

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 08-1934

STEELCRAFT, INC.

vs.

MOBI MEDICAL, LLC & another<sup>1</sup>

12-363-08

**MEMORANDUM OF DECISION AND ORDER ON THE PLAINTIFF'S  
MOTION FOR A TEMPORARY RESTRAINING ORDER  
OR PRELIMINARY INJUNCTION**

On September 3, 2008, Steelcraft, Inc. (Steelcraft) filed a three-count complaint and request for a temporary restraining order or preliminary injunction against Mobi Medical, LLC (Mobi) and James Hensel (Hensel). Steelcraft's complaint alleges that: (1) Hensel misappropriated trade secrets and confidential business information; (2) Mobi and Hensel engaged in unfair and deceptive acts and practices in violation of G. L. c. 93A, §§ 2 and 11; and (3) Mobi and Hensel intentionally interfered with Steelcraft's business relations. Steelcraft requests a restraining order or preliminary injunction restraining or enjoining Hensel from performing any work for any corporation, business employer, or any other person relating to the design, manufacture, or sale of custom products, including: roller carts, rolling stands, intravenous pole-based systems, and adjustable arms and additional mounts enhancing the utility of said products and devices that relate to the information Hensel acquired while working for Steelcraft.<sup>2</sup> For the following reasons, Steelcraft's motion for a temporary restraining order or preliminary injunction is **DENIED**.

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<sup>1</sup> James Hensel

<sup>2</sup> At oral hearing, counsel for the plaintiff stated that this was the only prayer for preliminary relief that the plaintiff was pursuing.

## **BACKGROUND**

Steelcraft manufactures medical products. Hensel began working for Steelcraft in September of 2002. While in Steelcraft's employ, Hensel did not execute a written covenant not to compete and the parties dispute the existence of an oral covenant not to compete. Hensel left Steelcraft's employ in early 2007. At that time, Hensel incorporated Mobi, a business that manufactures products similar to those manufactured by Steelcraft. Hensel incurred \$100,000 in debt to start Mobi.

## **DISCUSSION**

To prevail on a motion for a preliminary injunction, "a plaintiff must show (1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the plaintiff's likelihood of success on the merits, the risk of irreparable harm to the plaintiff outweighs the potential harm to the defendant in granting the injunction." Tri-Nel Mgmt., Inc. v. Board of Health of Barnstable, 433 Mass. 217, 219 (2001), citing Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 617 (1980).

### **I. Likelihood of Success on the Merits**

#### **A. Misappropriation of trade secrets and confidential business information**

Massachusetts courts will not enforce a covenant not to compete unless it is valid and reasonable in light of the circumstances. Marine Contractors Co., Inc. v. Hurley, 365 Mass. 280, 287 (1974). A covenant not to compete is valid only if it: (1) protects an employer's legitimate business interest; (2) is supported by consideration; (3) is reasonable in time and space; and (4) is consonant with the public interest. Novelty Bias Binding Co. v. Shevrin, 342 Mass. 714, 716 (1961). With regard to the first element, there are three types of legitimate business interests: (1)

trade secrets; (2) confidential business information; and (3) good will. Marine Contractors Co., Inc., 365 Mass. at 287.

Here, there was no written covenant not to compete and the parties dispute the existence of an oral covenant not to compete. However, even if Steelcraft can show that there was in fact an oral covenant not to compete, that the covenant protected a legitimate business interest, and that it was supported by adequate consideration, Steelcraft will nonetheless be unable to prove that the covenant is enforceable under Massachusetts law. First, with regard to time, Steelcraft has not alleged that the covenant contains a time limit. Therefore, the covenant is not for a reasonable amount of time. Second, with regard to space, Steelcraft has not alleged that the covenant limits its scope to a particular geographic area. Therefore, the covenant is not reasonable in space. Lastly, the alleged covenant is not consonant with the public interest because "the public and the individual have an interest in every person carrying on his trade or occupation freely," Woolley's Laundry v. Silva, 304 Mass. 383, 387 (1939), and the alleged covenant not to compete could conceivably stop Hensel from participating in his trade anywhere in the world ever again. Therefore, Steelcraft has not shown a likelihood of success on the merits with regard to its claim alleging misappropriation of trade secrets and confidential information.

**B. Violation of G. L. c. 93A, §§ 2 and 11**

General Laws c. 93A, § 2(a), provides that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." For conduct to be considered unfair or deceptive pursuant to G. L. c. 93A, § 2(a), "(1) it must fall within at least the penumbra of some common-law, statutory, or other established concept of unfairness, (2) it must be unethical or unscrupulous, and (3) it must cause substantial

injury to a consumer or another businessman.” Wasserman v. Agnastopoulos, 22 Mass. App. Ct. 672, 679 (1986).

At the outset, Steelcraft has not accused Mobi or Hensel of conduct that falls within some “common-law, statutory, or other established concept of unfairness.” See id. Mindful that no written covenant not to compete was executed by the parties, it is unlikely that Steelcraft will be able to show that Mobi and Hensel acted in an unethical or unscrupulous manner. Such a showing would require Steelcraft to prove that Mobi and Hensel engaged in conduct that “attains a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce.” Id., quoting Levings v. Forbes & Wallace, Inc., 8 Mass. App. Ct. 498, 504 (1979).

Here, Steelcraft alleges that Hensel left its employ with trade secrets and confidential business information and that he used the information for the wrongful purpose of advancing his own business, Mobi, to the detriment of Steelcraft. However, Steelcraft has not established that the information was in fact trade secrets or confidential business information. Notably, Steelcraft has not shown that it took any precautions to protect the information. See Jet Spray Cooler, Inc. v. Crampton, 361 Mass 835, 840 (1972) (holding that the extent of measures taken to guard the secrecy of information is relevant to determining whether such information constitutes a trade secret or confidential business information). If trade secrets and confidential business information were truly at stake here, Steelcraft would have to establish that it had taken measures to safeguard the information. Of course, Steelcraft could have easily done so by asking Hensel to execute a confidentiality agreement or a written covenant not to compete.

If the information was not in fact trade secrets or confidential business information,

Hensel merely departed with general knowledge. Such use of general information obtained from a former employer in subsequent employment situations is not conduct that "attains a level of rascality that would raise an eyebrow of someone inured to the rough and tumble world of commerce." Wasserman, 22 Mass. App. Ct. at 679. Lastly, Steelcraft has failed to show that it has been substantially harmed because it has failed to point to any specific business it lost as a result of Hensel and Mobi's conduct. Therefore, the plaintiff has not shown a likelihood of success on the merits with regard to its G. L. c. 93A claim.

### **C. Intentional interference with business relations**

In order to make out a prima facie case of intentional interference with business relations, Steelcraft must prove: "(1) the existence of a . . . business relationship which contemplated economic benefit; (2) the defendant's knowledge of the . . . business relationship; (3) the defendant's intentional interference with the . . . business relationship for an improper purpose or by an improper means; and (4) damages." Swansea Dev. Corp. v. Taunton, 423 Mass. 390, 397 (1996). Here, Steelcraft has failed to point to any specific economically-beneficial business relationship that Hensel knew of and intentionally interfered with for an improper purpose or by an improper means that caused Steelcraft to suffer damages. Therefore, Steelcraft has not shown a likelihood of success on the merits with regard to its intentional interference with business relations claim.

## **II. Irreparable Harm**

Even if Steelcraft could show a likelihood of success on the merits, it cannot show that it will suffer irreparable harm without a restraining order or preliminary injunction.

Steelcraft alleges that, due to Hensel's wrongful use of the information he acquired while

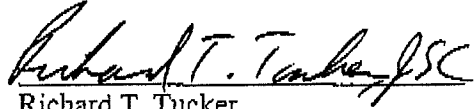
working for Steelcraft, it will lose business. Loss of business can easily be compensated with a monetary award for the amount of business lost. As such, the loss alleged by Steelcraft is essentially monetary loss, which is not enough to establish irreparable harm. Caffyn v. Caffyn, 70 Mass. App. Ct. 37, 42 (2007). However, "monetary loss may constitute irreparable harm where the loss threatens the very existence of the movant's business." Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co., 399 Mass. 640, 643 (1987). Here, Steelcraft does not allege that the monetary loss it would suffer as a result of Hensel's wrongful use of information is enough to threaten the very existence of its business. Therefore, Steelcraft has failed to show that it will suffer irreparable harm as a result of this court denying its motion for a restraining order or preliminary injunction.

### **III. Irreparable Harm to Steelcraft vs. Harm to Hensel in Granting an Injunction**

Because Steelcraft has failed to show that it will suffer irreparable harm, a showing of even the smallest amount of harm to Hensel will serve to tip this factor in Hensel's favor. Here, the facts suggest that Hensel would suffer significant harm if this court issued the preliminary injunction as requested by Steelcraft. Hensel would lose his sole source of income because he would be unable to continue his work at Mobi or any other similar business. In addition, without that income, Hensel would face severe hardship in repaying the loan he obtained to start Mobi. Therefore, the risk of irreparable harm to Steelcraft clearly does not outweigh the harm that would befall Hensel if this court granted Steelcraft's requested restraining order or preliminary injunction.

**ORDER**

For the foregoing reasons, Steelcraft's motion for a restraining order or preliminary injunction is **DENIED**.

  
Richard T. Tucker  
Justice of the Superior Court

DATED: November 10, 2008