M.D. Claims Grp., LLC v. Bagley, 2024 NCBC Order 40.

STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 24 CVS 16516
M.D. CLAIMS GROUP, LLC, Plaintiff, v. MATTHEW BAGLEY, individually, and BAGLEY CONSULTING, LLC, Defendants.	**ORDER ON PLAINTIFF'S VERIFIED SECOND AMENDED PRELIMINARY INJUNCTION MOTION**

1. **THIS MATTER** is before the Court on Plaintiff's Verified Second Amended Preliminary Injunction Motion (the "Motion"), (ECF No. 12).

2. Having considered the Motion, the affidavits filed in support of and in opposition to the Motion, the related briefing, the arguments of counsel at a hearing on the Motion held 25 June 2024, and relevant matters of record, the Court **FINDS** and **CONCLUDES**, solely for the narrow purposes of the Motion,[1] as follows:

FINDINGS OF FACT[2]

3. Plaintiff M.D. Claims Group, LLC, ("M.D. Claims") is an independent adjuster firm headquartered in Louisiana. (Am. Ver. Compl. ¶ 1, ECF No. 10; Defs.'

[1] It is well-settled that neither findings of fact nor conclusions of law made during a preliminary injunction proceeding are binding upon the Court at a trial on the merits. *See Lohrmann v. Iredell Mem'l Hosp. Inc.*, 174 N.C. App. 63, 75 (2005) (citing *Huggins v. Wake Cnty. Bd. of Educ.*, 272 N.C. 33, 40-41 (1967)).

[2] To the extent any finding of fact is more appropriately characterized as a conclusion of law or vice-versa, it should be reclassified. *See N.C. State Bar v. Key*, 189 N.C. App. 80, 88 (2008) ("[C]lassification of an item within [an] order is not determinative, and, when necessary, the appellate court can reclassify an item before applying the appropriate standard of review.").

Br. Opp. to Pl.'s Mot. for Prelim. Inj. ["Defs.' Br. Opp."] Ex. A ["First Bagley Aff."] ¶ 8, ECF No. 19.2.) M.D. Claims serves businesses in the Property, Casualty, and Direct Insurance industry. (Pl.'s Ver. Prelim. Inj. Moving Br. ["Pl.'s Br. Supp."] Ex. K[3] ["First Melerine Aff."] ¶ 4, ECF No. 18.1.)

4. In general, when an insurance claim arises, insurance companies assign adjusters to investigate and process the claim. Insurance companies often contract with independent adjusting firms ("IAFs"), such as M.D. Claims, to provide this service. (First Bagley Aff. ¶¶ 5, 8.) However, insurance companies typically do not enter into exclusive contracts with IAFs. Instead, it is customary for insurance companies to work with multiple IAFs. (First Bagley Aff. ¶¶ 11-13.)

5. M.D. Claims has built its client base of insurance companies through development efforts that require significant time and expense. (First Melerine Aff. ¶¶ 21-23.) The same is true when it comes to vetting adjusters to include on its Adjuster Roster. (Pl.'s Prelim. Inj. Reply Br. ["Reply Br"] Ex. F[4] ["Second Melerine Aff."] ¶¶ 12-17, ECF No. 21.1.)

6. Defendant Matthew Bagley ("Bagley") is a citizen and resident of North Carolina who has worked in the insurance industry for nineteen years. (First Bagley Aff. ¶¶ 3-4, 19.) He is licensed to investigate claims and to serve as an insurance adjuster in North Carolina, Louisiana, Texas, Florida, and California. (Bagley Aff. ¶

[3] Exhibit K refers to ECF No. 18.1 P042-P052 (Affidavit Supporting Plaintiff's Verified Second Amended Preliminary Injunction Motion).

[4] Exhibit F refers to ECF No. 21.1 P073-P080

10.) Throughout his career, Bagley has served in management, including as Director of Operations, for multiple IAFs. (Bagley Aff. ¶ 9.)

7. In May 2021, M.D. Claims hired Bagley to be its Claims Manager; however, he was quickly promoted to Director of Operations. (First Melerine Aff. ¶¶ 5, 11.) Throughout his employment, Bagley worked remotely from his home in North Carolina. (First Bagley Aff. ¶ 65; First Melerine Aff. ¶ 64; Second Melerine Aff. ¶ 9.)

