IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MCS SERVICES, INC.,	:	
	:	
Plaintiffs,	:	
	:	**Case No.: 289729-V**
v.	:	
	:	
ISAGANI A. CORONEL, *et al*,	:	
	:	
Defendants.	:	

MEMORANDUM OPINION

On Friday, February 29, 2008, after holding an evidentiary hearing on February 28, 2008, the court entered a written preliminary injunction precluding the Defendants, among other things, from soliciting the Plaintiff's customers, hiring the Plaintiff's employees and using the Plaintiff's proprietary business information. As required by Maryland Rule 15-502(e), the court on February 29, 2008 set forth on the record its findings of fact and reasons for issuing the preliminary injunction. In issuing the injunction, the court advised counsel that, given the lateness of the hour and the significance of some of the legal questions presented, it would issue a written opinion, providing a further expression of the reasons for its decision. Those reasons are set forth below.

I.

The Plaintiff, MCS Services, Inc. ("MCS"), is a Maryland corporation with its principal place of business in Gaithersburg, Maryland. MCS is in the business of servicing and maintaining high speed continuous form laser printers, primarily for direct mail printing companies and transactional printing companies. MCS' customers are located in Pennsylvania, Maryland, New Jersey, North Carolina, Virginia, California, Texas, Ohio, Iowa and

Washington, D.C. Much of MCS' business is servicing printers manufactured by Oce and Nipson.

Defendant Isagani A. Coronel ("Coronel") resides in Carson, California. Coronel, a former employee, began working for MCS as a Systems Analyst on September 14, 2005 and resigned his position as of October 19, 2007. Defendant Juan Garcia ("Garcia") resides in Lynwood, California. Garcia, a former employee, began his employment with MCS as a Field Engineer on February 5, 2007 and resigned on October 5, 2007. Among other duties, Coronel and Garcia were responsible for servicing existing MCS customers in California, as well as calling on and developing new customers.

As a condition of employment, both Coronel and Garcia signed an Employee Confidentiality, Non-Solicitation and Non-Compete Agreement (the "Agreement"). Coronel signed his Agreement on January 12, 2007 in California. He sent it to Maryland by facsimile, where it was counter-signed by MCS on January 12, 2007.[1] Garcia signed his Agreement on February 16, 2007 in California. He sent it to Maryland by facsimile, where it was counter-signed by MCS on that same date.[2] The terms of both Agreements are identical.

Defendant Techprnt, LLC ("Techprnt"), is a limited liability company organized under the laws of California. Techprnt was formed on August 9, 2007, by Coronel who, according to his business card, serves as the "President" of the company.[3] Coronel, Garcia and Modesto Vargas ("Vargas") own or have rights to own 49% of Techprnt. Vargas is a former MCS

[1] Plaintiff's Exhibit 2.

[2] Plaintiff's Exhibit 26.

[3] The court understands that, unlike corporations, limited liability companies have members rather than officers.

employee who, at the behest of Coronel and Garcia, resigned from MCS on December 3, 2007.[4] Techprnt is a direct competitor of MCS and is actively soliciting MCS' customers.

Linda Rogers and Sue McNabb own 51% of Techprnt. These individuals also are employed by Simprnt LLC ("Simprnt"), located in Dallas, Texas. Simprnt is owned by the husbands of Ms. Rogers (John Rogers) and Ms. McNabb (Chris McNabb). Simprnt competes with MCS.

MCS learned of the plans by Coronel and Garcia to solicit MCS' customers on November 22, 2007. On December 12, 2007, MCS sued Coronel, Garcia and Techprint in the Circuit Court for Montgomery County, Maryland, alleging their breach of the Agreements and seeking damages and injunctive relief. Judge Boynton of this court entered a temporary restraining order against the Defendants on December 12, 2007, and set a hearing on MCS' motion for a preliminary injunction on December 20, 2007. On the day of the scheduled preliminary injunction hearing in this court, the Defendants removed the action to the United States District Court for the District of Maryland.

After a telephone conference, Judge Alexander Williams remanded the action to this court. The defendants promptly appealed Judge Williams' decision to the United States Court of Appeals for the Fourth Circuit.

