2012 IL App (2d) 120941-U
No. 2-12-0941
Order filed December 24, 2012
Supplemental Order filed April 23, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SADDLERS ROW, LLC,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 12-CH-2500
	)	
MICHAEL DAINTON,	)	Honorable
	)	Margaret J. Mullen,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in finding unreasonable the geographical scope of covenant not to compete; however, the court abused its discretion in refusing to modify that provision of the covenant to make it enforceable.

¶ 2 I. INTRODUCTION

¶ 3 Plaintiff, Saddlers Row, LLC, appeals an order of the circuit court of Lake County denying its request for a preliminary injunction restraining defendant, Michael Dainton, from engaging in competition with plaintiff. The trial court concluded that the geographical scope of a covenant not to compete to which the parties had agreed was overbroad, and it further found that it would not be

appropriate to modify (blue pencil) this portion of the agreement. For the reasons that follow, we reverse.

¶ 4 II. BACKGROUND

¶ 5 The parties are aware of the facts, and, as the ultimate issue presented in this accelerated appeal is relatively narrow, we will not set them forth in detail here. Instead, we set forth the following background information to facilitate an understanding of this case.

¶ 6 Plaintiff operates a saddle shop located in Palatine. Defendant is a Master Saddler and a member of the Society of Master Saddlers in England. There are no more than six Master Saddlers in the United States. To become a Master Saddler, defendant underwent a four-year apprenticeship. In 1999, he moved from England to the United States, working in Pennsylvania until 2008. Plaintiff attempts to set itself apart from its competitors by having a Master Saddler on its staff, which allows plaintiff to attract customers. In 2008, plaintiff hired defendant. At that time, the parties executed a covenant not to compete, which purported, upon defendant's cessation of employment with plaintiff, to prohibit defendant from competing with plaintiff for two years within a 75-mile radius. After hiring defendant, plaintiff engaged in a marketing campaign that featured defendant as its Master Saddler. Plaintiff spent about $50,000 on the campaign, which showed great success after two years. Generally, customers who seek services from a Master Saddler also make additional purchases from plaintiff's store. In May 2012, defendant terminated his employment with plaintiff and began working for Barrington Saddlery, one of plaintiff's competitors located seven miles from plaintiff's establishment.

¶ 7 Plaintiff then initiated the instant litigation, successfully seeking a temporary restraining order in May 2012. However, on August 21, 2012, following an evidentiary hearing, the trial court denied plaintiff's request for a preliminary injunction. The trial court noted that this case did not involve

the misuse of confidential information. Rather, this case concerned plaintiff's relationships with its customers. The trial court then addressed what it termed "some of the less disputed questions in this matter." It noted that "[n]o one has argued that the Court does [*sic*] not find either undue hardship for the employee-promisor nor is there any injury to the public." It then concluded that plaintiff had established that it had a legitimate business interest in the near-permanent relationships it enjoyed with its customers. The trial court next turned to the reasonableness of the restriction on defendant's ability to work. It found the two-year temporal restriction reasonable (also noting that the parties advanced no argument on this subject). It also found reasonable the scope of the restriction as it pertained to the activities that were restricted.

¶ 8 Finally, the trial court considered the geographic scope of the restriction and determined that restricting defendant's activities within a 75-mile radius was not reasonable. It noted that "[a]ll of the plaintiff's competitors are within the 75-mile scope," which "greatly increases the hardship on the defendant in pursuing his trade." The trial court relied on an exhibit submitted by plaintiff that showed that "the highest frequency of customer zip codes are no more than 42 miles away." The trial court also rejected plaintiff's request that it "blue pencil" the covenant (meaning reform the agreement to make it acceptable to the trial court (see *Baird & Warner Residential Sales, Inc. v. Mazzone*, 384 Ill. App. 3d 586, 593 (2008))). The trial court believed modification to be an inappropriate remedy because it would encourage employers to "reach as far as possible in a noncompete agreement and then be saved by the Court in the judicial reformation of the agreement." The court continued, "modifying an agreement which prohibits a modestly paid tradesman from using his skills he acquired on his own and not from his employer would reward overreaching by the employer and be inconsistent with the Court's notion of equity." Having found the covenant not to compete unreasonable in terms of its geographic scope, the trial court in turn found it void and

unenforceable and denied plaintiff's request for a preliminary injunction. This appeal followed.