8. As a condition of his employment, on 18 May 2021 Bagley signed two agreements, an Employment Offer/Contract (the "Employment Contract") and a Non-Disclosure Agreement (the "NDA"), (together, the "Agreements"). Both contain restrictive covenants. (First Melerine Aff. ¶¶ 6-7; Pl.'s Br. Supp. Ex. A[5] ["Employment Contract"]; Pl.'s Br. Supp. Ex. B[6] ["NDA"].)

9. Bagley signed the Agreements in North Carolina and returned them via email to M.D. Claims' general counsel, Angelique Walgamotte ("Ms. Walgamotte"), its COO, Ricky Broom, and an administrative assistant, Kennedy Asevado. (First Bagley Aff. ¶ 24, Ex. 1.) Each of these individuals was located in Louisiana. (First Bagley Aff. ¶ 26.)

10. The Employment Contract contains the following restriction:

> [Bagley] recognizes that the various items of Information[7] are special and unique assets of [M.D. Claims] and need to be protected from improper disclosure. In consideration of the disclosure of the Information to [Bagley], [Bagley] agrees and covenants that during his . . . employment by [M.D. Claims] and for a period of two (2) years

[5] Exhibit A refers to ECF No. 18.1 P001-P004.

[6] Exhibit B refers to ECF No. 18.1 P005-P008.

[7] "Information" is not defined in the Employment Contract.

> following the termination of [Bagley's] employment, whether such termination is voluntary or involuntary, [Bagley] will not directly or indirectly engage or do business with current and/or future clients established during [Bagley's] employment with [M.D. Claims]. Directly or indirectly engaging in any competitive business includes, but is not limited to: (i) engaging in a business as owner, partner or agent, (ii) becoming an employee of any third party that is engaged in such business, (iii) becoming interested directly or indirectly in any such business, or (iv) soliciting any customer of [M.D. Claims] for the benefit of a third party that is engaged in such business.

(Employment Contract § 6.)

11. Pursuant to the NDA, Bagley promised not to disclose, modify, copy, or use M.D. Claims' confidential information. (NDA § II (A)-(D).) The NDA defines "Confidential Information" as:

> any information or material which is proprietary to [M.D. Claims], whether or not owned or developed by [M.D. Claims], which is not generally known other than by [M.D. Claims], and which [Bagley] may obtain through any direct or indirect contact with [M.D. Claims]. Regardless of whether specifically identified as confidential or proprietary, Confidential Information shall include any information provided by [M.D. Claims] concerning the business, technology and information of [M.D. Claims] and any third party with which [M.D. Claims] deals, including, without limitation, business records and plans, trade secrets, technical data, product ideas, contracts, financial information, including but not limited to compensation structure offered and/or agreements accepted, pricing structure, discounts, computer programs and listings, source code and/or object code, copyrights and intellectual property, inventions, sales leads, strategic alliances, partners, and customer and client lists. The nature of the information and the manner of disclosure are such that a reasonable person would understand it to be confidential.

(NDA § I.)

12. The NDA includes a "Non-Circumvention" provision, which provides:

> For a period of five (5) years after the end of the term of this Agreement, [Bagley] will not attempt to do business with, or otherwise solicit any business contacts found or otherwise referred by [M.D. Claims] to

> [Bagley] for the purpose of circumventing, the result of which shall be to prevent [M.D. Claims] from realizing or recognizing a profit, fees, or otherwise, without the specific written approval of [M.D. Claims].

(NDA § IV.)

13. In addition to these restrictions, the Employment Contract contains a "Return of Property" provision that requires Bagley, upon termination of his employment, to return all M.D. Claims' property in his possession, including "keys, records, notes, data, memoranda, models, and equipment[.]" (Employment Contract § 11.) The NDA contains a similar provision applicable to confidential information, providing that upon the written request of M.D. Claims, Bagley must return any written materials containing confidential information and certify in writing that all materials have been returned within five days of the request. (NDA § V.)

14. Both Agreements include a choice of law provision specifying that Louisiana law controls. (Employment Contract § 17; NDA § XII.)

15. Bagley was never provided a formal job description, but, as Director of Operations, he stepped in and assisted with whatever needed to be done. (First Bagley Aff. ¶ 31.) He was responsible for generating sales, maintaining existing clients, and "conducting day-to-day operations." (First Melerine Aff. ¶ 12.) He also oversaw the adjustment of claims. Most of the claims he oversaw occurred in Louisiana, Texas, California, North Carolina, and Florida. (First Bagley Aff. ¶ 33.)

16. In addition to maintaining existing clients, Bagley believes that he was able to leverage relationships he had with certain clients prior to joining M.D. Claims to attract new work to M.D. Claims after he joined the company. (First Bagley Aff.