The Clerk of this court was notified of Judge Williams' decision on February 19, 2008. On February 20, 2008, after a hearing, Judge Boynton extended the temporary restraining order and set a hearing on MCS' request for a preliminary injunction for February 28, 2008.

On February 27, 2008, the United States Court of Appeals for the Fourth Circuit denied the Defendants' request for a stay of Judge Williams' remand order pending the federal appeal.

[4] Coronel and Garcia solicited another MCS employee, Tony White, to leave MCS and join Techprnt, but White declined the offer.

On February 28, 2008, this court denied the Defendants' motion to stay state court proceedings pending the outcome of the federal appeal. As noted above, this court held an evidentiary hearing, as required by Maryland Rule 15-505(a), on MCS' motion for a preliminary injunction. A preliminary injunction was entered by this court at 4:00 p.m. on February 29, 2008, and the court's reasons were recited into the record and counsel for the Defendants were served with a copy of the injunction order.

II.

Defendants Coronel and Garcia contended at the hearing that the Agreements they signed were void and unenforceable under California law, specifically §16600 of the California Business and Professions Code.[5] The application of this provision of California law would render "void" the restrictive covenants in the Agreements. *See Edwards v. Arthur Anderson LLP*, 47 Cal Rptr.3d 788, 800 (Cal App. 3d 2006)("In our view, section 16600 prohibits noncompetition agreements between employers and employees even where the restriction is narrowly drawn and leaves a substantial portion of the market available for the employee.") The Defendants further contended that California law governed the Agreements at issue before this court. *See Application Group, Inc. v. Hunter*, 61 Cal. Rptr.2d 73 (1998)(applying California choice of law rules to a Maryland resident to invalidate her restrictive covenant in an employment agreement with a Maryland employer which attempted to prevent her from working with a California-based competitor). Finally, the Defendants argued that the Full Faith and Credit Clause of the federal constitution required this court to give effect to §16600 of the California Business and Professions Code.

[5] Section 16600 provides in relevant part: "[E]very contract by which anyone is restrained from engaging in a lawful profession, trade or business of any kind is to that extent void."

MCS countered that the parties had knowingly and voluntarily selected Maryland law to govern their disputes. Section 15 of each Agreement provides: "This Agreement shall be interpreted, construed, and governed according to the laws of the [S]tate of Maryland. Employee hereby expressly consents to personal jurisdiction in Maryland and agrees to submit to the jurisdiction of the state courts located in Maryland." As a consequence, MCS argued that Maryland should give effect to the parties' choice of governing law and that, in any event, Maryland's choice of law rules would apply Maryland law to determine the validity of the restrictive covenants.[6]

The Court of Appeals has held "that it is 'generally accepted that the parties to a contract may agree as to the law which will govern their transaction, even as to issues going to the validity of the contract.'" *National Glass, Inc. v. J.C. Penny Properties, Inc.*, 336 Md. 606, 610 (1994), *quoting Kronovet v. Lipchin*, 288 Md. 30, 43 (1980). Nevertheless, the Court of Appeals has held that the parties' choice is subject to the limitations set forth in Restatement (Second) Conflict of Laws § 187(2). *National Glass*, 336 Md. at 610-11; *Kronovet*, 288 Md. at 43-45. *See also General Insurance v. Interstate Service Co., Inc.*, 118 Md. App. 126, 137-141 (1997); *Labor Ready, Inc. v. Abis*, 137 Md. App. 116, 126-27 (2001); *Lamb v. Northwestern Nat. Life Ins., Co.*, 56 Md. App. 125, 128 (1983).