¶ 9 III. ANALYSIS

¶ 10 Plaintiff now appeals, arguing that the trial court erred in denying its request for a preliminary injunction. To be entitled to a preliminary injunction, a plaintiff must prove the following: "(i) a clearly ascertained right in need of protection exists, (ii) irreparable harm will occur without the injunction, (iii) there is not an adequate remedy at law for the injury, and (iv) there is a likelihood of success on the merits." *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & Western Ry. Co.*, 195 Ill. 2d 356, 365-66 (2001). The plaintiff must show that a fair question exists regarding the claimed right such that the *status quo* should be preserved pending resolution of the case. *Lifetec, Inc. v. Edwards*, 377 Ill. App. 3d 260, 268 (2007). In cases involving a covenant not to compete, the propriety of injunctive relief depends upon the validity of the covenant. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 63 (2006). We review a trial court's order regarding a preliminary injunction for an abuse of discretion, and factual findings are reviewed using the manifest-weight standard. *Hensley Construction, LLC v. Pulte Home Corp.*, 399 Ill. App. 3d 184, 190 (2010). Under the former standard, we ask whether any reasonable person could agree with the trial court's decision (*Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 442 (2006)), and under the latter, we will reverse only if an opposite conclusion is clearly apparent *(Best v. Best*, 223 Ill. 2d 342, 350 (2006)).

¶ 11 The validity of the covenant, in turn, is assessed using the three-factor test the supreme court reiterated in *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 17. There, the supreme court explained that a restrictive covenant is valid if (1) it is no greater than necessary to protect a legitimate business interest of the employer; (2) it does not result in an undue hardship to the employee; and (3) it "is not injurious to the public." *Id.* Whether a legitimate business interest exists

is judged with reference to the totality of the circumstances, including the nature of a business's relationship with its customers; an employee's acquisition of confidential information by virtue of his or her employment; and the reasonableness of any temporal or physical restrictions imposed upon the employee's ability to pursue his or her trade. *Id*. at 43.

¶ 12 We reiterate what is not at issue in this appeal. The trial court found that there was no undue hardship to defendant or injury to the public. Further, it concluded that plaintiff had shown a legitimate business interest in its relationship with its customers. As for the covenant not to compete, the trial court found it reasonable in terms of time and scope. The parties make no sustained argument as to any of these points. Moreover, with respect to them, our review of the record clearly demonstrates that the trial court neither abused its discretion nor made any findings of fact that are contrary to the manifest weight of the evidence with regard to these issues. As such, the sole issue before this court is the propriety of the trial court's rulings concerning the geographical scope of the covenant not to compete, that is, whether restricting defendant from competing with plaintiff within a 75-mile radius was reasonable.

¶ 13 We first consider whether the trial court erred in finding that the covenant's geographical scope was overbroad. The trial court determined that 75 miles was not reasonable. This conclusion is based largely upon the trial court's factual finding that, according to an exhibit submitted by plaintiff, "the highest frequency of customer zip codes are [*sic*] no more than 42 miles away" from plaintiff's establishment. We cannot say that this finding is contrary to the manifest weight of the evidence. Plaintiff contends that the trial court misconstrued its exhibit. It acknowledges that the greatest number of customers identified in the exhibit were in Barrington (7 miles from plaintiff) and Chicago (42 miles away). However, plaintiff points out that the exhibit shows that approximately 75% of it customers were located within 75 miles of Palatine. While we agree 75% is a substantial

number, we cannot say that trial court's finding that the greatest number of those customers resided within 42 miles is contrary to the manifest weight of the evidence, nor can we say that the trial court abused its discretion by attributing significance to that fact. Generally, the area from which the employee is restricted should be limited to the area in which the employer is doing business. *Cambridge Engineering, Inc. v. Mercury Partners 90 BI, Inc.*, 378 Ill. App. 3d 437, 448 (2007). Here, that is not literally possible, as plaintiff's exhibit shows that it does business with individuals across the nation. Thus, a line had to be drawn at some point. We can attribute no error to the trial court in placing that line at 42 miles and finding, in turn, that 75 miles was unreasonable.