¶¶ 35, 37.) These clients include Mills Mehr & Associates ("Mills Mehr"), Peninsula Insurance Bureau ("PIB"), the North Carolina Joint Underwriters Association ("NCJUA"), and Fortegra Insurance. (First Bagley Aff. ¶¶ 15-19, 35, 37, 42-44.) Bagley also used his relationship with American Traditions Insurance Company ("ATIC") to increase the volume of assignments sent to M.D. Claims. (First Bagley Aff. ¶ 36.)[8]

17. M.D. Claims has developed an Assignment Portal, which it describes as the software that houses client information, adjuster information, and other business materials. (First Melerine Aff. ¶ 30.)[9] Access to the Assignment Portal is limited by job title and need. (First Melerine Aff. ¶ 42.) Each authorized user has a unique passcode necessary to access the Assignment Portal. (First Melerine Aff. ¶ 42.)

18. As Director of Operations, Bagley had the highest-level of access to M.D. Claims' confidential information, including:

> generalized customer pricing information, billing/bidding formulas, specific customer pricing information, employee/contractor/adjuster compensation, business structure/plans, detailed client information, client proposals, employee/contractor/adjuster information (i.e., resumes, salaries, and employee profiles), certain overhead information, company forms/templates, general/administrative information, detailed prospective customer information, and full current-customer profiles (which include extensive background and preference information).

---

[8] M.D. Claims does not believe that Bagley's prior relationships with these clients increased its sales volume. (Second Melerine Aff. ¶¶ 35-39.)

[9] Bagley clarifies that M.D. Claims' Assignment Portal is not customer relationship management software like Salesforce, but rather "was designed to import claim assignment data, create invoices for those assignments, process payments for those invoices, and create commission sheets for the adjusters handling those assignments." (Second Bagley Aff. ¶¶ 16-17, ECF No. 22.) M.D. Claims advertises the Assignment Portal as a "file management software" and sells access to the software to other IAFs. (Second Bagley Aff. ¶ 19.)

(First Melerine Aff. ¶¶ 28, 41.) With respect to this Motion, M.D. Claims' focus is on protecting the information it has compiled regarding existing and future clients, as well as the roster of adjusters it has vetted.[10]

19. After a disagreement with Mr. Melerine, M.D. Claims' CEO, Bagley voluntarily resigned effective 23 February 2024. (First Melerine Aff. ¶¶ 2, 66, 68; Second Melerine Aff. ¶¶ 31-33; First Bagley Aff. ¶¶ 50-51, Pl.'s. Br. Supp. Ex. C[11] ["Voluntary Resignation Letter"].) Upon his termination, Bagley returned two laptops, the only physical property that M.D. Claims had provided to him. (Second Bagley Aff. ¶ 5.) He later compiled all of M.D. Claims' data in his possession and, through his attorney, returned it to M.D. Claims. (Second Bagley Aff. ¶ 6.) Bagley testified that, to the best of his knowledge, he no longer has any of M.D. Claims' data in his possession, including any data from the Assignment Portal. (Second Bagley Aff. ¶¶ 7-8.)

20. In February 2024, while still employed by M.D. Claims, Bagley formed Bagley Consulting, LLC ("Bagley Consulting"), a North Carolina limited liability company. (First Melerine Aff. ¶ 69; Pl.'s Br. Supp. Ex. D[12] ["Bagley Consulting Registration"].) When M.D. Claims asked about Bagley Consulting, Bagley

---

[10] Plaintiff maintains a "Adjuster Roster" of approximately 2,500 adjusters. (Second Melerine Aff. ¶ 12.) This roster includes information about the individual adjusters such as, "impressions made from meeting/interviewing them, preferences, and other impressions not listed in their resume or websites." (Second Melerine Aff. ¶ 20.)

[11] Exhibit C refers to ECF No. 18.1 P009.

[12] Exhibit D refers to ECF No. 18.1 P010.

responded that it "was set up for [his] wife and her business ventures." (First Melerine Aff. ¶ 71; Pl.'s Br. Supp. Ex. E[13] ["1 March 2024 Email"].) M.D. Claims asserts that Bagley Consulting is a direct competitor; however, Bagley contends that the majority of Bagley Consulting's business involves consulting with others in the industry, not handling claims. (First Bagley Aff. ¶ 67.)

