

Docket 7/13/10

18.0

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

SUPERIOR COURT RECEIVED & FILED
C.A. # 05- 1194
CLERK OF THE COURTS
NORFOLK COUNTY
Dated 7/13/10

BOCH TOYOTA, INC.

v.

FREDERICK V. LOCKE, JACLYN VASQUEX and BERNARDI'S INC. d/b/a
BERNARDI TOYOTA

MEMORANDUM OF DECISION AND ORDER
[On Plaintiff's Motion for Preliminary Injunction]

The plaintiff, Boch Toyota, Inc. (Boch) moves for a preliminary injunction against two former employees, Frederick V. Locke (Mr. Locke) and Jaclyn Vasquez (Ms. Vasquez) and their new employer, Bernardi Toyota (Bernardi) for violation of an alleged non-competition agreement. For the following reasons the motion is denied.

BACKGROUND

While Mr. Locke was a six year employee of Bernardi's he was recruited by Tony Bruno to work for Boch as a desk manager. Mr. Bruno led him to believe he (Mr. Locke) would make substantially more money. Mr. Locke was informed he may be required to sign a non-competition agreement but not to worry.

Mr. Locke began work on October 20, 2004. Six days later he was called into a room with Mr. Bruno and Mr. Rizzitano. A series of documents were presented for his signature. One document was the non-competition agreement. He signed the papers and returned to work. The meeting was brief.

The position of desk manager requires Mr. Locke to work with the floor

managers and sales agents to finalize sales. Mr. Locke was a floater which required him to work in difference departments such as new cars, used cars and new trucks. He appraised cars for their trade in value. He used "Boch Write-Up Process", a computer program to determine the sale price, a database to generate a receipt and a credit report and a tracking system¹. Boch claims the computer programs are "sophisticated and proprietary".

Ms. Vasquez was hired as a part-time receptionist in June 2004. She was paid \$10.50 per hour. On July 20th she went to meet Ms. Kosticzak, the Human Resources Manager, to sign some papers and learn about the dress code and the sexual harassment policy. She signed the papers which were not explained to her. She did not receive copies. In early 2005, she was refused the position of full- time receptionist. Subsequently she was offered another job which did not materialize. On April 17th she gave her notice because she obtained a full-time job at Ira Nissan.

One week before leaving, she was offer a job by Boch at the Business Development Center. When Ms. Vasquez said she wanted to think about the offer she was told Boch needed an answer "now". She accepted.

On May 2nd Ms. Vasquez began work. A week and ½ later she was brought into the office to sign more papers. In the folder was a series of single page documents. Ms. Vasquez does not believe there was an eight page document in the pile. No one explained the documents. She did not receive a copy of any documents.

Ms. Vasquez took incoming calls on sales leads and provided quotes. She also

¹There is a disagreement regarding whether Mr. Locke was trained in the use of the computer programs.

responded to inquiries over the internet. She inputted the information on the "Boch Track" computer system. She received training on basic listening skills and appropriate responses. She was not aware she signed a non-competition agreement until she received a letter from Boch's counsel dated June 30, 2005.

DISCUSSION

In order to succeed on a request for a preliminary injunction the moving party must show: (1) the likelihood of success on the merits; (2) irreparable harm if the injunction is not granted; and, (3) without the injunction its harm outweighs any harm to the opposing party. Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 616-617 (1980). Employee covenants not to compete generally are enforceable only to the extent that they are necessary to protect the legitimate business interests of the employer. Novelty Bias Binding Co. v. Shervin, 342 Mass. 714, 716 (1961). Protection of the employer from ordinary competition is not a legitimate business interest, and a covenant not to compete designed solely for that purpose will not be enforced. Richmond Bros. Inc. v. Westinghouse Bdcst. Co., Inc., 357 Mass. 106, 111 (1970).


The position of desk manager does not rise to the level where a non-competition agreement would be necessary to protect a legitimate business interest. Mr. Locke had years of experience in sales with different automobile dealerships. His function of arriving at a final sale price for a vehicle is nothing extraordinary. Every dealership uses some method or another.

Neither individual defendant have been shown to have technical skills to replicate Boch's special computer programs. A data entry position is clearly not the type of position requiring a non-competition agreement. Here Boch is attempting to

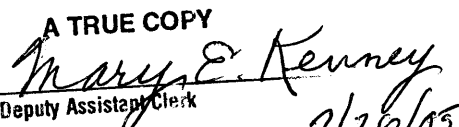
protect itself from ordinary competition. There is no legitimate business interest to be protected by enforcing a non-competition agreement against either Mr. Locke or Ms. Vasquez².

ORDER

The request for a preliminary injunction is denied.


Elizabeth Bowen Donovan
Justice of the Superior Court

Date: July 25, 2005

A TRUE COPY
Attest: 
Deputy Assistant Clerk 7/26/05

²Even if the non-competition agreement Ms. Vasquez signed was valid there is a serious question of consideration.