¶ 14 Finally, we come to the issue of whether the trial court erred in refusing to "blue pencil" the covenant. Initially, we note that defendant is working neither 42 miles nor 75 miles away from plaintiff's place of business. He is employed by one of plaintiff's main competitors located a mere seven miles from plaintiff in one of the towns in which, according to the trial court, plaintiff's exhibit revealed "the highest frequency of customer zip codes." We note that in its prayer for relief, plaintiff asks that if we determine that the trial court did not err in refusing to enforce the agreement as written, we enter a preliminary injunction preventing defendant from working for Barrington Saddlery.

¶ 15 It is well-established that "if the area covered by a restrictive covenant is found to be unreasonable as to area, it may be limited to an area which is reasonable in order to protect the proper interests of the employer and accomplish the purpose of the covenant." *Total Health Physicians, S.C. v. Barrientos*, 151 Ill. App. 3d 726, 730 (1986); see also *Lee/O'Keefe Insurance Agency, Inc. v. Ferega*, 163 Ill. App. 3d 997, 1006-07 (1987). Equitable considerations are pertinent here. See *Durapin, Inc. v. American Products, Inc.*, 559 A.2d 1051, 1058-59 (R.I. 1989) ("The underlying principle behind this rule is that equity should not permit the injustice that might result

from the total rejection of a covenant merely because the court disagrees with the promisee's judgment about what restriction is necessary to protect the promisee's proprietary interests and that covenant's language does not lend itself to the mechanical blue-pencil modification."). Thus, in *Total Health Physicians, S.C.*, 151 Ill. App. 3d at 730, the court found that modifying an overbroad covenant was the proper remedy, explaining:

> "An examination of the cases in which a restrictive covenant has been limited to an area less than that covered by the express restriction leads to the conclusion that none more clearly requires such limited application than the case at bar. Defendants do not contend that they innocently opened private medical practices in an area in which they were not aware that plaintiff was operating. To the contrary, they started their private practices in a county in which they knew or should have known plaintiff was operating. By reason thereof, we conclude that the restrictive covenants in the case at bar were applicable to the medical practices established by defendants in the case at bar and that the trial court erred in granting defendants' motions for summary judgment as to plaintiff's claims for injunctive relief."

The similarities to this case are patent. Defendant acknowledged that Barrington Saddlery was within the area covered by the covenant not to compete and that Barrington Saddlery and plaintiff were "close competitors." Furthermore, he admitted that he was aware that he was violating the restrictive covenant by accepting employment there. Like *Total Health Physicians, S.C.*, this is not a case where defendant "innocently [went to work] in an area in which [he was] not aware that plaintiff was operating." *Id*. Rather, defendant knew that he was violating the agreement he signed and was, in essence, entering into direct competition with plaintiff.

¶ 16 The trial court's rationale for refusing to enforce the covenant was that it would reward overreaching by plaintiff. It is certainly true that courts must be vigilant in guarding against such

conduct. See *Saban v. Caremark Rx, L.L.C.*, 780 F. Supp. 2d 700, 732 (N.D. Ill. 2011) ("[T]he court will not partially enforce a restraint if the circumstances indicate bad faith or deliberate overreaching on the part of the promisee."). However, we perceive no such overreaching here. Plaintiff's exhibit identifying the locations of customers by zip code shows that 75% of its customers are within the specified 75-mile radius. We cannot fault plaintiff for wishing to protect its customer relationships within this area. Moreover, we note that the trial court found that, "the highest frequency of customer zip codes [represented in plaintiff's exhibit] are [*sic*] no more than 42 miles away." Allowing a former employee to go into business 43 miles away would do little to protect relationships with customers that were 42 miles away, as they would be 1 mile from the competitor and 42 miles from plaintiff. As such, we see no indication of bad faith in plaintiff's desire to restrain unfair competition for some distance beyond 42 miles, particularly in light of defendant's acknowledgment that "some customers were attracted to the Master Saddler designation."

