

Not Reported in N.E.2d, 25 Mass.L.Rptr. 399, 2009 WL 1663651 (Mass.Super.)
(Cite as: **2009 WL 1663651 (Mass.Super.)**)



Superior Court of Massachusetts,
Suffolk County.
EMC CORPORATION
v.
David A. DONATELLI.

No. 091727BLS2.
May 5, 2009.

[Case is heavily edited for length. Not all omissions are noted]

*MEMORANDUM AND ORDER ON APPLICATION
FOR PRELIMINARY INJUNCTION*

STEPHEN E. NEEL, Justice.

*1 Plaintiff EMC Corporation (EMC) seeks an order enjoining its departing employee, defendant David A. Donatelli (Donatelli), from commencing employment with Hewlett-Packard Company (HP), on the basis that such employment would violate a non-compete covenant which Donatelli signed after commencing employment with EMC.

The Court heard the parties on EMC's motion on Friday, May 1, 2009. Donatelli's scheduled commencement date with HP is Tuesday, May 5. After hearing, the Court concludes that the covenant which Donatelli signed is an enforceable contract, is not unreasonably broad (at least on its face), and serves legitimate business interests of EMC. The Court further concludes that Donatelli's intention to work for HP in California, which has a statutory prohibition on covenants not to compete, does not warrant denial of EMC's request for injunctive relief in the circumstances of this case. Finally, the Court will permit Donatelli, if he wishes, to supplement the record with regard to whether he may be employed by HP in a manner which will not prejudice business interests of EMC which are legitimately protected by the non-compete covenant.

BACKGROUND

Donatelli began his employment with EMC in Massachusetts in 1987. He has been and is presently a

Massachusetts resident, and worked at EMC's headquarters in Hopkinton. His most recent title is EMC Executive Vice President and President, EMC Storage Division. The Storage Division produces hardware and software products enabling the storage of information, and accounts for 80% of EMC's revenue. Donatelli oversaw development of the Storage Division's key products: EMC Symmetrix and CLARiiON families of networked storage systems, EMC Celerra network-attached storage (NAS) systems, and EMC Centera content addressed storage (CAS) systems.

On May 13, 2002, Donatelli signed an EMC "Key Employee Agreement" (Agreement) which contains, *inter alia*, a covenant not to compete ("non-competition covenant" or "covenant"). The covenant states, at paragraph 1(b):

For the twelve month period following the effective date of your termination, for any reason, from the Company, you agree not to directly or indirectly compete with the Company ... [including] (i) the provision of any services ... as an employee ... to any entity that is developing, producing, marketing, soliciting or selling products or services competitive with products or services being developed, produced, marketed or sold by the Company as of the effective day of your termination.

On Monday, April 27, 2009, Donatelli informed EMC that he was resigning from EMC and that he intended to commence employment with HP on May 5. In a press release dated April 28, HP announced that Donatelli will "serve as executive vice president, Enterprise Servers, Storage and Networking ... His responsibilities will include the Enterprise Storage and Server (ESS) business unit, which had fiscal year 2008 revenues of \$19.4 billion."

*2 Also on April 27, Donatelli commenced an action against EMC in California Superior Court. The complaint seeks to enjoin EMC from "enforcing the non-competition ... provision[] of the Key Employee Agreement in California," on the basis that the provision violates the [California Business and Professions Code, § 17200 et seq.](#)

Not Reported in N.E.2d, 25 Mass.L.Rptr. 399, 2009 WL 1663651 (Mass.Super.)
(Cite as: 2009 WL 1663651 (Mass.Super.))

On April 28, EMC commenced this action against Donatelli. The complaint seeks judgment that Donatelli be restrained and enjoined “from working for Hewlett-Packard, for [sic] disclosing or using any of EMC’s confidential and proprietary information, from destroying, discarding or altering, directly or indirectly, any EMC Property,” and that he be required to return all “EMC Property.” ^{FN1}

^{FN1}. The parties have briefed and argued the dispute on the basis of Donatelli’s impending employment with HP; they have not focused on any threat by Donatelli to take confidential information or fail to return “EMC Property.”

DISCUSSION

The general principles governing enforceability of non-competition covenants in Massachusetts are well established. As stated in *Boulanger v. Dunkin’ Donuts, Inc.*, 442 Mass. 635, 639 (2004):

A covenant not to compete is enforceable only if it is necessary to protect a legitimate business interest, reasonably limited in time and space, and consonant with the public interest. See *Marine Contrs. Co. v. Hurley*, 365 Mass. 280, 287-88, 289, (1974); *All Stainless, Inc. v. Colby*, 364 Mass. 773, 778 (1974). Covenants not to compete are valid if they are reasonable in light of the facts in each case. See *Marine Contrs. Co. v. Hurley*, *supra* at 287; *Saltman v. Smith*, 313 Mass. 135, 145 (1943).

