

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

SWISH WHITE RIVER, LTD.,)	
)	
Plaintiff,)	Civil Action No. 16-cv-0078-JDL
)	
v.)	
)	
MICHAEL BERNARD and)	
CHAD LEONARD,)	
)	
Defendants.)	

**ORDER ON PLAINTIFF’S EX PARTE MOTION FOR A TEMPORARY
RESTRAINING ORDER**

This matter comes before the Court on Swish White River, Ltd.’s (“Swish”) ex parte motion for a temporary restraining order (ECF No. 5). Swish filed its complaint on February 10, 2016, together with a motion for a temporary restraining order and preliminary injunction, as amended, supported by the declarations of Michael Buescher and Michael Lyford. ECF No. 1, ECF No. 3, ECF No. 5.

I. LEGAL ANALYSIS

In considering a request for a temporary restraining order, the court must determine: “(1) the movant’s likelihood of success on the merits; (2) whether and to what extent the movant would suffer irreparable harm if the request were rejected; (3) the balance of hardships between the parties; and (4) any effect that the injunction or its denial would have on the public interest.” *Díaz-Carrasquillo v. García-Padilla*, 750 F.3d 7, 10 (1st Cir. 2014) (citing *Corporate Techs., Inc. v. Harnett*, 731 F.3d 6, 9 (1st Cir. 2013)).

1. Likelihood of Success on the Merits

Having considered all of the materials submitted by Plaintiff, I conclude at this extremely preliminary stage that Swish has demonstrated a likelihood of success on the merits related to its breach of contract and trade secret claims. The requirements of the agreements Bernard and Leonard signed as a condition of their employment with Swish are straightforward (ECF Nos.1-2 & 1-3). Both agreed that that they would not use Swish's confidential information, and that for a period of twelve months after they ended their employment with Swish, they would not solicit Swish customers that they serviced while working for Swish. These Agreements are likely enforceable under Maine law. *See Securadyne Sys., LLC v. Green*, Docket No. 2:13-CV-387-DBH, 2014 WL 1334184, at *5-6 (D. Me. Apr. 2, 2014) (holding that similar non-solicitation/non-competition provisions were enforceable and reasonable as to scope and duration "when the employee during his term of employment has had substantial contact with his employer's customers and is thereby in a position to take for his own benefit the good will his employer paid him to help develop for the employer's business"). Bernard and Leonard both had access to Swish's confidential information, including customer and supplier information, Swish's pricing matrix, products purchased, sell prices to the customers, payment terms, and credit limits. Accordingly, Swish has presented substantial evidence establishing the likelihood of multiple violations of the Agreements.

2. Irreparable Harm

Swish will suffer irreparable harm absent a temporary restraining order. As alleged in Michael Lyford's declaration, Defendants are soliciting Swish's customers, and have recently targeted Swish's largest customer accounts. *See* Declaration of Michael Lyford, ECF No. 3-2, at ¶¶ 25-35. Swish has already lost good will and customers as a result of Defendants' solicitations, which, once lost, may be difficult to reestablish. *See Securadyne Sys.*, 2014 WL 1334184, at *8.

3. Balance of Hardships

The balance of hardships weighs in Swish's favor. Absent a temporary restraining order, the risk of irreparable harm to Swish's ongoing business operations in Maine is apparent. On the other hand, the granting of a temporary restraining order should do no more harm to Defendants than that which they have already bound themselves to in their respective Agreements.

4. Public Interest

The issuance of a temporary restraining order is in the public interest in order to prevent breaches of contracts, misappropriation of trade secrets, and damage to local businesses. The Agreements are narrowly tailored to prevent the Defendants from soliciting the customers that they serviced while employed with Swish. Here, the Agreements are likely enforceable and accordingly, the public interest has been accounted for. *Securadyne Sys.*, 2014 WL 1334184, at *8-9.

5. Security and Notice

Rule 65(c) of the Federal Rules of Civil Procedure provides that a temporary restraining order may only issue if the movant gives security for the damages that

might be sustained by the issuance of the order, but courts have discretion to determine that no security is warranted. *See Crowley v. Local No. 82, Furniture & Piano Moving, Furniture Store Drivers, Helpers, Warehousemen & Packers*, 679 F.2d 978, 1000 (1st Cir. 1982), *rev'd on other grounds*, 467 U.S. 526 (1984). Here, because the Defendants are only being enjoined for a short period of time and are only being required to do that which they already agreed by contract to do, I find that no bond is warranted.

In addition, because the declaration submitted by Swish clearly demonstrates the ongoing, immediate, and irreparable nature of the harm to Swish, it is appropriate for a temporary restraining order to issue before the Defendants can be heard in opposition.

II. CONCLUSION

For the reasons stated above, I hereby **ORDER** that:

Defendants Michael Bernard and Chad Leonard, and their agents, servants, employers, and any and all persons in active concert or participation with them who receive notice of such judgment, directly or otherwise, are temporarily enjoined from:

- A. Using any of Swish's trade secrets or confidential information; and
- B. Contacting, directly or indirectly, or soliciting, directly or indirectly, any work, sales, contracts, or other business from any business, individual, or entity that was a customer of Swish at the time of Defendants' departures from the company; and

C. Doing business with any of Swish's customers they serviced while employed with Swish.

This matter will be set for a hearing on Swish's request for a preliminary injunction on February 22, 2016 at 1:00 p.m.

This Order shall remain in effect until fourteen days after it is entered, unless extended by further order.

SO ORDERED.

Dated: February 11, 2016.

/s/ Jon D. Levy
U.S. DISTRICT JUDGE