

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: [PLAINTIFF]

Plaintiff

AND:

[DEFENDANTS]

Defendants

BEFORE: Koehnen J.

COUNSEL: *Tanya C. Walker, Matthew Thomson* for the plaintiff

HEARD: In writing

ENDORSEMENT

[1] The plaintiff seeks an ex parte, interim injunction as follows:

- (a) an interim and interlocutory injunction restraining the Defendants, including their servants, agents and anyone acting on their behalf, from:
  - (i) sending communications from, or otherwise using, email addresses associated with [the Plaintiff] or [Company X];
  - (ii) directly or indirectly soliciting, contacting, approaching, entering into agreements, or in any way seeking to do business with clients, potential clients, and businesses owned by the Plaintiff;
  - (iii) using, misusing, or disclosing any and all confidential, proprietary, and/or sensitive commercial information belonging to the Plaintiff; and

- (iv) publicly disparaging the Plaintiff or its affiliates, agents, servants, or Directors; for a period of ten days following the date of the Order.
  
- (b) the Defendant, to return all outstanding company property to the Plaintiff, including work laptop, login information and passwords for any email address associated with [the Plaintiff] or [Company X];
  
- (c) the Defendant, to provide consent forthwith to transfer possession to the Plaintiff of the unit described as [name], a storage company located at [address];
  
- (d) preservation and disclosure orders pursuant to Rules 45.01 and 30.02(1) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 (“*Rules of Civil Procedure*”), compelling the Defendants to ensure the disclosure and preservation of evidence;
  
- (e) *ex parte* production orders compelling the Defendants to produce, within seven days of service of the order, all records and correspondence in their possession that relates to the Plaintiff; and
  
- (f) in the alternative, an order pursuant to Rule 30.11 compelling the Defendants to produce to the Court for safekeeping any and all records and correspondence requested in the above order, pending the full and complete discovery of this action or until a further order of the Court is otherwise made.

[2] The only order I am prepared to grant on an ex party basis is an order requiring the defendants to preserve all documentation in their possession, power or control relating to the plaintiff, [Company X], and any activities in which the defendants have engaged that are competitive with or attempt to be competitive with those of the plaintiff. In addition, I order that the defendants produce to the plaintiff any such documents within seven days of the date of service of this order.

- [3] The request for relief arises out of the plaintiff's purchase of [Company X] from the defendant. The plaintiff says it paid [the defendant] total consideration of \$2.7 million for the purchase. Following the purchase, [the defendant] continued to work for the plaintiff. That relationship deteriorated and [the defedant] is now alleged to have started a competing business in alleged contravention of non solicitation, a non competition and confidentiality covenants with the plaintiff. The specific terms of the non solicitation and non competition covenants are not set out in the plaintiff's factum.
- [4] It appears from the plaintiff's materials that [the defendant] has solicited customers of the plaintiff's since leaving the plaintiff and has also transferred electronic files from the plaintiff to himself. Although he purported to return some of those electronic files to the plaintiff, only approximately half of those original files are actually accessible to the plaintiff.
- [5] It also appears that [the defendant] is conducting business from his old [Company X] e-mail address.
- [6] I can understand how notice of this motion may lead defendants to destroy documents if they were so inclined to do so. It is for that reason that I am prepared to issue the preservation and production orders. Those orders do nothing more than require the defendants to do what the rules of Civil Procedure would require them to do in any event, all be it in a shorter time frame.
- [7] I am not satisfied that the balance of the relief sought should be granted on an ex parte basis. I do not see how the plaintiff would suffer irreparable harm if they were forced to wait for that relief for a short period of time while an urgent motion on notice is prepared

and argued. Moreover, in my view, the balance of convenience on that issue favors the defendants. The defendant may have his own explanation for things and may have defences to the claims made. The loss to the plaintiff in the short interim period while the motion is being prepared and argued causes less harm to the plaintiff than would the granting of an injunction if it were not warranted.

[8] I will be available for a case conference to set a speedy timetable to argue the motion on notice after the defendants have been served. Either party can contact my assistant for a case conference by emailing him at tahir.rana@ontario.ca

**Date: September 13, 2024**

 Digitally signed  
by Markus  
Koehnen Date:  
2024.09.13  
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Koehnen J.