¶ 17 In sum, we see no evidence of overreaching on plaintiff's behalf. Defendant, on the other hand, knowingly accepted employment with one of plaintiff's chief competitors located a mere seven miles from plaintiff. Plaintiff requests that, if we hold the trial court did not err in finding the covenant unreasonable, the covenant be modified to enjoin defendant from working for this competitor. We conclude that, under the facts and circumstances of this case, the trial court abused its discretion in failing to do so (*Langenhorst*, 219 Ill. 2d at 442). Accordingly, we conclude that the trial court erred in declining to impose a preliminary injunction for the term of the agreement.

¶ 18 Before closing, we note that defendant raises a number of additional arguments, none of which we find persuasive. Defendant contends that he was fired and rehired during 2008 and that he executed the covenant during the first period of employment. The trial court found that this was a "mere administrative snafu" that did not actually result in defendant's termination and rehiring.

This finding is not contrary to the manifest weight of the evidence. Defendant also contends that the covenant is not enforceable because plaintiff materially breached the employment agreement between the parties. Specifically, defendant asserts that, contrary to their agreement, plaintiff only paid for a portion of his health insurance premiums and failed to provide a five percent match to his retirement investment plan (26 USC § 401(k) (2008)). Only a material breach would excuse defendant from complying with the covenant not to compete. *Virendra S. Bisla, M.D., Ltd. v. Parvaiz*, 379 Ill. App. 3d 567, 572 (2008). Defendant makes no attempt to establish that these purported breaches were material, so we will not consider this argument any further. We note that defendant worked for plaintiff for about four years despite plaintiff's alleged violation of the employment agreement. *Cf. Omni Partners v. Down*, 246 Ill. App. 3d 57, 64-65 (1993) ("Defendant's overall conduct by silence, accommodation or acquiescence lulled plaintiff into a false sense of security, and therefore plaintiff could not be in material breach of the contract.").

¶ 19 IV. CONCLUSION

¶ 20 For the foregoing reasons, the order of the circuit court of Lake County denying plaintiff's request for a preliminary injunction is reversed and this cause is remanded for further proceedings. On remand, the trial court is to enter a preliminary injunction against defendant enjoining him, in accordance with plaintiff's request in its prayer for relief from this court, from working for Barrington Saddlery for the term of the agreement. Nothing in this order is intended to limit the trial court's authority to modify the injunction should there be a relevant change in the circumstances. See *Parr v. Neal*, 187 Ill. App. 3d 58, 60 (1989).

¶ 21 Reversed and remanded with directions.

¶ 22 SUPPLEMENTAL ORDER ON DENIAL OF REHEARING

¶ 23 Defendant, Michael Dainton, agreed that he would not directly or indirectly compete with

his employer for a period of two years following the termination of his employment. He further agreed that he would not "own, manage, operate, consult to or be employed in a business substantially similar to or competitive with" his employer, plaintiff Saddlers Row, within a 75-mile radius. After working for plaintiff for about four years, Dainton quit and began working for Barrington Saddlery, one of plaintiff's main competitors. Barrington Saddlery is located seven miles from plaintiff's establishment. Dainton admits that he understood the covenant not to compete agreement when he signed it; knew that Barrington Saddlery was within 75-miles of Saddlers Row and that the two businesses were close competitors; and was aware that he was violating the non-compete agreement by working for Barrington Saddlery. Nevertheless, Dainton claims that he should not be held to his promise due to reasons of public policy. We rejected Dainton's arguments in a previous order. See *Saddlers Row, LLC v. Dainton*, 2012 IL App (2d) 120941-U. He now seeks rehearing, asserting that we have overlooked certain points. We disagree and deny defendant's petition for rehearing.

¶ 24 As a preliminary matter, we decline to consider several issues raised by defendant. It is well-established that a petition for rehearing is not a vehicle to reargue an appeal. *Getto v. City of Chicago*, 392 Ill. App. 3d 232, 237 (2009). Portions of defendant's petition constitute rank reargument. For example, defendant claims we placed undue emphasis on *Total Health Physicians, S.C. v. Barrientos*, 151 Ill. App. 3d 726 (1986). We expressly considered the applicability of this case and found it persuasive; such an issue is not cognizable in a petition for rehearing.