In *Kronovet*, the Court of Appeals held that the parties' contractual choice of Maryland law did not violate any fundamental policy of New York, the competing state, regarding the law of usury. 288 Md. at 46-47. In contrast, in *National Glass*, the Court of Appeals held that the parties' choice of Pennsylvania law would not be respected because "application of Pennsylvania law to the instant case, which permits the waiver of a right to claim a mechanic's

[6] Maryland adheres to the *lex loci contractus* rule. *Kramer v. Bally's Park Place*, 311 Md. 387, 390 (1988). *See also Erie Ins. Exchange v. Heffernan*, 399 Md. 598, 630-31 (2007).

lien, would violate a fundamental policy of Maryland." 336 Md. at 615. Important to that conclusion was the fact that the work giving rise to the mechanic's lien was performed wholly in Maryland on real property located in Maryland. 336 Md. at 615-16. See also *Bethlehem Steel Corp. v. G.C. Zarnas & Co.*, 304 Md. 183, 188-93 (1985)(holding, under a *lex loci contractus* analysis, that Maryland would not honor a Pennsylvania indemnification provision in connection with a construction contract performed in Maryland). *But see Bethlehem Steel Corp.*, 304 Md. at 195-215 (Rodowsky, J. dissenting) ("economic tinkering is not the stuff of which fundamental social policy is made.")

The parties have not cited, and the court's research has not disclosed, any Maryland appellate decision refusing to give effect to a contractual choice of law clause electing that Maryland law govern the parties' rights under the contract. The closest case is *Barnes Group, Inc. v. C & C Products, Inc.*, 716 F.2d 1023 (4th Cir. 1983), where a divided panel of the United States Court of Appeals for the Fourth Circuit held that an Ohio choice of law clause would not be applied to govern a corporation's action against a third party for tortiously interfering with the contracts of six former salesmen.

In *Barnes Group*, Bowman Distribution, a subsidiary of Barnes, an Ohio corporation, had contracts with salesmen in a variety of states. It was stipulated that the salesmen in question were independent contractors, not employees of Bowman or its parent, the Ohio corporation. The subsidiary, Bowman, contracted with the salesmen to develop clients in a number of states. Six of the salesmen thereafter, and in breach of their agreements with Bowman, signed contracts with the third party, C & C products, Inc., a Bowman competitor, and commenced selling to former Bowman customers in violation of the contractual covenants.

Bowman brought suit in Ohio against C & C alleging that C & C's dealings with the salesmen constituted tortious interference with the restrictive covenants contained in the standard Bowman contracts with the salesmen. The case was transferred to South Carolina where it proceeded to a bench trial on the merits. The trial court applied Ohio law, the choice of law provision stated in the Bowman contracts, and held that C & C had violated the restrictive covenants.[7] On appeal, a divided panel of the Fourth Circuit reversed, holding that the trial court should have applied the law of each state where the salesmen solicited Bowman's customers. The majority reached this conclusion by applying Restatement (Second) of Conflicts § 187(2).[8] Pertinent to this case is the Fourth Circuit's decision in *Barnes Group* that the covenant with salesmen located in Alabama was wholly unenforceable because, under Alabama law, "covenants not to compete, whether or not reasonable, are void as against public policy and cannot be enforced." 716 F.2d at 1032.[9]

Judge Murnaghan dissented from the majority's conclusion that Ohio choice of law rules would not enforce the parties' contractual choice of Ohio law to govern the dispute. *Barnes Group*, 716 F.2d at 1037-44 (Murnaghan, J., dissenting). This court, not being bound by the panel decision as would be my colleagues on the Maryland federal bench, agrees with the reasoning set forth by Judge Murnaghan.

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[7] Notwithstanding the transfer from a federal court in Ohio to a federal court in South Carolina, the federal court in South Carolina was bound to apply the law of the original forum, Ohio. *Van Dusen v. Barrack*, 376 U.S. 612 (1964); *Klaxon Co. v. Stentor Electric Mfg. Co*., 313 U.S. 487 (1941).

[8] Possibly muddying the applicability to this case, the Fourth Circuit panel opinion stated that Ohio had abandoned *lex loci delicti* in tort cases in favor of an interest analysis. *Barnes Group*, 716 F.2d at 1028-29 & n. 7, 1032-33.

[9] The trial court's application of Ohio law to the salesmen located South Carolina and Maryland was held to be harmless error because those states, like Ohio, permitted the enforcement of reasonable restrictive covenants. *Barnes Group*, 716 F.2d at 1032 & nn. 23 & 24.