21. Prior to Bagley's resignation, M.D. Claims had nine active clients. (First Melerine Aff. ¶ 75.) M.D. Claims alleges that by late February 2024, it had already lost business from two clients, a loss of roughly fifteen percent of its total claims volume. (First Melerine Aff. ¶ 72.) Specifically, M.D. Claims alleges that Mills Mehr has discontinued its business with M.D. Claims and is instead using Bagley Consulting to adjust claims. (First Melerine Aff. ¶ 73.) Additionally, Fortegra Insurance has reduced by fifty percent the claims volume it has M.D. Claims handle and is now using Bagley Consulting for that work. (First Melerine Aff. ¶ 74.) M.D. Claims asserts that the decrease in its business will cause it to lose roughly $700,000 annually. It worries that any future losses will threaten the survival of its business. (First Melerine Aff. ¶¶ 76, 90.)

22. Bagley denies that he is responsible for M.D. Claims' lost business. (First Bagley Aff. ¶ 48.) Bagley testified that he did not open a checking account for Bagley Consulting until 24 February 2024, (the day after his resignation went into effect), and he did not begin processing claims for Bagley Consulting until April 2024. (First Bagley Aff. ¶¶ 53, 55.)

[13] Exhibit E refers to ECF No. 18.1 P011-P020.

23. In addition to taking some of its business, M.D. Claims alleges that Bagley repurposed its 2024 Final Report form as his own. (First Melerine Aff. ¶ 32.) M.D. Claims asserts that this form contains software tokens it created that allow it to automatically populate certain fields on the form. (First Melerine Aff. ¶ 34.) Bagley responds that the form is not proprietary and that use of software tokens is common in the industry. (First Bagley Aff. ¶ 41; Second Bagley Aff. ¶¶ 23-24.)

24. Plaintiff's Amended Complaint purports to assert claims against Bagley for breach of contract, breach of the implied covenant of good faith and fair dealing, and fraud. Plaintiff also seeks a declaratory judgment with respect to the enforceability of the restrictive covenants. Additionally, M.D. Claims asserts a claim against Bagley Consulting for unjust enrichment, and it asserts claims against both Bagley and Bagley Consulting for violation of the North Carolina Trade Secrets Protection Act, violation of the North Carolina Unfair and Deceptive Trade Practices Act, and conversion. (*See generally* Am. Ver. Compl., ECF No. 10.)

25. The case was designated as a mandatory complex business case and assigned to the undersigned on 29 May 2024, (ECF Nos. 1, 2).

26. Plaintiff filed the Motion on 3 June 2024 seeking an order enjoining Defendants from:

> (1) Soliciting and doing business with clients with whom Bagley interacted with [sic] during his employment with Plaintiff, including but not limited to Mills Mehr, Fortegra, the North Carolina Joint Underwriters Association, American Traditions Insurance Company, and SafePoint Insurance Company;

> (2) Soliciting and doing business with clients that Bagley Consulting, LLC learned about through the Confidential Information Bagley provided;
>
> (3) Using Plaintiff's forms;
>
> (4) Soliciting and doing business with Plaintiff's adjusters that Bagley interacted with during his employment with Plaintiff; and
>
> (5) Soliciting clients and doing business with Plaintiff's adjusters that Bagley Consulting, LLC learned about through the Confidential Information Bagley provided.

(*See* Motion.)

27. After full briefing, the Court held a hearing on the Motion on 25 June 2024. All parties were represented by counsel. (Not. of Hr'g., ECF No. 16.) The Motion is now ripe for decision.

CONCLUSIONS OF LAW

A. Applicable Law

28. Both the Employment Contract and the NDA contain choice of law provisions identifying Louisiana as the governing state law. However, Plaintiff argues that the Court should apply North Carolina law, both to its contract and its tort claims. (Pl.'s Br. Supp. 9-10, ECF No. 18.) Defendants agree that North Carolina law applies to Plaintiff's tort claims but assert that Louisiana law applies to the contract claims, not only because of the choice of law provisions, but also because the last act necessary to form each contract – the employer's signature – occurred in Louisiana. (Defs.' Br. Opp. 3-7, 22, ECF No. 19.)

29. North Carolina "follows the general rule that the validity and construction of a contract are to be determined by the law of the place where the

contract is made." *Nytco Leasing, Inc. v. Dan-Cleve Corp*., 31 N.C. App. 634, 640 (1976); *see also Tanglewood Land Co. v. Byrd*, 299 N.C. 260, 262 (1980) ("[T]he interpretation of a contract is governed by the law of the place where the contract was made."); *Clapper v. Press Ganey Assocs., LLC*, 291 N.C. App. 136, 143 (2023) ("The initial inquiry . . . depends on where the contract was entered into."). "Under North Carolina law, a contract is made in the place where the last act necessary to make it binding occurred." *Tom Togs, Inc. v. Ben Elias Indus. Corp.*, 318 N.C. 361, 365 (1986); *see also Bundy v. Commercial Credit Co.*, 200 N.C. 511, 515 (1931) ("[T]he test of the place of a contract is as to the place at which the last act was done by either of the parties essential to a meeting of minds.").

