

NOTICE

Decision filed 05/25/23. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2023 IL App (5th) 230361-U

NO. 5-23-0361

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

FIRST MID WEALTH MANAGEMENT COMPANY,)	Appeal from the
)	Circuit Court of
)	Macon County.
Plaintiff-Appellee,)	
)	
v.)	No. 23-CH-8
)	
JOSHUA CHAMBLIN; ANITA REED;)	
CHAMBLIN WEALTH MANAGEMENT, LLC;)	
and GROVE POINT INVESTMENTS,)	
)	
Defendants)	
)	Honorable
(Joshua Chamblin and Anita Reed, Defendants-)	Rodney S. Forbes,
Appellants).)	Judge, presiding.

JUSTICE McHANEY delivered the judgment of the court.
Justices Cates and Barberis concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where plaintiff was not able to establish each of the elements necessary for issuance of injunctive relief, we vacate the trial court's temporary restraining order.
- ¶ 2 On May 15, 2023, the trial court entered a temporary restraining order (TRO) in favor of the plaintiff, First Mid Wealth Management Company (plaintiff), and against the defendants Joshua Chamblin and Anita Reed (defendants).¹ On May 17, 2023, the defendants filed their

¹The TRO did not enjoin either the defendant Chamblin Wealth Management, LLC, or the defendant Grove Point Investments, LLC.

petition in this court pursuant to Illinois Supreme Court Rule 307(d) (eff. Nov. 1, 2017)) seeking an order vacating the TRO. For the following reasons, we grant the defendants' petition and vacate the TRO.

¶ 3

I. Background

¶ 4 The plaintiff provides financial services to clients, including retirement planning, financial planning, investment, and trust services. Seeking to expand its business into the Decatur market, the plaintiff entered into an asset purchase agreement on June 17, 2021, with David Swartz, individually, and Swartz Financial Services, LLC, to purchase certain business assets, including existing client lists and accompanying accounts associated with 427 clients. After the purchase was completed, Swartz retired, and the plaintiff hired the defendant Josh Chamblin as a financial advisor to manage the Swartz accounts. The plaintiff also hired the defendant Anita Reed, who had worked for Swartz since 2011 and was familiar with the Swartz accounts.

¶ 5 The defendants both signed employment contracts and, in addition, they both signed a confidentiality, non-compete and non-solicitation agreement (the agreement). In the agreement, the plaintiff described the consideration it was offering the defendants as follows: "The Company and the Employee agree that the Employee's compensation from the Company and continued employment on an at-will basis is consideration for this Agreement." The agreement prohibited the defendants from disclosing confidential information, soliciting customers, and competing with the plaintiff within a 50-mile radius of Decatur, Illinois, for a period of 12 months after the termination of their employment.

¶ 6 Within three days of each other, and without notice, both defendants resigned from their employment with the plaintiff in March of 2023. The defendants had been employed with the plaintiff for approximately 21 months. After their resignations, the plaintiff sent the defendants

notice of their obligations under the agreement. In the days and weeks following the termination of their employment, the plaintiff alleges that the defendants solicited Swartz clients from the plaintiff and engaged in other activities in violation of the agreement.

¶ 7 On April 28, 2023, the plaintiff filed a verified complaint for injunctive and other relief. On May 12, 2023, a hearing was held on the plaintiff's request for a TRO. After hearing arguments from the defendants, the plaintiff, and the defendant Grove Point Investments, the trial court granted the TRO, "to the extent that Joshua Chamblin and Anita Reed are enjoined from directly or indirectly soliciting those persons identified on the Swartz client list who have not already transferred their accounts from First Mid Wealth Management Company on or before the date that they receive notice that Plaintiff has posted a bond with the Macon County Circuit Clerk's Office." The trial court fixed the bond in the amount of \$200,000 full cash, with no 10% rule to apply. The trial court finally directed the parties to contact the court to schedule a hearing date on the motion for preliminary injunction.

¶ 8 The defendants filed their appeal of the TRO in this court pursuant to Illinois Supreme Court Rule 307(d).

¶ 9 II. Analysis

¶ 10 "The purpose of a preliminary injunction is to preserve the status quo pending a decision on the merits of the cause." *Beahringer v. Page*, 204 Ill. 2d 363, 379 (2003). "It is an extraordinary remedy which should apply only in situations where an extreme emergency exists, and serious harm would result if the injunction is not issued." *Id.* To obtain preliminary injunctive relief, the moving party must " 'demonstrate (1) a clearly ascertained right in need of protection, (2) irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits of the case.' " *Hutsonville Community Unit School District No.*

I v. Illinois High School Ass'n, 2021 IL App (5th) 210308, ¶ 8 (quoting *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2006)).

¶ 11 “Typically, the grant or denial of a TRO is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion.” *Id.* ¶ 7. However, the enforceability of a restrictive covenant not to compete in an employment contract is a question of law, the determination of which we review *de novo*. *McInnis v. OAG Motorcycle Ventures, Inc.*, 2015 IL App (1st) 142644, ¶ 24.