¶ 25 Furthermore, a number of issues are waived. It is equally well established that a party may not raise new issues in a petition for rehearing. See *People v. McNeal*, 405 Ill. App. 3d 647, 682 (2010). Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008) plainly states, "Points not argued are waived and shall not be raised in the reply brief, in oral argument, or *on petition for rehearing*."

(Emphasis added.) Thus, issues like defendant's argument concerning whether the injunction we directed the trial court to order is too broad have been forfeited. Plaintiff specifically asked that defendant be enjoined from working for Barrington Saddlery for the term of the agreement. Defendant made no objection to the scope of plaintiff's requested relief in his answer to plaintiff's opening brief. In accordance with Rule 342(h)(7), it is too late to do so now.

¶ 26 Finally, defendant makes a number of contentions that are flatly unpersuasive. For example, he alleges that we did not apply the proper standard of review. He makes this allegation despite the fact that we expressly set forth the applicable standard of review and explained what it means:

> "We review a trial court's order regarding a preliminary injunction for an abuse of discretion, and factual findings are reviewed using the manifest-weight standard. Under the former standard, we ask whether any reasonable person could agree with the trial court's decision and under the latter, we will reverse only if an opposite conclusion is clearly apparent." *Saddlers Row, LLC*, 2012 IL App (2d) 120941-U, ¶ 10.

Moreover, in resolving this case, we specifically held:

> "Plaintiff requests that, if we hold the trial court did not err in finding the covenant unreasonable, the covenant be modified to enjoin defendant from working for this competitor. We conclude that, under the facts and circumstances of this case, the trial court *abused its discretion* in failing to do so." (Emphasis added.)

Hence, we were acutely aware of the applicable standard of review. Therefore, defendant's assertion is plainly ill founded, and we will not consider it further.

¶ 27 Defendant also claims that we somehow changed the law regarding restrictive covenants. He posits that we did not analyze the issue in terms of "traditional considerations" and that we have "introduced new considerations." A number of the"traditional considerations" were raised, albeit

with much less detail for the most part (*e.g.*, defendant devotes a paragraph to his claim that we did not consider the relative bargaining power of the parties, while in his answer brief there is but an oblique reference to the subject as defendant discusses another case). We will not necessarily comment on every unpersuasive or irrelevant consideration set forth by a party. For example, we did not comment on the relative bargaining power of the parties as there was ample evidence that defendant was one of six Master Saddlers (a prestigious designation) in the United States and that plaintiff actively pursued defendant's services. In other words, we did not address this issue as it did not appear pertinent. Nothing raised in defendant's brief was overlooked. As such, defendant's attempt to re-raise them now is actually re-argument.

¶ 28 Indeed, the so-called "traditional considerations" defendant identifies do not persuade in light of our purportedly new considerations: bad faith and deliberate overreaching. Defendant claims that these factors "have never been recognized by any court applying Illinois law." Defendant is simply wrong. Bad faith and deliberate overreaching are, of course, ways of talking about the equities of the situation. An order enforcing a covenant not to compete is a form of an injunction. See *Prairie Eye Center, Ltd. v. Butler*, 329 Ill. App. 3d 293, 304 (2002). An injunction is an equitable remedy. *Town of Cicero v. Metropolitan Water Reclamation District of Greater Chicago*, 2012 IL App (1st) 112164, ¶ 45. In assessing the propriety of a preliminary injunction, a court must consider the balance of the equities. *Travelport, LP v. American Airlines, Inc.*, 2011 IL App (1st) 111761, ¶ 33. Contrary to defendant's claim, this has been expressly recognized in this precise context in Illinois law in *Total Health Physicians, S.C.*, 151 Ill. App. 3d at 730, where the Fifth District wrote:

> "Defendants do not contend that they innocently opened private medical practices in an area in which they were not aware that plaintiff was operating. To the contrary, they started their private practices in a county in which they knew or should have known plaintiff was

> operating. By reason thereof, we conclude that the restrictive covenants in the case at bar were applicable to the medical practices established by defendants in the case at bar and that the trial court erred in granting defendants' motions for summary judgment as to plaintiff's claims for injunctive relief."