There is little doubt that EMC’s non-competition covenant is necessary to protect its legitimate business interests in this case, in light of Donatelli’s knowledge, by virtue of his position and responsibilities, of EMC’s proprietary and trade secret information; Donatelli does not seriously argue to the contrary. Nor does he contest the reasonableness of the covenant’s one-year restriction.

Instead, Donatelli argues that EMC’s motion for injunctive relief enforcing the non-competition covenant should be denied on several grounds, which the Court addresses below.

I. California Law

[The court discusses Donatelli’s argument that it

should wait to see what the California court does. Most of this discussion is deleted – the court concludes that it is not clear enough that California’s interest is greater than Massachusetts’ to justify waiting.]

.... Donatelli asserts that “California famously has a fundamental policy against the enforcement of restrictive covenants, while Massachusetts does not.” *Id.* at 5. It is true that Section 16,600 of the California Business and Profession Code (Section 16,600) voids any contract “by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind ...” It is also true, as noted above, that Massachusetts common law provides for enforcement of the very same contracts, to the extent that they reasonably protect legitimate business interests of employers. The Court does not agree that California’s legislative policy, at least in this case, is somehow more “fundamental” than, and therefore trumps, Massachusetts’ common law.

....

Where (1) EMC is based in Massachusetts, (2) Donatelli is a resident of and domiciled in Massachusetts, (3) Donatelli entered the Agreement in Massachusetts, (4) Donatelli has worked for EMC in Massachusetts for 21 years, and has performed under the Agreement for the past seven, and (5) California does not have a materially greater interest in the dispute than does Massachusetts, Donatelli’s argument that California law should apply is unavailing.

....

II. Enforceability of the Covenant under Massachusetts Law

Donatelli’s second basis for opposing injunctive relief is that the non-competition covenant is not enforceable under Massachusetts law, and therefore that EMC has failed to demonstrate a sufficient likelihood of success on the merits. Specifically, he argues that (1) the covenant was not supported by consideration, and (2) that the covenant is broader than necessary to protect EMC’s interests.

A. Consideration

[We did not discuss this technical and arcane doctrine of contract law. The court finds against

Not Reported in N.E.2d, 25 Mass.L.Rptr. 399, 2009 WL 1663651 (Mass.Super.)
(Cite as: 2009 WL 1663651 (Mass.Super.))

Donatelli on the issue.]

B. Breadth

Donatelli contends that the covenant is broader than necessary to protect EMC's legitimate business interests, because "EMC seeks to prevent Donatelli from working at HP at all even though only 20 percent of his job overlaps with his previous EMC job duties." Opposition at 14. Specifically, he argues that, "[w]hile it is true that EMC and HP compete in the storage sector, storage-related responsibilities will make up only about 20 percent of Donatelli's position at HP, the majority of his responsibilities will relate to servers and networking gear-two areas EMC does not occupy." *Id.*, at 15.

At the hearing, EMC argued that Donatelli's argument fails because it is the very integration of EMC's storage products with servers and networking equipment that gives EMC's products a competitive edge; in counsel's words, "it's all linked." The Court's understanding of those facts, let alone the relative merits of the parties' arguments, is at this stage rudimentary at best. It is beyond dispute, however, that a non-competition covenant must be no broader than necessary to protect an employer's legitimate business interests. See [*Boulanger v. Dunkin' Donuts, Inc., supra*](#), 442 Mass. at 639.

Accordingly, if Donatelli seeks to do so, the Court will permit the parties to develop the record with regard to the following question: of the services that Donatelli would, if permitted, provide as an employee of HP, which constitute services in respect of "products or services competitive with products or services being developed, produced, marketed or sold by" EMC (Agreement, paragraph 1(b)(i)), and which do not?

ORDER

For the reasons stated above, the Court concludes that EMC has demonstrated a sufficient likelihood of success on the merits of its claim seeking to enforce the non-competition covenant agreed to by defendant David A. Donatelli when he signed the EMC Key Employee Agreement; that the balance of harms favors EMC; and that the relief sought is not against public policy. Accordingly, the Court enters the following preliminary injunction:

***8 Defendant Donatelli is RESTRAINED AND**

ENJOINED from commencing employment at Hewlett-Packard Company. Donatelli may move to modify this order upon a showing, described in Part II.B. above, that the services which he would provide to Hewlett-Packard do not overlap with products or services being developed, produced, marketed or sold by EMC.

....

Mass.Super.,2009.

EMC Corp. v. Donatelli

Not Reported in N.E.2d, 25 Mass.L.Rptr. 399, 2009 WL 1663651 (Mass.Super.)

END OF DOCUMENT