

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT

Hub International Midwest Limited,  
  
Plaintiff,

) Civil Action No.: 2018-CP-40-03019

v.

Kip Bouknight,

Defendant.

**RECEIVED**  
**ORDER GRANTING PRELIMINARY INJUNCTION**

AUG 09 2018

**SC Court of Appeals**

This matter came before this Court on June 15, 2018, on the motion of Defendant Kip Bouknight to vacate a Temporary Restraining Order ("TRO") issued on June 8, 2018. At the same time, the Court considered the motion for preliminary injunction filed by Plaintiff Hub International Midwest Limited ("Hub") on June 8, 2018. I have reviewed the pleadings in this matter, Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction and exhibits, Defendant's Emergency Motion to Vacate Temporary Restraining Order, and the Affidavit of John C. Glancy (all of which were filed with the Richland County Clerk of Court). I have also reviewed the two affidavits and a letter that Defendant handed up at the hearing of this matter. For the reasons set forth below, this Court denies the motion to vacate the TRO and grants the motion for preliminary injunction.

**FINDINGS OF FACT**

1. Plaintiff Hub is an insurance brokerage firm.
2. Defendant was hired by Hub as a broker on or about November 24, 2014.

Defendant worked for Hub in Hub's Columbia, South Carolina office where he marketed and sold Hub's products to various customers throughout the State of South Carolina.

3. On November 24, 2014, Defendant executed a Confidentiality and Non-Solicitation Agreement (South Carolina) ("Agreement"). The Agreement states in pertinent part:

Section 3(a). Employee understands and acknowledges that during Employee's employment with the Company, Employee will learn or be given access to, may will be entrusted with, or may assist in the development of, trade secrets and other confidential or proprietary information concerning the business and affairs of the Company, other members of the Hub Group, their respective clients and prospective clients, and other third parties who entrust information to the Hub Group with the understanding, express or implied, that it will be kept confidential (collectively, "Confidential Information"). Confidential Information specifically includes, but is not limited to, the following, whether in hard copy, electronic copy or any other form or medium: (1) information regarding any clients and prospective clients, including lists, contact information for the representatives of clients and prospective clients with decision making authority, insurance requirements or preferences, insurance policy terms, including policy premiums and expiration dates, renewal information and claims and loss history; (2) the amount of commissions indirectly earned from clients; (3) insurance products or programs developed by the members of the Hub Group (with or without Employee's assistance); (4) information pertaining to the Hub Group's relationships with insurance carriers and other providers of products or services; (5) financial information and accounting procedures; (6) business plans and strategies, including potential acquisitions or divestitures; (7) sales, marketing and e-commerce strategies; (8) business personnel information, including compensation structures and strategies, skills and qualifications; (9) business personnel training procedures; (10) intellectual property, including inventions and copyrightable works; and (11) any of the above information that is stored, maintained or used on any computer programs or databases. Notwithstanding the foregoing, Confidential Information will not include information that Employee demonstrates (i) is or has become generally known to the public, other than by a breach of this Agreement or a breach of Employee's fiduciary duties to the Hub Group, or (ii) is or has been lawfully obtained by Employee from an independent third party under no obligation of confidentiality to the Hub Group and without a breach of this Agreement.

Section 3(b). During Employee's employment with the Company or any other member of the Hub Group and at all times following Employee's termination of employment for any reason, Employee shall not, directly or indirectly, use or disclose any Confidential Information, except (1) as may be required for Employee to perform properly Employee's assigned

employment duties and responsibilities for the benefit of the Hub Group or (2) as may be required by applicable law (and in that case only after compliance with paragraph (c) below).

Section 5(b). Non-Solicitation of Clients: During Employee's employment with the Company and for a period of two (2) years following Employee's termination of employment for any reason (whether voluntary or involuntary or with or without cause), Employee shall not, directly or indirectly, either for Employee's own benefit or on behalf of any other person or entity: (1) solicit any Client or Prospective Client for or on behalf of an existing or prospective Competitive Business; (2) except in connection with Employee's employment by the Company and for the benefit of the Hub Group, accept a broker or agent of record appointment for the placement of insurance for, place or broker insurance on behalf of; or provide insurance administrative functions or consulting services to, any Client or Prospective Client; or (3) interfere with or damage or attempt to interfere with or damage any member of the Hub Group's business relationship with any Client or Prospective Client.

4. "Client" is defined by Section 5(a)(i) of the Agreement as:

any person or entity who or which is, or at any time during the twelve (12) month period immediately preceding the date of termination of Employee's employment was, a client of the Company or any other member of the Hub Group (1) to whom Employee provided services or for whom Employee transacted business or (2) about whom Employee acquired information not generally available to the public as a result of or in connection with Employee's employment. The term Client also includes any association or other organization that recommends a member of the Hub Group as a preferred provider of insurance products or services to its members or participants or otherwise assists its members or participants in obtaining insurance products or services from a member of the Hub Group.

5. "Prospective Client" is defined by Section 5(a)(iv) of the Agreement as:

any person or entity other than a Client (1) to whom Employee submitted or assisted in the submission of a proposal or quote of any kind on behalf of the Company or any other member of the Hub Group at any time during the twelve (12) month period immediately preceding the date of termination of Employee's employment or (2) about whom Employee acquired information not generally available to the public as a result of or in connection with Employee's employment.