It has long been settled in Maryland that restrictive covenants in a contract of employment, by which an employee as part of his agreement "undertakes not to engage in a competing business or vocation with that of his employer on leaving the employment, will be sustained 'if the restraint is confined within limits which are no wider as to area and duration that are reasonable necessary for the protection of the business of the employer and do not impose undue hardship on the employee or disregard the interests of the public.'" *MacIntosh v. Brunswick Corp.*, 241 Md. 24, 31 (1965), *quoting in part Silver v. Goldberger*, 231 Md. 1, 6 (1963). Although the enforceability of a particular restrictive covenant in a specific case will turn on the facts, the policy of Maryland to permit reasonable restrictive covenants in connection with employment agreements is firmly rooted in Maryland common law. *See, e.g., Tolman Laundry v. Walker*, 171 Md. 7, 11-13 (1936); *Deuerling v. City Baking Co*., 155 Md. 280, 287-90 (1928). *See also Becker v. Bailey*, 268 Md. 93, 96-99 (1973); *Tawney v. Mutual System of Maryland, Inc*., 186 Md. 508, 518-21 (1946).

The purpose of the foregoing citation of cases is not to assess whether the covenants in the Agreements with Coronel and Garcia are to any extent enforceable. Instead, the court's purpose at this juncture simply is to determine whether, under Restatement (Second) Conflict of Laws § 187(2), the parties' choice of Maryland law should be disregarded.

The Defendants contend that Maryland common law must give way to the public policy of California because, in the words of § 187(2)(b), "application of the law of the chosen state [Maryland] would be contrary to a fundamental policy of a state which has a materially greater interest [California] than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties." Manifestly, there is a direct conflict between the law of

California and the law of Maryland as to the enforceability of the restrictive covenants in the Agreements. But the court is at a loss to understand why California's interest is more fundamental than Maryland's. Indeed, comment e to § 187 plainly notes: "Prime objectives of contract law are to protect the justified expectations of the parties and to make it possible for them to foretell with accuracy what will be their rights and liabilities under the contract. These objectives may best be attained in multistate transactions by letting the parties choose the law to govern the validity of the contract and the rights created thereby. In this way certainty and predictability of result are most likely to be secured."

In this case, there was a reasonable basis for the parties to choose Maryland law. MCS is chartered in Maryland and has its principal place of business in Maryland. The contract was formed in Maryland, when the Agreements were signed by MCS, and thus accepted by MCS in Maryland.[10] The contract in this case was partly performed in Maryland, not wholly in California. As Judge Murghanan cogently explained: "A bilateral contract is inherently as well as linguistically two-sided, and all of [MCS'] contractual obligations were fulfilled in [Maryland], in addition to the several aspects of [the Defendants'] performance which occurred in or involved communications with [Maryland]." *Barnes Group*, 716 F.2d at 1040.

Moreover, MCS does business in many states and it is wholly appropriate for MCS to desire consistent treatment among its employees and predictable results in the event of a dispute. The court recognizes that "the competing states have an interest in protecting their workers and setting local economic policies," but the reasoning of the panel majority in *Barnes*

[10] Notably, all of MCS agreements with its customers specify Maryland as the governing law. In contrast, Techprnt's customer contracts specify Texas as the governing law, notwithstanding that Techprnt is a California limited liability company, Defendants Coronel and Garcia, owners of Techprnt, live in California and Techprnt has entered into contracts with California customers. Surely if California law was "fundamental" to the Defendants' economic relations they would have specified California law in their own customer contracts.

Group "gives short shrift to [Maryland's] interest in assuring its employers, as far as possible, of uniform enforcement in [Maryland] courts of valid contracts with out-of-state employees." 716 F.2d at 1041. *See also Bethlehem Steel Corp. v. G.C. Zarnas & Co.*, 304 Md. at 215 (Rodowsky, J., dissenting). "Given the strong predisposition of the Restatement to honor contractual choices of law wherever possible, its underlying policies of furthering predictability and reliability in contractual affairs, the numerous contacts with [Maryland] in the instant case, and the interest [Maryland] has in seeing that its employers assure their employees evenhanded treatment, the bland assumption simply does not follow that [California] has a materially greater interest than [Maryland] in the transaction and dispute before us." 716 F.2d at 1041.

