

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
Milliken & Company, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Abigail W. Branch, )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE SEVENTH JUDICIAL CIRCUIT

C. A. No.: 2013-CP-42-2642

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**TEMPORARY INJUNCTION ORDER**

This matter is before the Court on Plaintiff's Motion for Temporary Injunction. Based on Plaintiff's Motion, the Complaint, the Affidavits on file, the memoranda of law submitted by both parties, and the live testimony and oral arguments presented to the Court at the hearing held on July 9, 2013, the Court finds that the record supports a finding that Plaintiff Milliken & Company ("Milliken") has satisfied its burden of demonstrating entitlement to the relief it seeks.

**Findings of Fact and Conclusions of Law**

1. Defendant Abigail W. Branch ("Branch") was employed as a Senior Account Manager in Milliken's Floor Covering Division.
2. Branch signed a Milliken Associate Agreement ("Agreement") on February 19, 2010 as a condition of her initial employment with Milliken. Milliken specifically referenced the Agreement as a term and condition of Branch's initial employment in its February 12, 2010 written employment offer.
3. Branch became employed by Milliken on March 1, 2010.

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4. As a Senior Account Manager, Branch was responsible for managing, developing and growing sales for Milliken in her territory. To accomplish this, Branch worked with existing and prospective Milliken customers and referral sources to solicit sales of Milliken's commercial carpet and floor covering products.

5. Branch was exposed to Milliken's confidential information in the course of her work with Milliken, including, but not limited to, regional and business financial performance, customer prospects, pricing and design issues, delivery and quality issues, marketing initiatives, strategy on customers, confidential pricing and discount information, new product introductions, product sales history, contact information, annual market plans, customer preferences, and other highly sensitive and confidential data for national and local customers with which she worked.

6. As Branch was employed by Milliken in a sales capacity, Paragraph F.b. of the Agreement applied to her. This subparagraph contains a non-solicitation provision in which Branch agreed that, for a period of two years after termination of her employment with Milliken, she would not directly or indirectly render "the same or similar services" as those she performed for Milliken "to any Conflicting Organization in connection with the promotion of a Conflicting Product to any person or organization upon whom I called, or whose account I supervised on behalf of Milliken, at any time during the last two years of my employment by Milliken."

7. Paragraph 5 of the Agreement defines a "Conflicting Product" as:

any product, process, system or service of any person or organization other than Milliken, in existence or under development, which is the same as or similar to or competes with, or has a usage allied to, a product, process, system or service upon which I work (in either a sales or non-sales capacity) during the last two (2) years of my employment by Milliken, or about which I acquire Trade Secrets or Confidential Information.

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8. Paragraph 6 of the Agreement defines a "Conflicting Organization" as "any person or organization which is engaged in or about to become engaged in research on or development, production, marketing, leasing, selling or servicing of a Conflicting Product."

9. Branch also agreed in Paragraph B of the Agreement that she would not, for a period of three years after termination of her employment with Milliken, "use, disclose, modify or adapt" any Milliken Confidential Information (as defined in the Agreement).

10. Paragraph 3 of the Agreement sets forth the following definition for "Confidential Information":

Confidential Information means all competitively sensitive information of importance to and kept in confidence by Milliken, which becomes known to me through my employment with Milliken and which does not fall within the definition of Trade Secret above. Such Confidential Information may be valuable to Milliken because of what it costs to obtain, because of the advantages Milliken enjoys from its exclusive use, or because its dissemination may harm Milliken's competitive position.

11. The evidence in the record demonstrates that the services Branch rendered on behalf of Milliken during her employment included the following:

- a. The sale of, and the performance of sales-related activities (including solicitation of sales) with respect to, Milliken's commercial carpet and floor covering products, which involved Branch communicating (e.g., face-to-face, telephone, e-mail, and other written and oral communication) and otherwise calling upon Milliken's actual and prospective customers and referral sources (primarily Architecture & Design entities), which were specifically identified in Exhibits 4, 5, and 6 Milliken entered into the record during the hearing.
- b. Promotion, presentation, and display of Milliken's commercial carpet and floor covering products and product information to Milliken's actual and prospective customers and referral sources (primarily Architecture & Design entities), which were specifically identified in Exhibits 4, 5, and 6 Milliken entered into the record during the hearing).