6. On March 20, 2018, Defendant resigned his employment with Hub.

7. Shortly thereafter, Defendant went to work for BB&T – Boyle Vaughan Insurance (“BB&T”) as a Producer, and Defendant is currently employed there.

8. Hub sent Defendant a letter on March 26, 2018, with a copy of the Agreement signed by Defendant. In that letter, Hub told Defendant Hub expected Defendant to abide by the terms of the Agreement after his employment with Hub ended.

9. Hub submitted the affidavit of Thomas E. Suggs wherein he provided sworn testimony that, within 15 days of Defendant's resignation, he became aware that Defendant, after his move to BB&T, had written business for J&S, Inc.

10. It is undisputed that J&S, Inc. was a Client of Hub.

11. Mr. Suggs stated in his affidavit that Hub will lose \$20,000.00 in revenue as a result of losing J&S, Inc.'s business.

12. Defendant denies soliciting business from J&S, Inc.

13. Defendant stated on the record at the hearing on June 15, 2018, that J&S, Inc. moved its business from Hub to BB&T.

14. On April 20, 2018, Robert Knowles sent a second letter to Defendant, stating that Hub was aware that Defendant had accepted a broker of record appointment from J&S, Inc.

15. Mr. Knowles stated in his April 20, 2018 letter that Hub was retaining Defendant's March commissions (totaling \$18,407.64) as a partial set-off against what Hub believed its liquidated damages to be from the loss of the J&S, Inc. business.

16. In Mr. Suggs's Affidavit, he provided sworn testimony that as of June 5, 2018, he was aware that J H Seale & Son Inc. intended to move its business to BB&T with Defendant.

17. In Mr. Suggs's Affidavit, he also provided sworn testimony that losing J H Seale & Son Inc. as a client would result in a loss of approximately \$134,000.00 of revenue to Hub.

18. Defendant stated at the hearing that J H Seale & Son Inc. is moving its business to BB&T.

19. It is undisputed that J H Seale & Son, Inc. was a Client of Hub.

20. Defendant contends the Agreement is unenforceable.

21. There is nothing in the record of this case or the material presented at the hearing indicating that Defendant has suffered any monetary damages since initiation of this action.

22. The TRO issued on June 8, 2018, has expired.

#### **CONCLUSIONS OF LAW**

23. Hub faces immediate, irreparable harm if Defendant is permitted to solicit insurance business from Hub's Clients and Prospective Clients.

24. Hub faces immediate, irreparable harm if Defendant is permitted to continue placing insurance business for Hub's Clients and Prospective Clients with BB&T.

25. Hub faces immediate, irreparable harm if Defendant uses Hub's Confidential Information.

26. There is a likelihood that Hub would succeed on the merits of its claim that Defendant has breached one or more of the terms of the Agreement.

27. The liquidated damages provision of the Agreement will not prevent future breaches of the Agreement. Thus, Hub does not have an adequate remedy at law.

28. The status quo ante at the time Defendant resigned from Hub is that Hub's clients were still its Clients and Prospective Clients were still its Clients and Prospective Clients.

29. Defendant placing business for Hub's Clients or Prospective Clients with BB&T is a change from the status quo ante.

30. A preliminary injunction is necessary to maintain the status quo ante.

31. This preliminary injunction is narrowly drawn so as to only prevent Defendant from using Confidential Information or soliciting or placing business for only Hub's Clients and Prospective Clients to whom Defendant provided services or transacted business or about whom Defendant acquired Confidential Information. Such limitation permits Defendant to otherwise continue in his line of work in the insurance field in Richland County, South Carolina.

32. Accordingly, this Court orders the following:

- A. Because the TRO has expired, there is no need to vacate it; therefore, Defendant's motion to vacate the TRO is denied.
- B. Hub's motion for preliminary injunction is granted.
- C. Defendant must immediately cease using, disclosing, or disseminating Hub's Confidential Information;
- D. Defendant must immediately cease from soliciting any of Hub's Clients or Prospective Clients to whom Defendant provided services or for whom Defendant transacted business or about whom Defendant acquired Confidential Information;
- E. Defendant must immediately cease accepting a broker or agent of record appointment for the placement of insurance for, placing or brokering insurance on behalf of, or providing insurance administrative functions or consulting services to any Client or Prospective Client to whom Defendant provided services or for whom Defendant transacted business or about whom Defendant acquired

Confidential Information on behalf of himself, BB&T, or any person or entity other than Hub;

- F. Defendant must immediately cease from interfering with, damaging, or attempting to interfere with or damage Hub's business relationship with any Client or Prospective Client to whom Defendant provided services or for whom Defendant transacted business or about whom Defendant acquired Confidential Information.
- G. Bond would appear unnecessary in this matter because it is Hub not Defendant who has alleged damage by Defendant's actions, but out of an abundance of caution, Hub is directed to post a bond in the amount of \$ \_\_\_\_\_.

**AND IT IS SO ORDERED.**

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The Honorable Joseph M. Strickland  
Special Circuit Judge, Fifth Judicial Circuit

Columbia, South Carolina

June \_\_\_\_, 2018



Richland Common Pleas

**Case Caption:** Hub International Midwest Limited vs Kip Bouknight  
**Case Number:** 2018CP4003019  
**Type:** Order/Temporary Injunction

It is so Ordered

s/Joseph M. Strickland, 3055