a motion for summary disposition under MCR 2.116(C)(10). MCR 2.116(G)(4); *Coblentz v Novi*, 475 Mich 558, 569; 719 NW2d 73 (2006).

Further, we reject plaintiff's argument that defendant failed to support its argument, either before the trial court or on appeal. Although the arguments before the trial court were exceedingly brief, defendant claimed that plaintiff had not alleged any trade secrets that were misappropriated. A party moving for summary disposition has the initial burden of supporting its position with documentary evidence, MCR 2.116(G)(3)(b). Here, defendant contended in its motion that plaintiff's MUTSA claim was meritless, and supported its initial position with an affidavit from Young stating that he had not divulged any confidential information since leaving his employment with plaintiff. This sufficed to shift the burden back to plaintiff to provide support for its position that a genuine issue of material fact existed. MCR 2.116(G)(4); *Coblentz*, 475 Mich at 569. Plaintiff failed to meet that burden, and summary disposition was therefore appropriate. Additionally, although defendant's argument on appeal was similarly sparse, it was not devoid of citation to legal authority and was not abandoned. See *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 626; 750 NW2d 228 (2008).

VI. TORTIOUS INTERFERENCE WITH CONTRACT AND CIVIL CONSPIRACY

Next, plaintiff argues that the trial court erred in dismissing its claims for tortious interference with contract and civil conspiracy. Again, we disagree.

"In Michigan, tortious interference with a contract or contractual relations is a cause of action distinct from tortious interference with a business relationship or expectancy." *Health Call of Detroit v Atrium Home & Health Care Services*, 268 Mich App 83, 89; 706 NW2d 843 (2005). "The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant." *Id*. at 90.

To prove tortious interference with a contract, plaintiff must prove improper interference by defendant. "In other words, the intentional act that defendants committed must lack justification and purposely interfere with plaintiffs' contractual rights . . . ." *Advocacy Organization for Patients & Providers v Auto Club Ins Assoc*, 257 Mich App 365, 383; 670 NW2d 569 (2003), citing *Winiemko v Valenti*, 203 Mich App 411, 418 n 3; 513 NW2d 181 (1994) (citations omitted). Actions motivated by legitimate business reasons do not constitute improper interference. *Badiee v Brighton Area Schools*, 265 Mich App 343, 366; 695 NW2d 521 (2005).

Here, plaintiff alleged in its complaint that (1) Young had a preexisting confidentiality agreement with plaintiff, (2) defendant was aware of the agreement at relevant times in this action, and (3) that defendant caused Young to breach that agreement by encouraging or assisting Young in using confidential information to obtain business from plaintiff's customers and to solicit plaintiff's employees. In responding to defendant's motion for summary disposition, plaintiff agreed that evidence existed that showed that none of defendant's representatives were aware of the Young Agreement when defendant hired Young; however, plaintiff alleged that even after learning of the Young Agreement, which would have occurred at least by June 10, 2009 (the date of filing of plaintiff's first complaint in this matter) Young contacted two customers of plaintiff to solicit business.

Plaintiff asserts than an October 30, 2009 email from Young to Richard demonstrates that Young contacted two of plaintiff's customers, GKN and Ford Louisville, after June 10, 2009. The email refers to a "[p]otential 6 million dollar contract with GKN" and states: "Just recently had a great presentation at Ford Louisville and was promised a minimum pilot program with no additional cost." However, no reference to specific dates of contact is made; further, the email is replete with language indicating Young's frustration at *not* being able to use his contacts in the industry because of the pending lawsuit. Campbell also testified that Young was told not to call on plaintiff's customers.

We conclude that the trial court did not err in dismissing plaintiff's claim for tortious interference with contract. Plaintiff offered no evidence that the challenged customer contacts derived from a breach of the confidentiality restrictions of the Young Agreement, or that defendant had knowledge of the Young Agreement at the time of the alleged breach. Moreover, the record does not contain evidence to support the conclusion that defendant improperly (i.e. intentionally, purposefully, and maliciously) interfered with the confidentiality restrictions contained in the Young Agreement. *Winiemko* 203 Mich App at 418 n 3.[4] For the reasons noted, plaintiff has not demonstrated a breach of the Young Agreement or a knowing, unjust, intentional and purposeful instigation of the alleged breach by defendant. Accordingly, we affirm the trial court's grant of summary disposition on plaintiff's tortious interference with contract claim.

Plaintiff also alleged conspiracy to tortiously interfere with the Young Agreement. "A civil conspiracy is a combination of two or more persons, by some concerted action, accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means. . . . However, a claim for civil conspiracy may not exist in the air, rather it is necessary to prove a separate, actionable tort." *Advocacy Org for Patients & Providers v Auto Club Ass'n*, 257 Mich App 365, 384; 670 NW2d 569 (2003), aff'd 472 Mich 91 (2005). Here, plaintiff's claim for tortious interference with contract must fail. Absent that separate, actionable tort, plaintiff's claim for civil conspiracy must also fail.

VII. PERMANENT INJUNCTIVE RELIEF

Next, plaintiff argues that the trial court erred in failing to grant it permanent injunctive relief. We disagree.

As noted above, the trial court granted plaintiff a narrow preliminary injunction prohibiting defendant from soliciting plaintiff's customers for asset management business. However, the trial court stated in its opinion and order granting defendant's motion for summary disposition: "Since the Court has found all of Plaintiff's claims are without merit, injunctive relief is not warranted."

"'Injunctive relief is an extraordinary remedy that issues only when justice requires, there is not adequate remedy at law, and there exists a real and imminent danger of irreparable injury.'" *Kernen v Homestead Development Co*, 232 Mich App 503, 509; 591 NW2d 369 (1998), quoting *Jeffrey v Clinton Twp*, 195 Mich App 260, 263-264; 489 NW2d 211 (1992). Here, plaintiff cannot demonstrate that it will suffer any specific harm, much less irreparable harm. This is fatal to their claim for an injunction. See *Kernen*, 232 Mich App at 515. We agree with the trial court that all of plaintiff's claims are without merit. The trial court therefore did not err in denying plaintiff permanent injunctive relief.

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[4] We note that plaintiff does not allege tortious interference with contract arising out of defendant's hiring or employment of Young, notwithstanding that the Young Agreement contains "non-competition" restrictions. By its terms, the Young Agreement does not restrict Young's employment after leaving plaintiff's employ, but only prohibits Young from engaging in any "competitive acts" with any "conflicting organization" "while [Young] is employed by and/or associated with ICR."

VIII. DENIAL OF PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION

Finally, plaintiff argues that, in addition to erring in granting defendant's motion for summary disposition, the trial court erred in not granting it partial summary disposition on the issue of defendant's liability for breaches of the PIA and Purchase Agreement. Because we affirm the trial court's grant of summary disposition to defendant on each of plaintiff's claims, we also affirm the trial court's denial of partial summary disposition to plaintiff on these issues for the reasons stated *supra*.

Affirmed. Having prevailed in full, defendant may tax costs. MCR 7.219(A).

/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra