

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Lewallen Automation, LLC, and ASAG )  
 Energy, LLC )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 Michael Lewallen and Everworks, LLC, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2014-CP-23,489


**ORDER ON MOTION  
 FOR TEMPORARY INJUNCTION**

FILED - CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENS  
 2014 OCT 9 9 11 AM '14

This matter is before the Court on Plaintiff Lewallen Automotive, LLC Motion for a Temporary Injunction. A hearing was held before me on September 29, 2014. The parties were represented by counsel at the hearing. After reviewing Plaintiff's pending motion with exhibits, and additional documents supplied by the parties, and considering the arguments of counsel, the Court finds that Plaintiffs are entitled to a temporary injunction pursuant to Rule 65, SCRPC, as set forth more specifically below.

**FINDINGS OF FACTS**

From approximately March 28, 2008 to December 31, 2012, Defendant Michael Lewallen ("Lewallen") was a member of Lewallen Automation, LLC ("LALLC"), and was an officer and president of LALLC. On December 31, 2012, Lewallen sold all of his equity interest in LALLC to Plaintiff ASAG Energy, LLC, pursuant to a Membership Interest Purchase Agreement. That same day, Lewallen resigned his position as president of LALLC and entered into an "Employment Agreement" with LALLC, pursuant to which he became vice president of LALLC. Lewallen remained employed as vice president of LALLC until his termination by LALLC on June 30, 2014. Defendant Lewallen subsequently entered into a contract relationship

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with Defendant Everworks, LLC. Everworks is also in the automation business although the scope of its business, according to Lewallen, may differ from that of LALLC.

The Membership Interest Purchase Agreement states Lewallen “shall not disclose, publish or make use of Confidential Information at any time following the date hereof without the prior written consent.” “Confidential Information” is defined in the Membership Interest Purchase Agreement as “any data or information of the Companies or Purchaser that is valuable to the operation of the Companies and not generally known to the public or competitors.” The Membership Interest Purchase Agreement provides that “[a]ny remedy at law for any breach of the provisions contained in this Section shall be inadequate and the non-breaching party shall be entitled to injunctive relief in addition to any other remedy available hereunder or under applicable Law.”

The Employment Agreement states that Lewallen “is employed hereunder by the Companies in a confidential relationship wherein Employee, in the course of his employment with the Companies, has and will continue to become familiar with and aware of information as to the customers of the Companies and the Companies’ specific manner of doing business, including the processes and techniques, and future plans with respect thereto, all of which has been and will be established and maintained at great expense to the Companies.” The Employment Agreement also states that “[Lewallen] agrees that he will not, during or after the term of this Agreement with the Companies, disclose the specific terms of the Companies’ relationships or agreements with its significant vendors or customers or any other significant and material trade secret of the Companies, whether in existence or proposed, to any person, firm, partnership, corporation or business for any reason or purpose whatsoever.”

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LALLC has submitted evidence, in the form of affidavits, that Defendant Lewallen, as former president and vice president of LALLC, was privy to and had knowledge of confidential information of LALLC, including, but not limited to, prices for all parts purchased to assemble the panels, hourly rates charged by LALLC to the customers, costs of OEM panels and how long it takes to assemble them, and LALLC's pricing information. There is also evidence that such information was protected by LALLC, including for example, by having employees execute non-disclosure agreements, maintaining a company Confidentiality and Trade Secrets Policy that prohibits the disclosure of information outside the company, and by maintaining a badge lock system at the facility. There is also an allegation that during his employment with LALLC, Lewallen e-mailed to his personal e-mail address, on or about January 20, 2014, a spreadsheet containing LALLC's Sales Planning Budget for 2014, including existing and potential customer names, contacts, and actual and forecasted budgets. LALLC has also presented evidence that this spreadsheet was e-mailed to a "Rachel Kay," who is not an employee of Plaintiffs. Plaintiffs have also alleged that a number of customers and employees have advised them that Defendant Lewallen is making untrue statements about LALLC's ability to remain in business and its improper business practices. Other affidavits have been submitted by LALLC. Lewallen objects to these affidavits arguing they contain inadmissible hearsay. The Court, being aware of this objection, has not considered any inadmissible hearsay in its ruling. Further, this is a temporary Order and is based upon the limited facts in the record at this time.

### **CONCLUSIONS OF LAW**

Under South Carolina law, a party seeking to obtain injunctive relief generally must demonstrate that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *FOC*

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*Lawshe Ltd. Partnership v. International Paper Co.*, 352 S.C. 408, 574 S.E.2d 228 (Ct. App. 2002). There is no additional requirement that a trial judge must “balance the equities” before issuing an injunction. *Poynter Investments, Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15, 17 (2010). When a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate determination of the case on the merits. *Helsel v. City of North Myrtle Beach*, 307 S.C. 29, 413 S.E.2d 824 (1992).

Here, the Court finds that Plaintiffs have made a sufficient showing under these standards that it is entitled to a temporary injunction. The Court finds that Plaintiffs have made a sufficient showing of likely irreparable harm if Lewallen uses certain confidential information of LALLC, including pricing and cost information. As set forth above, there is evidence that Defendant Lewallen, as former president and vice president of LALLC, was privy to such information and has knowledge of such information, and that such information was protected by LALLC. There is also evidence that during his employment with LALLC, Lewallen e-mailed to his personal e-mail and to a “Rachel K,” who is not an employee of Plaintiffs, a document containing LALLC’s Sales Planning Budget for 2014, including existing and potential customer names, contacts, and actual and forecasted budgets. The Court finds this constitutes sufficient evidence of disclosure under the South Carolina Trade Secrets Act and pursuant to Lewallen’s contractual obligations.

The Court declines to issue an Order relative to LALLC’s allegations of slander by Lewallen finding such is typically not a basis for an injunction. However, Lewallen proceeds at his own risk in this lawsuit if the allegations of LALLC are ultimately proven relative to slander.

The Court denies LALLC’s request that Defendants be enjoined from encouraging or employing LALLC employees in any manner that violates such employee’s non-competition,

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non-disclosure, and/or non-solicitation covenant with LALLC. However, and as noted above, Lewallen and Everworks proceed at their own risk in this lawsuit if such allegations are ultimately proven true and actionable.

**THEREFORE, IT IS ORDERED, ADJUGED AND DECREED**, pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, that Plaintiffs are hereby granted a temporary injunction against Defendant Lewallen as follows:

1. Defendant Lewallen shall immediately return and certify in writing to LALLC that he has returned all or its documents, electronic data, and equipment and property. With respect to the January 2014 electronic mail correspondence referenced above, Defendant Lewallen shall not disclose or use it or the information contained therein, and shall protect its confidentiality until such time as the parties resolve how and in what format it shall be delivered. This shall be addressed in a separate Protocol Order.
2. To the extent that the Plaintiffs determine that a forensic audit is the manner in which they seek return of the information attached to the January 2014 electronic mail correspondence referenced above, the parties shall convene and agree as to the capture of any electronic data for that very limited purpose. To the extent that Defendant Lewallen provides his personal laptop computer referred to at the hearing to Plaintiffs or their experts for such capture, Plaintiffs shall not retain Defendant Lewallen's laptop computer for longer than four (4) days. Plaintiffs shall give at least seven (7) days notice to Lewallen in the event they seek such audit.
3. Defendant Lewallen shall not use, directly or indirectly, or disclose any

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confidential information or trade secrets of LALLC, as defined by the parties in the Membership Interest Purchase Agreement, §1.01 and §5.04, to mean:

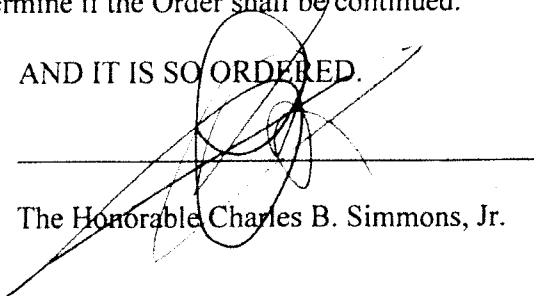
any data or information of the Companies or Purchaser that is valuable to the operation of the Companies and not generally known to the public or competitors.

And in the Employee Agreement, paragraph 6, to mean:

Trade Secrets. Employee agrees that he will not, during or after the term of this Agreement with the Companies, disclose the specific terms of the Companies' relationships or agreements with its significant vendors or customers or any other significant and material trade secret of the Companies, whether in existence or proposed, to any person, firm, partnership, corporation or business for any reason or purpose whatsoever.

4. Defendant Lewallen shall not make any misrepresentation to LALLC's customers regarding LALLC's ability or capacity to fulfill orders from such customers.
5. Defendant Lewallen shall not make any statement to LALLC's customers, vendors or employees that suggests or implies that any of LALLC's officers falsify financial records, that that LALLC is going to cease business operations, or any other statement meant to cause harm to LALLC.
6. LALLC shall post bond with the Clerk of Court in the amount of \$2,500.00 prior to this Order becoming effective. See, Rule 65, SCRPC.
7. I hereby retain jurisdiction to decide all matters properly brought before the Court pursuant to this Order. This Order shall stay in effect for forty-five (45) days from the date the Court executes and enters it, and the Court shall reconvene the parties prior to its expiration to determine if the Order shall be continued.

AND IT IS SO ORDERED.

  
The Honorable Charles B. Simmons, Jr.

10/2/14  
2:00 p.m.