30. Relevant here is when and where the parties signed the Agreements. It is undisputed that Bagley was the first to sign both Agreements and that he signed them in North Carolina. (Am. Ver. Compl. ¶ 18; First Bagley Aff. ¶¶ 22, 25, Ex. 1; First Melerine Aff. ¶¶ 9-10.) Bagley signed and dated both Agreements on 18 May 2021 and then returned them via email to Ms. Walgamotte, as well as to M.D. Claims' COO, Ricky Broom, and its administrative assistant, Kennedy Asevado, each of whom was located in Louisiana. (First Bagley Aff. ¶¶ 24, 26 Ex. 1.) At some point thereafter, Mr. Melerine signed the Agreements on behalf of M.D. Claims. (*See* Agreements.) However, the Agreements submitted to the Court lack a date for his signature.[14]

[14] Bagley questions whether Plaintiff ever signed the Agreements, at least during his employment. He does not recall ever receiving a copy of either Agreement signed by M.D. Claims. (First Bagley Aff. ¶ 27.) He argues, therefore, that it is possible that the Agreements

31. Plaintiff contends that Bagley's signature (in North Carolina) was the last act necessary for him to accept M.D. Claims' offer of employment and bind the parties to the Agreements. (First Melerine Aff. ¶ 8; Second Melerine Aff. ¶¶ 4-5.) The Court disagrees. The Employment Contract contains the following language directly above the signature lines for both M.D. Claims and Bagley: "This Contract shall be signed by Darryn Melerine, CEO or Richard J. Broom, Jr., COO on behalf of [M.D. Claims] and by [Bagley] in an individual capacity." (Employment Contract § 18.) Similarly, the NDA provides: "This Agreement shall be executed by Darryn Melerine, CEO, on behalf of [M.D. Claims] and [Bagley] and delivered in the manner prescribed by law as of the date first written above." (NDA § XIV.) This language makes plain that the signatures of both parties were necessary to form the Agreements.[15]

32. Plaintiff relies on the Court of Appeals' decision *Schwarz v. St. Jude Med., Inc.*, 254 N.C. App. 747 (2017), for the proposition that an employer's countersignature is not necessary for an employment agreement to be binding. (Pl.'s Br. Supp. 9-10.) While true in that case, it is not universally so. Whether a countersignature is necessary to bind the parties depends on the language of the contract and the facts of the case. *See e.g., Bundy*, 200 N.C. at 514-15 (holding that

---

were never formed. (Pl.'s Br. Opp. 6, n. 2.) The Court's determination below is not dependent on the answer to this question.

[15] In addition, the Employment Contract's preamble expressly provides that it "is made effective as of the date of execution by all parties."

a contract negotiated in North Carolina was not enforceable until it was signed by the company's officials in Maryland).

33. Unlike the Agreements here, which use mandatory language requiring that they be signed by both parties, the agreement at issue in *Schwarz* did not specify that the employer's signature was required to bind the parties. *Schwarz*, 254 N.C. App. at 760. The Court concludes that this case is more analogous to the facts of *Bundy v. Commercial Credit Co.*, in which a contract was not enforceable until it was signed by the company's officials. *Bundy*, 200 N.C. at 514-15.

34. Given the express language of the Agreements at issue here, the Court concludes that the last act necessary to form the Agreements was the countersignature of M.D. Claims' CEO, Mr. Melerine. As such, the Court concludes that the Agreements were formed in Louisiana, and Louisiana law therefore controls.

35. Even if the Agreements had been formed in North Carolina, however, for the reasons stated below, Louisiana substantive law would apply to Plaintiff's contract claims pursuant to the parties' agreed choice of law provisions. This is because North Carolina has adopted the approach set forth in Section 187 of the Restatement (Second) of Conflict of Laws. *Behr v. Behr*, 46 N.C. App. 694, 696 (1980). Section 187 provides in relevant part:

> The law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to the issue, unless either
>
> (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties choice, or

> (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest 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.

Restatement (Second) of Conflict of Laws § 187. Thus, "[t]he parties' choice of law is generally binding on the interpreting court as long as they had a reasonable basis for their choice and the law of the chosen State does not violate a fundamental policy of the state of otherwise applicable law." *Behr*, 46 N.C. App. at 696.

36. It is undisputed that the parties agreed that the Employment Contract and NDA would be subject to Louisiana law. There is no question that Louisiana has a substantial relationship to Bagley's employment with M.D. Claims given that Plaintiff's headquarters and principal office are located there. Plaintiff has not presented evidence that North Carolina has a materially greater interest than does Louisiana.

37. Furthermore, Louisiana shares North Carolina's policy of disfavoring restrictive covenants. *Compare Kimball v. Anesthesia Specialists of Baton Rouge, Inc.*, 2000-1954, p. 6 (La. App. 1 Cir. 09/28/01), 809 So. 2d 405, 410 ("Louisiana has long had a strong public policy disfavoring noncompetition agreements between employers and employees."), *with Med. Staffing Network, Inc. v. Ridgway*, 194 N.C. App. 649, 655 (2009) ("[Non-competition] agreements are disfavored by the law."). Plaintiff has not shown that application of Louisiana law would violate a fundamental policy of this state. Therefore, regardless of whether Louisiana law applies because

the last act necessary to form the contracts occurred there or because the parties chose it, Louisiana law is controlling with respect to the contract claims.

38. As for Plaintiff's misappropriation of trade secrets claims, North Carolina "favors the use of the *lex loci* test in cases involving tort or tort-like claims." *SciGrip, Inc. v. Osae*, 373 N.C. 409, 420 (2020). This includes misappropriation of trade secret claims. *See id.* ("[T]he proper choice of law rule for use in connection with our evaluation of [plaintiff's] misappropriation of trade secrets claim is the *lex loci* test."). Under the *lex loci* rule, "[t]he law of the place where the injury occurs controls tort claims[.]" *Terry v. Pullman Trailmobile, Div. of Pullman, Inc.*, 92 N.C. App. 687, 690 (1989); *see also RoundPoint Mortg. Co. v. Florez*, 2016 NCBC LEXIS 18, at **57 (N.C. Super. Ct. Feb. 18, 2016) ("In applying the *lex loci* test, the plaintiff's injury is considered to be sustained in the state where the last act occurred giving rise to the injury." (cleaned up)).

39. The record contains no evidence that Bagley's alleged misappropriation occurred outside of his state of residence, North Carolina. Accordingly, the Court shall apply North Carolina law to Plaintiff's trade secret misappropriation claims.

B. Preliminary Injunction

40. A preliminary injunction is an "extraordinary measure taken by a court to preserve the status quo of the parties during litigation." *Ridge Cmty. Invs., Inc. v. Berry*, 293 N.C. 688, 701 (1977). The plaintiff bears the burden to show: (1) a likelihood of success on the merits, and (2) that it is likely to sustain irreparable loss[16]

[16] The Court observes that with respect to the contract claims, Louisiana law does not require the plaintiff to prove irreparable injury. *See* La. R.S. § 23:921(H) ("Any agreement covered

unless the injunction is issued or, "if, in the opinion of the Court, issuance is necessary for the protection of plaintiff's rights during the course of litigation." *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401 (1983); *see also Pruitt v. Williams*, 288 N.C. 368, 372 (1975) ("The burden is on the plaintiffs to establish their right to a preliminary injunction."); N.C.G.S. § 1-485.

41. Likelihood of success means a "reasonable likelihood[.]" *A.E.P. Indus., Inc.*, 308 N.C. at 404. Irreparable injury is not necessarily injury that is "beyond the possibility of repair or possible compensation in damages, but . . . one to which the complainant should not be required to submit or the other party permitted to inflict, and is of such continuous and frequent recurrence that no reasonable redress can be had in a court of law." *Id.* at 407 (emphasis omitted).

42. Irreparable injury must be "real and immediate," *DaimlerChrysler Corp. v. Kirkhart*, 148 N.C. App. 572, 586 (2002), but the indeterminate nature of damages resulting from lost goodwill and threatened loss of market share may itself constitute irreparable harm. *See e.g., Bayer CropScience LP v. Chemtura Corp.*, 2012 NCBC LEXIS 43, at **23-24 (N.C. Super. Ct. July 13, 2012) (collecting cases).

43. When deciding whether to afford preliminary injunctive relief, the Court must balance the potential harm the plaintiff will suffer if no injunction is entered against the potential harm the defendants may suffer if an injunction is entered.