¶ 12 Because Illinois courts abhor restraints on trade, postemployment restrictive covenants are carefully scrutinized because they operate as partial restrictions on trade. *Id.* ¶ 26. For a restrictive covenant to be valid and enforceable, the terms of the covenant must be reasonable. *Prairie Eye Center, Ltd. v. Butler*, 305 Ill. App. 3d 442, 445 (1999). It is established in Illinois that a restrictive covenant is reasonable only if the covenant (1) is no greater than is required for the protection of a legitimate business interest of the employer, (2) does not impose undue hardship on the employee, and (3) is not injurious to the public. *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 17.

¶ 13 “[B]efore even considering whether a restrictive covenant is reasonable, the court must make two determinations: (1) whether the restrictive covenant is ancillary to a valid contract; and (2) whether the restrictive covenant is supported by adequate consideration.” *Fifield v. Premier Dealer Services, Inc.*, 2013 IL App (1st) 120327, ¶ 13. Absent adequate consideration, a covenant, though otherwise reasonable, is not enforceable. *Id.* ¶ 14 (citing *Brown & Brown, Inc. v. Mudron*, 379 Ill. App. 3d 724, 728 (2008)). “As a general rule, courts do not inquire into the adequacy of consideration.” *McInnis*, 2015 IL App (1st) 142644, ¶ 27. “However, postemployment restrictive covenants are excepted from the general rule,” “because it has been recognized that a promise of

continued employment may be an illusory benefit where the employment is at-will.” *Id.* Illinois courts have repeatedly held that there must be at least two years or more of continued employment to constitute adequate consideration of a restrictive covenant. *Fifield*, 2013 IL App (1st) 120327, ¶ 19.

¶ 14 Significantly, the agreement expressly stated that the defendants’ “compensation *** and continued employment on an at-will basis is consideration for this Agreement.” That language, coupled with the fact that the defendants were employed for less than two years, leads us to conclude that there was inadequate consideration to support enforcement of the postemployment covenants at issue, which precludes a finding that there is a likelihood of success on the merits of the plaintiff’s case.

¶ 15 Although our analysis could end here, we further find that the plaintiff had an adequate remedy at law. Significantly, during argument on the TRO, plaintiff abandoned virtually all of the expansive relief requested in its seven-count complaint, shrinking its TRO request to cover only the remaining 207 Swartz clients. The following excerpt from the transcript of the TRO hearing is illustrative:

“THE COURT: So you’re asking for—I noticed in the Complaint there were seven different counts. The first count is an injunction, based on the Non-Compete Clause contained in the Agreement, and I see that you had submitted a Proposed Order, and in the Proposed Order you’re asking that this Court order that the defendants, all of them, immediately cease contacting any of the clients included on the Swartz client list; that the defendants immediately cease processing any transfer requests for clients included on the Swartz client list; and then, excuse me, to return to Mid—First Mid all information, data, files, and other property in defendants’ possession, custody, or control related in any way to First Mid, First Mid’s clients, or its business, which seems to go beyond the Swartz client list and also asks for return of items rather than just a prohibition on certain activities.

And then you’re asking that the Court enter an order directing the defendants to preserve and not damage or destroy any hard copies in their possession, and preserve, not delete, and prevent from deletion all e-mails or other

electronically stored information, kind of a spoliation type of request or anti-spoliation request for relief there.

And then you're asking that the Defendant Chamblin be enjoined from directly or indirectly working for or on behalf of Grove Point Investments, LLC, in a capacity that involves financial planning, wealth management, investment planning or retirement.

Again, this seems to go beyond the Swartz list as well, unless I'm not seeing something.

And then you're also asking the defendants be enjoined, directly or indirectly, from working on behalf of Grove Point Investments or Chamblin Wealth Management in a capacity that involves financial planning, wealth management, investment planning or retirement planning.

So this would just mean that they couldn't work in their current capacities as I understand it.

And then, finally, you're asking that they be enjoined from tortiously interfering with Chamblin and Reed's Confidentiality, Non-Compete and Non-Solicitation Agreements.

So is that all of the relief you're requesting?

MR. WETZEL: That was initially what—the relief we were requesting, yes [Y]our Honor.

We're willing to limit that to the Swartz client list, the 427, or now, 207 clients left.

THE COURT: All right. So not the clients that have already transferred, but just the clients that are currently with First Mid and that potentially could be leaving, is that correct?

MR. WETZEL: That is correct, [Y]our Honor. We understand that the 220 clients, that those ships have sailed."

Such capitulation does not support the existence of an emergency extreme enough to warrant the issuance of a TRO. Moreover, by making the TRO effective only upon the posting of bond, the trial court left the defendants free to allegedly continue soliciting Swartz clients until the plaintiff

filed that bond with the circuit clerk. Any injury to the plaintiff caused by the defendants' alleged actions to solicit Swartz clients is the type of injury that could be remedied by a monetary judgment.

¶ 16

III. Conclusion

¶ 17 We conclude that the plaintiff is unable to establish the elements required for issuance of injunctive relief. *Hutsonville Community School District No. 1*, 2021 IL App (5th) 210305, ¶ 8. Moreover, under the facts of this case, the terms of the restrictive covenant were unreasonable and were not valid and enforceable. *Prairie Eye Center, Ltd.*, 305 Ill. App. 3d at 445; *Reliable Fire Equipment Co.*, 2011 IL 11871, ¶ 17. For the reasons stated in this order, we vacate the TRO entered by the trial court on May 15, 2023.

¶ 18 Order vacated.