Of additional importance in this case is a specific representation made by the individual Defendants in their contracts with MCS. Paragraph 6 of each Agreement recites:

> Employee has carefully read and considered the provisions of paragraph 5 of this Agreement, and having obtained or having had the opportunity to obtain the advice of counsel of his/her own choosing, agrees that the restrictions set forth in Paragraph 5 of this Agreement are fair and reasonable and are reasonably required for the protection of the interests of the Company, its officers, directors, and employees. Further, Employee understands said restrictions, intends to be fully bound with respect thereto, and represents that such limitations on Employee's activities shall not prevent Employee from earning a reasonable livelihood or engaging in any other businesses during the restrictive time periods specified in Paragraph 5 of this Agreement.

It has long been settled in Maryland that, absent proof of fraud, a party has a duty to read a contract before he signs it and, even if he signs it without reading it, he remains bound by its terms. *See, e.g.*, *Holloman v. Circuit City*, 391 Md. 580, 595 (2006); *Canaras v. Lift Truck Services*, 272 Md. 337, 344-45 (1974); *Merit Music v. Sonneborne*, 245 Md. 213, 220-21 (1967); *McGrath v. Peterson*, 127 Md. 412, 416 (1916).

These rules also apply when the contract implicates a confidential relationship. *See, e.g., Cannon v. Cannon*, 384 Md. 537, 553-59 (2005); *Frey v. Frey*, 298 Md. 552, 563-64 (1984); *Hartz v. Hartz*, 248 Md. 47, 57 (1967). In connection with confidential relationships, the Court of Appeals has "emphasized the importance of independent legal advice in evaluating whether the [ante-nuptial] agreement was voluntarily and understandingly made." *Frey*, 298 Md. at 563. However, there is no requirement that a party actually seek independent legal advice. "It was enough for Mr. Cannon to demonstrate that Mrs. Cannon had the opportunity to seek counsel and that she was not discouraged to do so." *Cannon*, 384 Md. at 578 (footnote omitted). Although Coronel and Garcia may not have obtained independent legal advice before signing the Agreement, there is no credible evidence of record that either Defendant was dissuaded or precluded from doing so.

"If a trial court finds that a contract is ambiguous, it may receive parol evidence to clarify the meaning." *Phoenix v. Johns Hopkins*, 167 Md. App. 327, 393 (2006). However, if a contract is "complete and unambiguous, parol evidence is inadmissible as a matter of substantive law to vary, alter or contradict it in the absence of fraud, accident or mutual mistake." *McLain v. Pernell*, 255 Md. 569, 572 (1969), *quoted with approval in Bernstein v. Kapneck*, 290 Md. 452, 460 (1981). "Without the presence of one of these excusing factors 'one having the capacity to understand a written document who reads it, or, without reading it or having read it to him, signs it, is bound by his signature.'" *Higgins v. Barnes*, 310 Md. 532, 537 (1987), *quoting in part Rossi v. Douglas*, 203 Md. 180,199 (1953).

Here, neither Coronel nor Garcia has shown by a preponderance of the credible evidence (much less shown by clear and convincing evidence) that there was fraud in the making of the Agreement. P. SANDLER & J. ARCHIBALD, Pleading Causes of Action in

Maryland 193 (MICPEL 1991). ("The critical element of this tort is the intent to deceive, i.e. 'scienter.' Materiality and justifiable reliance are indispensable elements as well. If these elements are not alleged, the tort has not been properly pleaded.") *See, e.g., Ellerin v. Fairfax Savings, F.S.B.*, 337 Md. 216, 229-30 (1995); *Mathis v. Hargrove*, 166 Md. App. 286, 314 (2005). There is no credible basis in the record for the court to conclude that the Agreement "was induced by false or fraudulent statements or promises." *Greenfield v. First Commercial Bank*, 61 Md. App. 420, 426 (1985).