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12. In late April, 2013, Branch resigned from Milliken and assured Milliken she would not be selling Conflicting Products to or calling upon any of Milliken's customers and referral sources upon which she called on behalf of Milliken.

13. Prior to resigning, Branch forwarded numerous business e-mails from her Milliken e-mail account to her personal e-mail account, many of which Branch acknowledges to contain Milliken's confidential and highly sensitive business information.

14. Milliken informed Branch it did not object to her engaging in marketing and merchandising activities in any location or on behalf of any organization as long as she complied with the terms of the Agreement.

15. Milliken specifically directed Branch that she "should not be involved in the representation, specification (or any activity that would result in the specification of products) or sales of commercial floorcoverings, directly or indirectly, to or through any of the customers (including the large A&D firms) that [she] worked with while at Milliken."

16. Milliken has shown that after Branch resigned she most probably breached Paragraph F.b. of the Agreement at least on one occasion by calling upon and promoting the Conflicting Products of a Conflicting Organization (her new employer, Totally Enterprises d/b/a Totally Carpet) to several "person[s] [and] organization[s] upon whom [she] called, or whose account [she] supervised on behalf of Milliken, . . . during the last two years of [her] employment by Milliken."

17. Milliken could suffered and will continue to suffer damage to and loss of its business reputation, business opportunities, goodwill, and relationships with existing and potential customers and referral sources, as well as damages in the form of actual and potential lost sales (and profits derived therefrom).

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18. The injury to Milliken could result in irreparable damage in that (a) important relationships with significant customers and referral sources will likely be impaired and/or lost permanently, (b) opportunities to do business with important prospects will likely be impaired and/or lost permanently, (c) Milliken's confidential information will continue to be used and disclosed, and (d) Milliken may suffer a loss of goodwill and damage to its business reputation.

19. Milliken lacks an adequate remedy at law because the amount of damages Milliken has suffered and will continue to suffer as a result of Branch's actions—particularly including, but not limited to, the loss of goodwill, damage to business reputation, and disclosure of confidential information—are inherently difficult, if not impossible, to calculate.

20. The irreparable harm that Milliken would suffer in the absence of injunctive relief substantially outweighs whatever harm Branch could suffer if the Court grants injunctive relief. First, all Milliken is requesting is that Branch comply with the terms of her Agreement. Second, Branch's ability to engage in employment of her choice has few limitations. For example, she is free to: 1) work in any geographic area; 2) work for Totally Carpet, a direct competitor of Milliken; 3) engage in sales activities with respect to customers, prospects and referral sources she dealt with as an employee of Milliken as long as she does not call upon them regarding "Conflicting Products"; and 4) call upon any persons and organizations which she did not call upon on behalf of Milliken regarding any products, including Conflicting Products. Third, Branch herself believes she can engage in adequate employment, having resigned for the stated purpose of developing her own public relations business.

**Temporary Injunction**

In consideration of the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED AND DECREED AS FOLLOWS:



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1. Branch is enjoined from violating the applicable terms of the Agreement, specifically including, but not limited to, Paragraph B. (Non-Disclosure) and Paragraph F.b. (Non-Solicitation) of the Agreement.

2. Under the terms of this Injunction, Branch may not engage in any of the following conduct with the Companies or Individuals listed in Exhibit A attached hereto and incorporated herein by reference, based on the language of Paragraph F.b. and the evidence in the record regarding the specific services Branch performed on behalf of Milliken<sup>1</sup>:

- a. The sale of, or the performance of any sales-related activities (including the solicitation of sales) with respect to, any Conflicting Product (as defined in Paragraph 5 of the Agreement), where such conduct involves Branch having any communication (e.g., face-to-face, telephone, e-mail, text message, or other written or oral communication) with any person or organization upon whom Branch called, or whose account Branch supervised on behalf of Milliken, during the last two years of her employment with Milliken;
- b. Promotion, presentation, or display of any Conflicting Product (as defined in Paragraph 5 of the Agreement) or information about any such product to any person or organization upon whom Branch called, or whose account Branch supervised on behalf of Milliken, during the last two years of her employment with Milliken; or
- c. Indirect engagement in either of the types of conduct set forth in Paragraphs 2.a. and 2.b., by assisting, encouraging, providing information or advice to, or otherwise facilitating such conduct by any other person or entity.

