[Cite as *De Cavel v. DCHW, L.L.C.*, 2011-Ohio-549.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

JEAN-ROBERT DE CAVEL,	:	APPEAL NO. C-100221 TRIAL NO. A-0911448
Plaintiff-Appellee,	:	*D E C I S I O N.*
vs.	:	
DCHW, LLC,	:	
JRB, LLC,	:	
TWD, LLC,	:	
FVRG, LLC,	:	
Defendants-Appellants,	:	
and	:	
CHIEN CHAUD, LLC,	:	
Defendant.	:	
	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: February 9, 2011

The Bison Jacobson Firm, LLC, LPA, and *Barbara Bison Jacobson,* for Plaintiff-Appellee,

Taft Stettinius & Hollister LLP, Russell S. Sayre, John B. Nalbandian, and *Catherine E. Howard*, for Defendants-Appellants.

Please note: This case has been removed from the accelerated calendar.

SUNDERMANN, Judge.

{¶1} DCHW, LLC, JRB, LLC, TWD, LLC, and FVRG, LLC, (collectively, "the companies") appeal the trial court's judgment that denied their motion for preliminary injunctive relief and granted Jean-Robert de Cavel's motion for a preliminary injunction.[1] We conclude that the companies' assignments of error do not have merit, so we affirm the judgment of the trial court.

{¶2} In 2001, de Cavel, a French Master Chef, and Martin Wade formed DCHW, LLC, for the purpose of operating a restaurant named Jean-Robert at Pigall's ("Pigall's"). In subsequent years, de Cavel and Wade formed other limited-liability companies, known as the Jean-Robert Group, to operate various restaurants in the Cincinnati area. Each operating agreement that established a limited-liability company provided that de Cavel and Wade were members of the company. De Cavel was given a 20% interest in each company, while Wade was given an 80% interest.

{¶3} In 2008, Wade and his wife, Marilyn, issued a memorandum informing employees about various management changes that were occurring in the companies. A chief operating officer was appointed to oversee the operations of the companies, and a director of restaurant operations was appointed. According to the memorandum, all managers and chefs were to report to the director of restaurant operations, with the exception of the employees of Pigall's, who would continue to report to de Cavel.

{¶4} In a second memorandum, the Wades informed de Cavel that Pigall's would be closed effective Febuary 28, 2009, and that a new restaurant would be opened in its place on April 2, 2009. The Wades also stated that de Cavel would have no ownership interest in the new restaurant, that de Cavel's salary would be $80,000, and that de Cavel would be entitled to 25% of the profits of the new venture.

{¶5} In September 2009, de Cavel signed a lease to open a new restaurant in Cincinnati. The companies then sent a letter to de Cavel, informing him that they

[1] Chien Chaud, LLC, has not appealed the trial court's judgment.

intended to enforce the noncompete clauses in the operating agreements. In December 2009, de Cavel filed a complaint against the companies alleging breach of the implied duty of good faith and fair dealing and seeking temporary, preliminary, and permanent injunctions to prevent the companies from interfering with de Cavel's operation of his new restaurant. The companies filed a counterclaim for damages and injunctive relief, alleging that de Cavel had breached the noncompete clause in each of the operating agreements. Following a hearing, the trial court denied the companies' motion for a preliminary injunction and granted de Cavel's motion for a preliminary injunction.

{¶6} We consider the companies' two assignments of error together. In the first assignment of error, the companies assert that the trial court erred when it granted de Cavel's motion for a preliminary injunction. In the second, the companies assert that the trial court erred when it denied the companies' motion for a preliminary injunction. We review the trial court's decision to grant de Cavel's motion and to deny the companies' motion under an abuse-of-discretion standard.[2]

{¶7} To succeed on his motion for a preliminary injunction, de Cavel needed to demonstrate that "(1) there [wa]s a substantial likelihood that the plaintiff w[ould] prevail on the merits, (2) the plaintiff w[ould] suffer irreparable injury if the injunction [wa]s not granted, (3) no third parties w[ould] be unjustifiably harmed if the injunction [wa]s granted, and (4) the public interest w[ould] be served by the injunction."[3] The companies contend that de Cavel failed to prove the first element—that there was a substantial likelihood that he would prevail on the merits of his case.

{¶8} The companies argue that under Section 5.5 of each of the operating agreements that established the companies, de Cavel was under a duty not to compete with the companies. The section states that "[d]uring the period of de Cavel's service as a Manager, and for a period of one year after the termination thereof, for any reason other than termination by the [companies] for other than cause, de Cavel covenants and

[2] *Garano v. State* (1988), 37 Ohio St.3d 171, 173, 524 N.E.2d 496.
[3] *Procter & Gamble Co. v. Stoneham* (2000), 140 Ohio App.3d 260, 267, 747 N.E.2d 268.

agrees that he shall not directly or indirectly engage in the restaurant or food service business nor, directly or indirectly, enter into any competition with the [companies] anywhere within a one hundred twenty mile (120) radius of Cincinnati, Ohio[.]" The trial court concluded that Section 5.5 in the agreements was a valid noncompete clause, but that the period of noncompetition had expired for each of the companies. The companies contend that de Cavel remains subject to the duty not to compete because he is still a manager of the companies.

{¶9} The companies' argument hinges on its interpretation of Section 5.1(c) of the operating agreements, which provides that "[t]he Managers of the Company ("Managers") shall be the Members." Because de Cavel remains a member of the companies, the companies argue, he is still a manager of the companies. Under this reasoning, a duty not to compete is in effect unless and until de Cavel gives up his interest in the companies.

{¶10} The companies' reasoning is undermined by the remainder of Section 5.1(c) and other terms of Section 5.1. The last sentence of Section 5.1(c) states that "[a]fter de Cavel ceases to be a Manager, the Managers need not be a Member." The sentence makes clear that, contrary to the companies' contention, de Cavel's status as a member was separate from his status as a manager. That the roles were separate is further demonstrated in Section 5.1(d), which provides that "de Cavel will receive compensation of $____ per year, payable in accordance with the [companies'] standard payroll procedures for *services as Manager*." (Emphasis added.) Even though no compensation was indicated in any of the operating agreements, the sentence makes clear that the parties contemplated a separate role as manager for de Cavel.

{¶11} Having concluded that the operating agreements created separate member and manager roles for de Cavel, we return to the language of the noncompete clause. Under the clause, de Cavel is prevented from competing with the companies "during the period of [his] service as Manager, and for a period of one year after the termination thereof[.]." The trial court found that, with respect to all of the companies

except for DCHW, the one-year noncompete period began in September 2008 when the first memorandum regarding management changes was sent to the companies' employees. De Cavel's duty not to compete expired, then, in September 2009. The trial court further found that, with respect to DCHW, the one-year noncompete period began with the closing of Pigall's on February 28, 2009. Therefore, that restriction expired as of March 1, 2010. We conclude that the court's findings were supported by the record, and that the court did not abuse its discretion in granting a preliminary injunction to permit de Cavel to open a restaurant in the Cincinnati area. Further, we conclude that the trial court did not abuse its discretion when it denied the companies' motion for a preliminary injunction to prevent the opening of de Cavel's restaurant.

{¶12} The companies' two assignments of error are without merit, and we therefore affirm the judgment of the trial court.

Judgment affirmed.

DINKELACKER, J., concurs.
CUNNINGHAM, P.J., concurs in judgment only.

Please Note:

The court has recorded its own entry this date.