In summary, the Defendants have shown no legal or factual basis for the court to disregard the parties' choice of Maryland law.[11] With the greatest respect for California, the court cannot say that California has a fundamentally greater interest in the Agreements at issue in this case than Maryland.[12]

III.

An injunction is a remedy governed by principles of equity, even when it is requested in a legal proceeding in which money damages are sought. Consequently, a plaintiff seeking an injunction must come to court with "clean hands" and in good faith, and the defendant may assert the traditional equitable defenses, such as unclean hands and laches.

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[11] The Defendants' reliance on *Motor Club of America v. Hanifi*, 145 F.3d 170 (4th Cir. 1998), is misplaced. That case involved a motor tort between a New York driver and New Jersey residents that fortuitously occurred in Harford County. In that context, the Fourth Circuit held that it was error for the trial court to apply Maryland law, when New York law provided the tort plaintiffs with greater protections (ability to reach insurance coverage) and New York law was not inconsistent with or an affront to Maryland law.

[12] In its oral ruling, the court was careful to note that this case does not present a circumstance where the law of a sister state implicated a fundamental constitutional right or was enacted to protect a suspect class. The result may very well be different if Maryland law failed to give effect to a right created by another state, such as the right of same-sex couples to lawfully marry. The result also could be different if the terms of the contract violated a strong Maryland policy. *See Accrued Financial Services, Inc. v. Prime Retail, Inc.*, 298 F.3d 291 (4th Cir. 2002).

The now well-settled factors the court must consider when weighing a request for a preliminary injunction are:

1. The likelihood that the plaintiff will succeed on the merits;

2. The "balance of convenience" of the parties, which is whether greater injury would result from the issuance of the injunction than from its denial;

3. Whether plaintiff will suffer irreparable injury if the injunction is denied; and

4. The public interest.

See, e.g., Eastside Vend Distributors, Inc. v. Pepsi Bottling Group, Inc.,396 Md. 219, 240-41 (2006); *State Comm'n v. Talbot County*, 370 Md. 115, 136 (2002); *Fogle v. H&G Restaurant, Inc.*, 337 Md. 441, 455-56 (1995); *Dep't of Transp. v. Armacost*, 299 Md. 392, 404-05 (1984). The burden at all times is on the party seeking the injunction to prove facts necessary to sustain all of the four essential factors. *Eastside Vend*, 396 Md. at 241.

However, the legal test is not simply formulaic. If there is a decided imbalance of hardship in favor of the party seeking the preliminary injunction, the likelihood of hardship factor may be satisfied with a lesser showing of likelihood of success on the merits. *Lerner v. Lerner*, 306 Md. 771, 784 (1986)(applying the seminal decision of the Fourth Circuit in *Blackwelder Furniture Co. v. Seilig Manufacturing Co.*, 550 F.2d 189 (4th Cir. 1977)). But in all cases, the party seeking the injunction must establish a real probability of prevailing on the merits, not simply a possibility of doing so. *Eastside Vend*, 396 Md. at 241.

"Preliminary injunctions are designed to maintain the status quo between parties during the course of litigation." *Eastside Vend*, 396 Md. at 241. *See also LeJuene v. Coin Acceptors, Inc.*, 381 Md. 288, 301 (2004); *Lerner*, 306 Md. at 791-93. This determination is important because, as Judge Hollander has aptly noted on several occasions, a key reason to issue a

preliminary injunction is to preserve the *status quo* until the matter can be adjudicated on the merits. And the *status quo* means the preservation or maintenance of the last actual, uncontested status of affairs that preceded the pending controversy. *Maloof v. State Dept. of the Env't*, 136 Md. App. 682, 692-93 (2001); *Maryland Comm'n on Human Relations v. Downey*, 110 Md. App. 493, 516 (1996). Consequently, the destruction of the *status quo* in the absence of an injunction may constitute "irreparable injury in the context of preliminary injunctions." *Lerner*, 306 Md. at 791.

IV.