3. Under the terms of this Injunction, Branch may engage in any of the following conduct based on the language of Paragraph F.b. and the evidence in the record regarding the specific services Branch performed on behalf of Milliken:

<sup>1</sup> The Court is well aware of the requirement under South Carolina law that "the restrictions in a non-compete clause cannot be rewritten by a court." *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 694 S.E.2d 15, 18, 387 S.C. 583, 588 (2010). Here, the Court is in no way re-writing the Agreement, but is simply applying the language of the Agreement to the evidence in the record which indicated that Branch engaged in conduct in violation of her Agreement in order to provide clarity regarding the specific types of conduct in which Branch is enjoined from engaging.

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- a. Marketing or merchandising activities for any person or organization in any location, as long as such activities do not qualify as impermissible conduct under Paragraphs 2.a., 2.b., or 2.c. above.
- b. Sales or sales-related activities for any person or organization in any location, as long as such activities do not qualify as impermissible conduct under Paragraphs 2.a., 2.b., or 2.c. above.
- c. Any other type of conduct that does not qualify as impermissible conduct under Paragraphs 2.a., 2.b., or 2.c. above.

4. Within 14 days of the entry of this Order, Branch must return to Milliken all Milliken documents and information in her custody or control, or in the custody or control of anyone acting on her behalf (specifically including, but not limited to, all e-mails and attachments that Branch sent from her Milliken e-mail account to her personal e-mail account(s)), including all copies or derivatives thereof, whether in printed or electronic form, including but not limited to all copies of all files containing any such information on any internal or external electronic storage device. When Branch returns all documents and information to Milliken in accordance herewith, Branch shall submit a sworn affidavit to Milliken affirming that she has complied fully with the requirements hereof and that neither she nor anyone acting on her behalf possess or have access to any document or information covered hereby. Branch's attorney in this matter, W. Andrew Arnold, shall be permitted to keep a copy of all information returned to Milliken in accordance with this Paragraph, although such information shall be kept in his office, shall not be viewed by anyone other than his staff and/or his client while in his office, shall not be used for any purpose other than for defending this litigation, and shall be returned to Milliken's counsel upon the completion of this litigation.

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5. Except as specifically required in Paragraph 4 above with respect to the return to Milliken of all Milliken information, Branch is enjoined from altering, erasing, deleting, destroying, or modifying any computer or computerized device with any internal or external storage devices in her

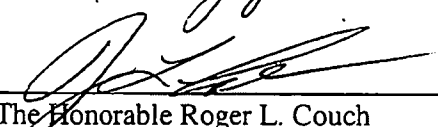
possession, custody, or control or otherwise spoiling any evidence that may relate in any way to this matter.

6. Within 14 days of the entry of this Order, Branch will identify by name, address, telephone, position, and email or other electronic contact identifier all Milliken customers who she has directly or indirectly solicited for her own benefit or on behalf of any third party other than Milliken since January 1, 2013 (excluding solicitations that took place as required in her duties to Milliken). The identification requirement under this Paragraph shall be limited to direct and indirect solicitations that would be covered by Paragraph 2 of this Injunction.

7. This Temporary Injunction shall remain in full force and effect until a trial can be had on the merits.

8. This Court finds a bond in the amount of \$130,000 (One-hundred thirty thousand) is sufficient to pay Branch's costs and damages in the event Branch is found to have been wrongfully enjoined. Milliken shall post a bond in this amount by 5:00 pm on August 9, 2013.

IT IS SO ORDERED ON THIS THE 31<sup>st</sup> DAY OF July, 2013.

  
The Honorable Roger L. Couch  
South Carolina Circuit Judge  
Seventh Judicial Circuit

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**EXHIBIT A**

**Persons and Organizations upon Whom Branch Called, or Whose Account Branch Supervised on Behalf of Milliken, During the Last Two Years of Her Employment by Milliken (as indicated in Milliken's Exhibits 5, 6, and 7 introduced during hearing)**

|  |
|--|
| 1,2,3 Floors LLC                         |
| Abel                                     |
| Abel Design Group                        |
| Acs Flooring Group, Inc.                 |
| AMB.                                     |
| Ann Wolf Design                          |
| Arch Floors                              |
| Argosy Floor Covering LLC                |
| Austin Fine Floors Inc                   |
| Bay Architects                           |
| Business Flooring Specialists, LP        |
| Capital of Texas Flooring LLC            |
| Cerano @ Murphy Ranch                    |
| Coastal Flooring Inc                     |
| Commercial Marketing Associates Inc      |
| Creative Design & Furnishing Mickey Hamm |
| Crosspointe Architects                   |
| Curry Budreux                            |
| David Watson                             |
| Design Brokers Inc.                      |
| Design House                             |
| Dmi & Associates Inc.                    |
| Don Harrison Architects                  |
| Eldridge                                 |
| English & Associates                     |
| Excel Carpets Inc.                       |
| FKP                                      |
| Floor Zone LLC                           |
| Flooring Solutions Inc                   |
| Ford Powell & Carson                     |
| Gail Johnson Interiors                   |
| Gensler                                  |
| Gomez Floor Covering Inc.                |
| GRAEBEL RELOCATION SERVICES              |
| Haven Design                             |
| HBL                                      |

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| HDR                             |
| Heery                           |
| Hermes                          |
| HOK Architects                  |
| Hunter Moody                    |
| Intertech Flooring              |
| Jackson & Ryan Architects Inc   |
| JBGoodwin REALTORS              |
| Kell Munoz Architects           |
| Ken S Kaplan                    |
| Kendall Heaton Arch             |
| Kirksey and Partners Architects |
| KM Design                       |
| Labiche                         |
| Lameroux                        |
| Landry's Restaurants Inc.       |
| Laura Manchee Designs, LLC      |
| Leo A. Daly                     |
| Lucas Eilers                    |
| M Architects                    |
| Malibu Acceptance Corp.         |
| Manchee & Woods Pamer           |
| Mars Architects                 |
| Mars Associates                 |
| Maureen Ford                    |
| Mayfield Ragni & Strasser       |
| MEK                             |
| Melissa Holmes edi ownership    |
| Merriman Holt Architects        |
| Metaform Architects             |
| Mohle                           |
| MW Design                       |
| Newground                       |
| NO ARCHITECTURAL DESIGN FIRM    |
| PBK                             |
| Phillip Ewald Architects        |
| Perkins & Will                  |
| Philo Wilke                     |
| Powers Brown                    |
| Richard S Weiss AIA             |
| RNL                             |

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|------------------------------------|
| Robert A M Stern Architects        |
| Rottet Studio                      |
| S & S Tile, LTD                    |
| SEADRILL SERVIÇOS DE PETROLEO LTDA |
| SET Floors LLC.                    |
| SETON                              |
| Sheehan Partners                   |
| Sixth River Architects             |
| Southern Equity Inc.               |
| Spectra Contract Flooring          |
| SPG Moquette Inc.                  |
| STG                                |
| STG Architects                     |
| Studio 8                           |
| Superior Energy Service            |
| Swift Design                       |
| TCC Multi-Family Interiors Inc.    |
| Texan Floor Service, LTD           |
| Texas Floor Covering               |
| Tishman Speyer Prop                |
| Treanor Architects                 |
| UNIVERSITY OF HOUSTON              |
| Urban Architecture                 |
| Valerio Dewalt Train               |
| W.E. Imhoff & Company, Inc.        |
| Webb County                        |
| WPA                                |
| Ziegler Cooper Architects          |

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