

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

NATIONAL COLLEGE OF BUSINESS
& TECHNOLOGY COMPANY, INC.,
d/b/a FLORIDA TECHNICAL COLLEGE

Plaintiff,

Case No.: 2023-CA-016942-O
Division 43

v.

HEIDI POLLPETER,

Defendant.

_____ /

ORDER GRANTING AMENDED MOTION
FOR TEMPORARY INJUNCTION

THIS MATTER came before the Court for evidentiary hearing on July 31, 2024, on Plaintiff's "Amended Motion for Temporary Injunction and Request for Expedited Hearing," filed January 31, 2024 (the "Motion"). The Court, having reviewed the file, the Motion, the response in opposition to the Motion, the reply, having reviewed the record evidence, heard argument of counsel for the parties during the July 31, 2024, evidentiary hearing, and being otherwise fully advised of the premises, finds as follows:

Standard

To be entitled to a temporary injunction, a party must prove: (1) irreparable harm will result if the temporary injunction is not entered; (2) an adequate remedy at law is unavailable; (3) there is substantial likelihood of success on the merits; and

(4) entry of the temporary injunction will serve the public interest. *Minty v Meister Fin. Grp. Inc.*, 97 So. 3d 926, 930 (Fla. 4th DCA 2012). A temporary injunction is an extraordinary remedy which should be granted sparingly. *Gooding v. Gooding*, 602 So. 2d 615, 616 (Fla. 4th DCA 1992).

The primary purpose of a temporary injunction is to preserve the *status quo* while the merits of the underlying dispute are litigated. *Gawker Media v. Bollea LLC*, 129 So. 3d 1196, 1199 (Fla. 2d DCA 2014). The party seeking the injunction has the burden to show, by competent substantial evidence, each of the four required elements. *See Bautista REO U.S. v. ARR Investments, Inc.*, 229 So. 3d 362, 365 (Fla. 4th DCA 2017) (*quoting Concerned Citizens for Judicial Fairness, Inc. v. Yacucci*, 162 So. 3d 68, 72 (Fla. 4th DCA 2014)) (citation omitted).

Findings, Analysis and Ruling

Plaintiff operates Florida Technical College (“FTC”), a private, postsecondary college offering training and education in various fields, including healthcare, information technology, and business. Defendant is a former employee of FTC at its Orlando campus.¹ While employed at FTC, Defendant signed a

¹ The evidence showed that Defendant’s two employment positions with Plaintiff were with “NUC University-Florida Technical College.” Defendant acknowledged at the hearing having worked for “NUC University-FTC.” Plaintiff’s CEO testified that NUC University and Florida Technical College are fictitious names for the operations of the incorporated entity, National College of Business and Technology, Inc. The Court limits its review to the National College of Business and Technology,

Confidentiality and Non-Solicitation Agreement (the “Agreement”). The Agreement provided, in relevant part:

During the course of the Employee’s employment with the College, and for a period of nine (9) months following the termination of the Employee’s employment with the College for any reason whatsoever, . . . the Employee shall not, directly or indirectly, whether on behalf of or in conjunction with any entity or person, . . . associate with, become employed or engaged by, provide or render any services for, or further the business of, any person or entity engaged, or intending or planning to become engaged, in the business of operating a post-secondary technical school that offers programs, courses or services within a 50 mile radius of any current geographic area in which the College is now doing business or which the College reasonably expects to do business in the near future”

See Agreement, at § 5(a). Defendant held two positions at FTC: Director of Student Support Services from January 4, 2021, to March 28, 2022, and Regional Director of Student Support Services from March 28, 2022, until she resigned and left FTC on September 15, 2023.

On October 2, 2023, Defendant began working at the Winter Park, Florida, campus of Herzing University, with the job title of Academic Dean. Her duties and responsibilities as Academic Dean included supervision of “Student Services” and she is required to have “[k]nowledge of the local employment market and competitors in order to inform the development and revision of relevant academic

Inc. d/b/a Florida Technical College, which is the Plaintiff in this matter and the party to the Agreement at issue with Defendant.

programs.” Her job title was later changed to Director of Campus Operations, with carries substantially similar job duties. This lawsuit and the Motion ensued.

In response to the Motion, Defendant asserts that the Agreement’s non-compete applied only to a “post-secondary technical school” and that Herzing University was not a technical school. However, the Court finds otherwise. Namely, the term “the College” is used throughout the Agreement and refers to Plaintiff conducting business under the fictitious name, Florida Technical College. Thus, the non-compete provision in Section 5(a) of the Agreement prohibits Defendant from being employed at a school in a similar line of business as FTC. *See Fla. Stat. § 542.335(1)(h)* (“A court shall construe a restrictive covenant in favor of providing reasonable protection to all legitimate business interests established by the person seeking enforcement.”).