---

by Subsection . . . C . . . of this Section shall be considered an obligation not to do, and failure to perform may entitle the obligee to recover damages for the loss sustained and the profit of which he has been deprived. In addition, upon proof of the obligor's failure to perform, and *without the necessity of proving irreparable injury*, a court of competent jurisdiction shall order injunctive relief enforcing the terms of the agreement." (emphasis added)).

Addison Whitney, LLC v. Cashion, 2017 NCBC LEXIS 23, at **12-13 (N.C. Super. Ct. Mar. 15, 2017) (citing *Williams v. Greene*, 36 N.C. App. 80, 86 (1978)); s*ee Travenol Labs., Inc. v. Turner*, 30 N.C. App. 686, 694 (1976) ("A court of equity must weigh all relevant facts before resorting to the extraordinary remedy of an injunction.").

44. Ultimately, the decision to grant or deny a preliminary injunction rests in the discretion of the court. *Lambe v. Smith*, 11 N.C. App. 580, 583 (1971).

C. Non-Competition and Non-Solicitation

45. Plaintiff's counsel conceded during the hearing that the Employment Contract's non-competition and nonsolicitation provisions are unenforceable under Louisiana law. The Court agrees.

46. Louisiana Revised Statute § 23:921(C) provides:

> Any person . . . who is employed as an agent, servant, or employee may agree with his employer to refrain from carrying on or engaging in a business similar to that of the employer and/or from soliciting customers of the employer within a specified parish or parishes, municipality or municipalities, or parts thereof, so long as the employer carries on a like business therein, not to exceed a period of two years from termination of employment.

La. R.S. § 23:921(C). "To be valid, [both] non-competition and non-solicitation agreements must comply with La. R.S. 23:921. Although non-competition agreements are separate and distinct from non-solicitation agreements, the requirements of La. R.S. 23:921 apply to both." *Wechem, Inc. v. Evans*, 18-743, p. 8 (La. App. 5 Cir. 05/30/19), 274 So. 3d 877, 885.

47. Among other things, contrary to this Louisiana statute, the restrictive covenants at issue do not specify the territory in which Bagley is restricted from

soliciting business or otherwise competing. *See, e.g., Zanella's Wax Bar, LLC v. Trudy's Wax Bar, LLC*, 2019-0043 (La. App. 1 Cir 11/07/19), 291 So. 3d 693, 698 ("A non-competition agreement must specifically name the parishes or municipalities in which the agreement is to have effect."). Even a client-based restriction is invalid if it does not specify the prohibited territory. *See Kimball*, 809 So. 2d at 411-413 (finding a non-compete agreement unenforceable where the restriction contained no territory and applied to "any health care facility regularly serviced by the Corporation during the term of this agreement.").

48. Accordingly, Plaintiff has not established a reasonable likelihood of success on its breach of contract claim with respect to the Employment Contract's non-competition and nonsolicitation provisions.

49. Moreover, to the extent Plaintiff relies on the NDA's non-circumvention provision, the Court observes that in substance, this provision is a restriction against client solicitation. Therefore, for the same reasons the Employment Contract's non-solicitation provision is unenforceable under Louisiana law, the non-circumvention provision is also unenforceable. Furthermore, the NDA's non-circumvention provision applies for a period of five years, far exceeding the two-year limitation mandated by the Louisiana statute. (La. R.S. 23.921(C).)

D. Disclosure of Confidential Information and Trade Secret Misappropriation

50. Plaintiff contends that Bagley has disclosed/misappropriated Plaintiff's existing client list, its prospective client list, its adjuster roster, and its Final Report form. On the other hand, Bagley has testified that he has not used information from

M.D. Claims' Assignment Portal, including any customer, prospective customer, or adjuster information. He states that when he left employment, he turned over to M.D. Claims the two computers that he used while employed, as well as any electronic data that had been in his possession. (Second Bagley Aff. ¶¶ 6-8.) Further, Bagley denies that the Final Report form is proprietary to M.D. Claims. (Second Bagley Aff. ¶ 24.)

51. First addressing Bagley's alleged violation of the NDA, under Louisiana law, "[c]onfidentiality agreements have been held enforceable and not subject to the prohibition (and requirements) of La. R.S. 23:921." *NovelAire Techs., L.L.C. v. Harrison*, 2009-1372, p. 8 (La. App. 4 Cir. 10/13/10), 50 So. 3d 913, 918 (quoting *Engineered Mech. Servs., Inc. v. Langlois*, 464 So. 2d 329, 334, n. 15 (La. App. 1 Cir. 1984)). Nevertheless, Plaintiff fails to present evidence that Bagley has disclosed its Confidential Information to Bagley Consulting. Speculation will not suffice.

