

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Jennings-Dill, Inc.,)
)
Plaintiff,)
)
v.)
)
Eric Israel,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2021-CP-23-03406

RECEIVED
Oct 05 2021
SC Court of Appeals

TEMPORARY INJUNCTION ORDER

This matter is before the Court on Plaintiff’s Motion for Temporary Injunction (the “Motion”). Based on Plaintiff’s Motion, the Complaint, the affidavits on file, the memoranda of law submitted by both parties, and the oral arguments presented to the Court at the hearing held on August 3, 2021, the record supports a finding that Plaintiff Jennings-Dill, Inc. (“Jennings-Dill” or the “Company”) has satisfied its burden of demonstrating entitlement to the relief it seeks.

Findings of Fact and Conclusions of Law

1. Jennings-Dill is a mechanical contractor providing services in heating, ventilation and air-conditioning (“HVAC”), plumbing and process piping primarily for industrial, commercial, school and hospital construction customers.
2. Defendant Eric Israel (“Israel”) was employed at Jennings-Dill as a Plumbing Superintendent.
3. As the Plumbing Superintendent, Israel oversaw the operations and personnel of Jennings-Dill’s Plumbing Division. In his role with Jennings-Dill, Israel had access to Jennings-Dill’s confidential information related to employee payroll and retention, and the bidding process. Jennings-Dill issued Israel an iPad, which allowed access to Jennings-Dill’s confidential

information through an application called ShareFile.

4. Jennings-Dill has numerous policies to protect its confidential business information. Israel was aware of these policies and signed an acknowledgement of such a policy directed to the use of the iPad he was issued.

5. On June 13, 2021, Israel resigned from his employment with Jennings-Dill. In his email to Andy Locklair, Jennings-Dill's Vice President of Operations, Israel stated that he had "...been given a good opportunity with another company for change and growth." From June 13 until June 24, 2021, Jennings-Dill management met with Israel to encourage him to stay with Jennings-Dill.

6. On June 24, 2021 at 6:38 pm, Locklair missed a call from Israel. Locklair called Israel back less than ten (10) minutes later. During the thirty-eight (38) minute call, Israel announced his resignation for the second time, offering to work a two-week notice. Locklair told him a two-week notice was not necessary, and directed him to return all of Jennings-Dill's property first thing the following morning. On June 25, 2021 at 6:20 am, Locklair sent Israel an email confirming the June 24, 2021 conversation.

7. Less than two hours after the conclusion of the call the evening of June 24, 2021, in which Israel made clear his resignation from employment, Israel accessed and downloaded documentation with the iPad Jennings-Dill had issued to him. The documentation was within Jennings-Dill's ShareFile and contains confidential information.

8. At 8:53 pm, Israel accessed and downloaded Jennings-Dill's document entitled "Personnel Report." Then, at 8:55 pm, Israel downloaded two documents, "Personnel Report Jan 2021 - Dec 2021" and "JD Employee List." Jennings-Dill did not authorize Israel to access, download, or use these three documents (collectively as "Electronic Property") after resigning

from the Company or for a competitor.

9. The Electronic Property contains Jennings-Dill's confidential information and is the property of the Company. The Electronic Property unlawfully downloaded by Israel contains monthly employee headcount information through July 2021, including hires and terminations, and personal contact information and pay rates for all Jennings-Dill employees, not just those in the Plumbing Division.

10. On the morning of June 25, 2021, Locklair discovered that Israel improperly accessed and downloaded the Electronic Property. It was not until July 13, 2021, however, that it became apparent to Jennings-Dill that Israel was using the stolen Electronic Property for his and that of his new employer, Place Services, Inc. ("PSI"), benefit.

11. Specifically, on July 13, 2021, Phillip Dobbins, former Jennings-Dill Superintendent and now employed by PSI, sent an email to Israel's Jennings-Dill email address by mistake. The email made clear Israel was now employed by PSI, a competitor of Jennings-Dill. The email from Dobbins to Israel directed Israel to communicate with another recently departed former Jennings-Dill employee, now employed at PSI, regarding a training issue.