Furthermore, while there are different course offerings at the two schools, the record evidence adduced at the evidentiary hearing shows there are common courses, programs, and services offered in various educational fields, including healthcare, information technology, and business. During the evidentiary hearing Defendant admitted she signed the Agreement, left employment with Plaintiff and went to work for Herzing University. Based on this, the Court finds that Plaintiff has demonstrated a substantial likelihood of success on the merits. *See Transunion Risk and Alternative Data Solutions, Inc. v. Reilly*, 181 So. 3d 548, 551 (Fla. 4th DCA 2015)

(quoting *Walsh v. Paw Trucking, Inc.*, 942 So. 2d 446, 448 (Fla. 2d DCA 2006))
(Evidence that the defendant has violated an enforceable restrictive covenant supports a finding of likelihood of success on the merits).

Plaintiff has demonstrated the existence of irreparable harm. The violation of an enforceable restrictive covenant creates a presumption of irreparable injury. *See* Fla. Stat. §542.335(1)(j). Once the presumption is established as it is here, the party opposing the injunction has a high burden of rebuttal. *See Pitney Bowes Inc. v. Acevedo*, 2008 WL 2940667, *5 (S.D. Fla. 2008) (citing *Autonation, Inc. v. O'Brien, Jr.*, 347 F. Supp. 2d 1299, 1307 (S.D. Fla. 2004)). The Court finds that Defendant failed to meet her burden of rebuttal. During the evidentiary hearing, Plaintiff's CEO testified that Herzing University is a direct competitor of the Plaintiff for a finite number of students and prospective students. While working for the Plaintiff, Defendant had access to insider information about Plaintiff's business operations, including its marketing, recruitment, and building of relationships with prospective and current students, which Defendant now has at her disposal to use while working for Herzing University.

The Court also finds that an adequate remedy at law is unavailable. The scope of information Defendant testified at the evidentiary hearing she acquired during her time of employment with the Plaintiff coupled with the fact that Herzing University competes with the Plaintiff at least partially, supports the finding that it is inherently

difficult, if not impossible, to determine damages. *See Miller Mechanical, Inc. v. Ruth*, 300 So. 2d 11, 12 (Fla. 1974) (internal citations omitted) (explaining that in cases of a breach of agreements not to compete, injunctions are generally granted because the task of determining damages caused by the breach is inherently difficult); *see also Hatfield v. AutoNation, Inc.*, 939 So. 2d 155, 158 (Fla. 4th DCA 2006).

Furthermore, the Court finds that considerations of the public interest support entry of a temporary injunction. Namely, the public interest is served by requiring parties to a contract to abide by their obligations, and there is no record evidence showing that entry of a temporary injunction will not serve the public interest under the present circumstances.

Finally, The Court finds unpersuasive Defendant's argument that the temporary injunction should be denied because Plaintiff did not act expeditiously in seeking the injunction. Plaintiff filed this lawsuit and the initial motion seeking an injunction approximately six weeks after Defendant began working at Herzing University. Plaintiff conducted initial discovery, filed an amended Motion and set it for hearing. However due to circumstances outside of Plaintiff's control, the hearing was postponed and heard as soon as practicable thereafter. Accordingly, it is hereby

ORDERED and ADJUDGED:

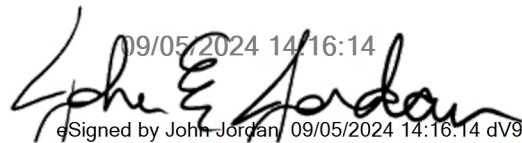
1. Plaintiff's "Amended Motion for Temporary Injunction and Request for Expedited Hearing," filed January 31, 2024, is **GRANTED**.

2. Defendant Heidi Pollpeter is hereby temporarily enjoined from working for Herzing University pursuant to the terms of the Confidentiality and Non-Solicitation Agreement, or until a final judgment is entered in this case, whichever is sooner.

3. Defendant Heidi Pollpeter shall honor the terms of the Confidentiality and Non-Solicitation Agreement.

4. Pursuant to Rule 1.610(b), *Florida Rules of Civil Procedure*, Plaintiff shall post a bond or security in the amount of \$40,000.

DONE and **ORDERED** in Orlando, Orange County, Florida, on

09/05/2024 14:16:14

eSigned by John E. Jordan, 09/05/2024 14:16:14 dV9AggfJ

John E. Jordan
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.

Cathy Stephens, Judicial Assistant for Judge John E. Jordan