Thus, the Fifth District relied on the bad faith of the defendant in violating the covenant in finding an injunction appropriate (a factor that is also present and highly relevant in this case). As such, the relative bad faith (or lack thereof) of the party seeking the injunction is also relevant. Indeed, we do not see how it would be possible to balance the equities without considering it. Additionally, defendant himself cited a passage from *House of Vision, Inc. v. Hiyane*, 37 Ill. 2d 32, 39 (1967), in his initial brief that also recognizes the relevance of an employer's relative good or bad faith: "[T]he fairness of the restraint initially imposed is a relevant consideration to a court of equity." Thus, we have added nothing new to Illinois law.

¶ 29 Indeed, defendant's failure to recognize that the relative bad faith of the parties was the salient consideration upon which our disposition of this appeal rested underlies his claims that we have overlooked various arguments that he had raised. As we explained in our original order, that the area protected was 75 miles provides no evidence of overreaching where the majority of plaintiff's customers are spread out over a 42-mile area. In fact, if defendant went into business 75 miles from plaintiff, defendant would actually be significantly closer to plaintiff's clientele located at the fringe of the 42-mile area. Further, that the agreement forbid work in any capacity for a competitor is not indicative of bad faith. That Saddlers Row failed to anticipate that Dainton, a Master Saddler, might wish to work for Barrington Saddlery as a janitor, mechanic, or cashier and did not include such an exception in the covenant hardly appears nefarious (rather, defendant's claim appears a bit disingenuous). Given defendant's willful and blatant disregard of the agreement, the

balance of the equities clearly favors plaintiff.

¶ 30 Defendant contends that we ignored a number of additional considerations, namely, that the covenant applied to all of plaintiff's customers regardless of whether defendant had contact with them while in plaintiff's employ; that defendant developed his unique set of skill prior to working for plaintiff; that defendant had access to no confidential information belonging to plaintiff; and that defendant's contact with any particular customer was intermittent (approximately once every three years). While we agree that these considerations are relevant in varying degrees to the question of whether the covenant was enforceable as written, they are significantly less illuminating on the issue of whether the covenant should be reformed. Whether defendant possessed any confidential information has no bearing upon the latter subject, as this case was about customer relationships. Further, we do not see how the fact that the covenant applied to all of plaintiff's customers including those who had never dealt with defendant is indicative of bad faith or overreaching. That plaintiff did not wish to bring a Master Saddler into the area, facilitate his establishing a local reputation, have him defect to a nearby competitor, and attract customers away from plaintiff (regardless of whether he had actually serviced those customers) is in no way unreasonable. To the extent it may have been overbroad, we held that the covenant was unenforceable as written. Indeed, as we agreed with that portion of the trial court's order, extensive analysis of these factors would have added little to our initial order. In short, though the covenant may have been overbroad in certain respects, it did not evince such overreaching on plaintiff's part that defendant should be excused from abiding by the promise he made to plaintiff to refrain from competition.

¶ 31 Finally, defendant raises two questions regarding the scope of our mandate. He claims that the mandate is "overly broad in temporal scope" because we directed the trial court to enter an injunction for the term of the agreement. Defendant notes that this is a preliminary injunction and

that he is still entitled to a full trial. Our order, he contends, is tantamount to a permanent injunction. We point out that our original order contained the following language: "Nothing in this order is intended to limit the trial court's authority to modify the injunction should there be a relevant change in the circumstances." *Saddlers Row, LLC*, 2012 IL App (2d) 120941-U, ¶ 20. Plaintiff's failure to demonstrate its entitlement to an injunction at a full trial would obviously constitute a "relevant change in the circumstances." To be absolutely clear, we intended to order the trial court to enter a preliminary injunction as set forth in our original order and then to proceed as it would have had it entered the injunction.

¶ 32 Defendant also contends that we should have remanded this cause to the trial court to formulate the terms of the preliminary injunction. No one requested such relief. Moreover, plaintiff's request that we enjoin Dainton only from working for a chief competitor was rather modest, and we deemed it appropriate to simply grant it, as is within our authority to do pursuant to Illinois Supreme Court Rule 366(a)(5) (eff. February 1, 1994).

¶ 33 In light of the foregoing, we deny defendant's petition for rehearing. Quite simply, defendant has provided us with no persuasive reason for us to deviate from our original order and allow him to violate his agreement with plaintiff.