On February 29, 2008, the court recited on the record the reasons why MCS had demonstrated a high likelihood that it will succeed on the merits of its claims.[13] Among other things, MCS demonstrated both that Coronel and Garcia violated their Agreement with MCS by soliciting MCS' customers and employees *during and after* their employment with MCS, as well as actively competing with MCS. Such conduct not only violated ¶ 5.2 and ¶5.3 of the Agreement but also their common law duty of loyalty to their employer because such conduct took place during the term of their employment relationship with MCS. *Maryland Metals, Inc. v. Metzner*, 282 Md. 31, 37-41 (1978). The court also found that Coronel and Garcia knowingly and willfully violated ¶ 5.5 of the Agreement by owning and providing services to Techprnt, which is a direct competitor of MCS, *during and after* their term of employment with MCS.

The duration and scope of the pertinent provisions of ¶ 5 of the Agreement (non-competition for a period of one year, non-solicitation of customers for a period of one year, and

[13] The court rejected Garcia's contention that the June 13, 2007 settlement agreement he entered into with MCS to resolve an overtime claim for $893.29 (Defendants' Ex. 1) displaced the Agreement he signed on February 16, 2007 to induce MCS to employ him (Plaintiff's Ex. 26). *See Rourke v. Amchem Products, Inc.*, 384 Md. 329, 354-56 (2004).

non-solicitation of employees for a period of two years) are reasonable in light of the nature of MCS' business, the specific states in which MCS has existing customers and the need to protect MCS' goodwill. *See Ruhl v. F.A. Bartlett Tree Expert Co.*, 245 Md. 118 (1967); *National Instrument, LLC v. Braithwaite*, 2006 WL 2405831, 2006 MDBT 11 (June 5, 2006). *See also PADCO Advisors, Inc. v. Omdahl*, 179 F. Supp.2d 600, 606-08 (D. Md. 2002).

Both Coronel and Garcia were the "face of the company" with several of MCS' most important customers, and they had ready access to pricing information, contract terms and customer requirements.[14] In MCS' line of business, the most difficult aspect is to obtain a relationship with the customer in the first instance. The testimony of MCS' vice-president of operations credibly showed that this process often requires several years of meetings and negotiations, as well as the investment of thousands of dollars, before MCS can obtain a contract.

MCS also demonstrated by a preponderance of the credible evidence that it will suffer irreparable harm if the preliminary injunction were not issued. MCS' largest customer already has expressed concerns to MCS regarding Techprnt's activities and that customer has not yet decided whether to renew MCS' contract. MCS need not wait until the Defendants successfully pirate MCS' customers. "Persons in business have a protectable interest in preventing an employee from using the contacts established during employment to pirate the employer's customers." *Holloway v. Faw, Casson & Co.*, 319 Md. 324, 335 (1990).

Although Coronel and Garcia will suffer some harm if the Agreement is enforced, it is plain that both are highly skilled and can, if they so desire, earn a living with those skills in their chosen and historic field of expertise even if the Agreement is enforced. *See Intelus Corp.*

[14] The court found at the hearing that the Defendants had taken MCS' form of customer contract, without permission, and used it nearly verbatim when signing customers for Techprnt.

v. Barton, 7 F. Supp. 2d 635, 639-40 (D. Md. 1998). The fact that they may earn somewhat less if the Agreement is enforced (and they had abided by the promises they made in exchange for being well paid by MCS) is irrelevant. The balance of hardships in this case tips strongly in favor of MCS.

Finally, the court is of the view that the public interest is well served by the enforcement of the Agreement. Absent a legitimate reason, parties to a contract are expected to keep their promises. Here, Coronel and Garcia simply decided that they could earn more by violating their Agreement, and they did so knowingly and willfully. That is not a good reason to decline to issue an injunction. To the contrary, the substantial weight of the credible evidence of record strongly supports the enforcement of their Agreements by way of a preliminary injunction. As Judge Alexander Williams aptly noted, "the public has an interest in the enforcement of reasonable restrictive covenants." *Intelus*, 7 F. Supp.2d at 642, *quoted with approval in Corporate Healthcare Financing, Inc. v. BCI Holdings*, 2006 WL 1997126 (D. Md., July 13, 2006)(Blake, J.).

Dated: March 4, 2008.

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Ronald B. Rubin, Judge
Circuit Court for Montgomery County