12. Since his departure, Israel has communicated with several Jennings-Dill employees for what appears to be the purpose of soliciting them to join him at his new place of employment, PSI. Possession of the Electronic Property would be of great benefit to Israel and PSI in connection with such solicitations. Israel has been successful in several instances. However, it remains unclear as to how far Israel's solicitations reach.

13. Concurrent with Israel's apparent use of Jennings-Dill's Electronic Property and reliance upon it to solicit Jennings-Dill's plumbing foremen, plumbers and plumber helpers, the Company has lost one-third of its Plumbing Division workforce in the last month. Because of this,

Jennings-Dill was only able to bid on five (5) projects last month compared to what Jennings-Dill ordinarily bids, an average of thirteen (13) projects each month, and none of these bids sought the plumbing work.

14. In addition, Jennings-Dill has had to withdraw from confirmed work for customers, resulting in lost revenues. Jennings-Dill believes these withdrawals have affected its relationships with these customers. At least one of these customers has expressed frustration with the delays on another project caused by the lack of Jennings-Dill manpower.

15. Jennings-Dill's business relies on its success in bidding on projects. The bidding process involves the Company's evaluation of the proposed project and specifications, projecting the cost of materials, projecting the hours of labor necessary to complete the project, and assigning a blended hourly labor rate to the project. The wage information contained in the Electronic Property in the hands of a company in the business of providing mechanical contracting services would be of great value in recruiting Jennings-Dill's workforce and in submitting its own bids.

16. Without adequate manpower in its Plumbing Division, Jennings-Dill will be unable to bid on plumbing work until November 2021 or bid on work to commence before February 2022. Jennings-Dill believes that these limitations cause harm to its reputation to customers or prospective customers and may cause the customers and prospective customers to reject or turn down bids from Jennings-Dill in the future.

17. Jennings-Dill filed this action on July 20, 2021, and filed the Motion presently before the Court later that day.

18. The Court scheduled the hearing on this Motion to take place on August 3, 2021, which was the first available date after the filing of the action.

19. The Court concludes that Jennings-Dill has taken diligent steps to protect its

interests in this matter and has not caused an unreasonable delay in filing.

20. Absent an Order from this Court, Israel's actions will cause Jennings-Dill to suffer irreparable damage to and loss of its business reputation, business opportunities, goodwill, market share, and relationships with existing and potential customers.

21. The injury to Jennings-Dill is irreparable in that:

- a. Its relationships with customers will likely be impaired and/or lost permanently;
- b. Its business opportunities with customers and prospective customers will likely be impaired and/or lost permanently;
- c. Its confidential information in the hands of and being used by a former employee now employed with a company performing the same kind of mechanical contracting services would likely lead to:
 - i. the loss of even more employees; and
 - ii. possible misuse in competitive bidding;
- d. As it seeks to hire replacements for those who have left Jennings-Dill to go to work for PSI, Jennings-Dill's newer plumbing employees will likely have less skill and efficiency for a period impacting Jennings-Dill's reputation and profitability; and
- e. Jennings-Dill likely will suffer a loss of goodwill, a loss of market share, and damage to its business reputation.

22. Jennings-Dill lacks an adequate remedy at law because damages for the injuries Jennings-Dill has suffered as a result of Israel's actions - particularly including, but not limited to, the loss of good will, loss of market share, damage to business reputation, and disclosure of confidential information - are inherently difficult, if not impossible to calculate.

23. Although this Court does not engage in a balancing test between the irreparable

harm that Jennings-Dill would suffer in the absence of injunctive relief versus whatever harm Israel could suffer if the Court grants injunctive relief, it is appropriate for this Court, sitting in equity, to consider the impact on Israel. It appears that a grant of the relief Jennings-Dill seeks would have little impact on Israel.

24. First, all Jennings-Dill is requesting with respect to Jennings-Dill's Electronic Property is that Israel not possess or use the information and that he return or destroy it. Second, Jennings-Dill is asking that Israel not solicit its employees to work for a competitor, new to the upstate region, given that doing so would inevitably involve the use of the confidential information that Israel is able to retain even after a return of paper copies of the confidential information or the destruction of electronic versions. Third, these limitations do not in any way prevent Israel from working as a plumber at PSI. In his Memorandum in Opposition, Israel asserts that he is just a plumber working at PSI. If so, restricting his ability to solicit Jennings-Dill employees by using Jennings-Dill Electronic Property should not in any way inhibit his ability to perform the functions of a plumber.

25. Jennings-Dill has demonstrated a likelihood of success of the merits, as the Court finds as follows:

- a. Jennings-Dill's Electronic Property appears to amount to a trade secret under the South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-1 *et seq.* and the record reflects that it has been misappropriated:
 - i. Jennings-Dill's Electronic Property appears to derive value from not generally known to or readily ascertainable to the public or its competitors, and the Company engages reasonable efforts in maintaining the secrecy of that information.

- ii. Israel misappropriated the data when he took the data in secret, and began using the data to systematically raid Jennings-Dill's Plumbing Division. Israel did not have permission to take the Electronic Property, and has conferred a benefit by doing so.
- b. Israel's conduct also rises to an unfair trade practice under the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et seq.* ("SCUPTA"), that is offensive to the public interest.
 - i. Israel's deception has allowed an out of state company to unfairly compete for employee talent in the mechanical contracting field in the upstate South Carolina by the use of a formerly highly placed employee in possession of confidential information owned by an existing in-state company to raid its employees.
 - ii. The fact that Israel misappropriated the Electronic Property at the end of his last day of employment does not convert this into a workplace dispute outside the scope of the SCUTPA.
- c. Israel's conduct also rises to conversion. Here, Israel took the Electronic Property for no lawful reason, with the full intention of using the information to raid the Company for a competitor. Jennings-Dill has policies in place that safeguard against this, to which Israel has agreed to abide by. Israel is now using the Electronic Property to benefit himself and PSI at a detriment to Jennings-Dill.
- d. Jennings-Dill has also shown its likelihood of success as it pertains to unjust enrichment - quantum meruit. Israel inappropriately took the Electronic Property and realized a benefit by raiding the Jennings-Dill's Plumbing Division for his new

employer, PSI. No one at Jennings-Dill gave Israel permission to engage in such use of the Electronic Property.

Temporary Injunction

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

1. Israel is enjoined and restrained from using any of Jennings-Dill's Electronic Property (as defined above) or the confidential information therein.
2. Israel is enjoined and restrained from bidding on any projects on behalf of PSI by using information found within Jennings-Dill's Electronic Property.
3. Israel is enjoined and restrained from soliciting any Jennings-Dill employees by using information found within Jennings-Dill's Electronic Property.
4. Within 14 days of the entry of this Order, Israel will identify all Jennings-Dill's current and former employees who he has directly or indirectly solicited for his own benefit or on behalf of any third party other than Jennings-Dill since June 24, 2021.
5. Within 14 days of the entry of this Order, Israel will identify all third parties who have received paper or electronic copies of the Electronic Property. Israel also will request such third parties return all paper copies of the Electronic Property to him and destroy all electronic versions of the Electronic Property. Israel will mail to Jennings-Dill any paper copies he has or receives from any third parties.
6. Within 14 days of requesting originals and copies of the Electronic Property and mailing such documents back to Plaintiff, Israel will provide a Sworn Affidavit:
 - a. Confirming that he has returned all paper copies and destroyed all electronic versions of the Electronic Property in his possession; and

b. List who he requested returned paper copies and destroyed electronic copies of the Electronic Property, and stating when such Electronic Property was returned or confirmed as destroyed.

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

8. A bond in the amount of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) is sufficient to pay Israel's costs and damages in the event Israel is found to have been wrongfully enjoined. Jennings-Dill shall post a bond in this amount within seven (days) after the date this Order is entered.

IT IS SO ORDERED ON THIS THE __ DAY OF _____, 2021.

The Honorable Alex Kinlaw, Jr.
South Carolina Circuit Judge
Thirteenth Judicial Circuit

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Greenville Common Pleas

Case Caption: Jennings Dill Inc vs. Eric Israel

Case Number: 2021CP2303406

Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763