52. To the extent any of Plaintiff's confidential information rises to the level of a trade secret, North Carolina requires that Plaintiff plead the existence of the trade secret with sufficient specificity for Defendants and the Court to understand what it is that Plaintiff claims rises to that level. *Washburn v. Yadkin Valley Bank & Tr. Co.*, 190 N.C. App. 315, 326 (2008). Plaintiff must also plead misappropriation with specificity. *Id.* at 327.[17] At present, the record does not contain this level of specificity.

---

[17] Moreover, the appellate courts of this State have not adopted the inevitable disclosure doctrine. *See, e.g., Southeast Anesthesiology Consultants v. Charlotte-Mecklenburg Hosp. Auth.*, 2018 NCBC LEXIS 137, at *57-59 (N.C. Super. Ct. June 22, 2018) (observing that a federal district court's prediction that North Carolina would adopt and apply the inevitable

53. Even if evidence were presented to show that, after his employment with M.D. Claims ended, Bagley contacted one or more of the nine insurance companies that regularly do business with M.D. Claims, or one or more of the 2500 adjusters on M.D. Claims' Adjuster Roster, such activity, standing alone, does not make it reasonably likely that trade secret misappropriation has occurred. Contact information of this nature is publicly available. (Second Bagley Aff. ¶¶ 10-12.)

54. Further, even if not publicly available, contact information retained in the memory of a departing employee is typically not considered to be a trade secret. *See, e.g., Kadis v. Britt*, 224 N.C. 154, 162 (1944) ("By the majority view, the knowledge of a deliveryman, or other personal solicitor, of the names and addresses of his employer's customers, gained during the performance of his duties, is not a trade secret, partly because the information would be readily discoverable, and partly because of the court's reluctance to deprive the employee of his subjective knowledge acquired in the course of employment."); *Asheboro Paper & Packaging, Inc. v. Dickinson*, 599 F. Supp. 2d 664, 667 (M.D.N.C. 2009) ("Under North Carolina law, customer information maintained in the memory of a departing employee is not a trade secret.").

55. Bagley has worked in the insurance industry for nineteen years during which time he has served in management roles for several IAFs. (First Bagley Aff.

---

disclosure doctrine "ha[d] still not come to fruition" nearly twenty-two years later (citing *Merck & Co. v. Lyon*, 941 F. Supp. 1443, 1459 (M.D.N.C. 1996)). *See also Travenol Labs*, 30 N.C. App. at 693 (declining to award injunctive relief on the basis of inevitable disclosure and observing that "North Carolina courts have never enjoined an employee from working for a competitor merely to prevent disclosure of confidential information.").

¶¶ 4, 9.) He testified that he had established relationships with Mills Mehr and Fortegra prior to being employed by M.D. Claims. (First Bagley Aff. ¶¶ 15-20, 42-43.) Furthermore, throughout his nearly two-decade career, Bagley has also formed personal relationships with adjusters. (Second Bagley Aff. ¶ 15.) Therefore, Bagley's successful solicitation of business from Mills Mehr and Fortegra and his work with adjuster Chris Rankin is just as easily attributed to his own preexisting relationships as it is to the use of any information M.D. Claims considered to be a trade secret.

56. As for M.D. Claims' contention either that its Final Report Form is a trade secret, or that the manner in which it populates its form (through specifically developed software tokens) is a trade secret[18], based on the record currently before the Court, the Court is unconvinced that a trade secret exists. It is undisputed that the Final Report form itself is in the public domain and has not been kept secret, and there is conflicting evidence regarding the origin of the software tokens. In short, on this record the Court concludes that M.D. Claims has not carried its burden of establishing a reasonable likelihood of success with respect to its claim regarding its Final Report form.

57. Accordingly, the Court concludes that the record currently before it is insufficient to support entry of an injunction against the Defendants for misappropriation of trade secrets.

---

[18] Even after briefing and oral argument, it is unclear to the Court exactly what it is about M.D. Claims' forms that it contends is either confidential or constitutes a trade secret.

CONCLUSION

58. **WHEREFORE**, based on the foregoing **FINDINGS** and **CONCLUSIONS**, Plaintiff's Verified Second Amended Preliminary Injunction Motion, (ECF No. 12), is **DENIED**.

IT IS SO ORDERED, this 1st day of July, 2024.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases