

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2284CV02428-BLS1

HYANNIS PORT RESEARCH, INC.

vs.

CHRISTOPHER GONZALES

**MEMORANDUM OF DECISION AND ORDER ON
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff Hyannis Port Research, Inc. (“HPR”) commenced this action against a former employee, Defendant Christopher Gonzales (“Gonzales”), alleging that Gonzales misappropriated trade secrets in violation of G.L. c. 93, §§ 42-42G (the “Massachusetts Uniform Trade Secrets Act”) (Count I), and breached the parties’ Non-Disclosure, Inventions Assignment, and Non-Competition Agreement (“Agreement”) (Count II). HPR seeks damages and injunctive relief. HPR alleges that it employed Gonzales as a hardware engineer from January 2018 until his resignation on October 12, 2022. HPR further alleges that Gonzales resigned in order to work at Headlands Technologies LLC (“Headlands”). The case is before the court on HPR’s motion for a preliminary injunction seeking to enjoin Gonzales from disclosing HPR trade secrets and from working at Headlands.

Following a hearing on November 4, 2022, the court issued an order enjoining Gonzales from disclosing HPR trade secrets.¹

¹ With Gonzales’s assent, the court further ordered Gonzales to:

- (1) Permanently remove all references to HPR’s confidential information from his LinkedIn page and resume;
- (2) Destroy all copies of the PowerPoint presentation; and

The court also temporarily enjoined Gonzales from working at Headlands because the court had conflicting information as to whether Gonzales's work for Headlands would, in fact, violate the Agreement. Moreover, while Gonzales had agreed not to work on any products that would be competitive with HPR's product offerings, the court was unable to determine, based on the record before it, if this would suffice to protect HPR's interests. An evidentiary hearing was held on December 20 and 21, 2022 to resolve these issues. At the evidentiary hearing, the court heard the testimony of Anthony D. Amicangioli ("Amicangioli"), founder and CEO of HPR; Timothy C. Field ("Field"), Vice President of Engineering at HPR; Matthew Andresen ("Andresen"), CEO and co-owner of Headlands; and Gonzales.

BACKGROUND

Amicangioli founded HPR in 2010 after an errant electronic trade caused the Dow Jones to crash. Amicangioli invented high speed technology that could detect and prevent such errant trades. Today, HPR develops and sells a variety of capital market infrastructure technologies. These products are used primarily by brokerage firms, although HPR claims to have a small number of sales directly to trading firms. HPR is not in the business of trading stocks, nor does it develop products that assist traders in picking stocks to buy and sell. Technology similar to that which HPR develops and sells has been built by others, but HPR contends that its products are superior to anything else on the market.

When Gonzales was hired by HPR, he signed the Agreement, which contains non-disclosure and non-competition provisions. The parties agree that pursuant to the non-disclosure

(3) Abide by the terms of the Agreement, including refraining from accepting employment with any proprietary trading firm, stock exchange, broker, or other competitor until October 17, 2023, as well as maintaining the confidentiality of HPR's trade secrets and other confidential information indefinitely.

The court did not make any findings that these materials contained HPR trade secrets.

provision, Gonzales may not disclose any HPR confidential information, including trade secrets, and Gonzales does not oppose an order enforcing that provision.

The non-competition provision in the Agreement provides that while Gonzales is associated with HPR, and for a period of one year following the termination of his employment, he “shall not participate, directly or indirectly, on [his] own behalf or as owner, stockholder, partner, director, officer, manager, employee, agent or consultant in any ‘Competitive Business.’” A “Competitive Business” is defined as:

“[A]ny firm, corporation, business enterprise or other activity, which is or intends or plans to be directly or indirectly involved in any way with (i) providing real-time, high performance, low-latency risk management and market access products for all financial instruments in all markets, including without limitation equities, options, futures, foreign exchange and fixed income in all markets worldwide or (ii) any other products or services that at the time of such termination are, or are proposed to be, sold, licensed, leased or provided by [HPR], anywhere in the world.”

While employed as a hardware engineer at HPR, Gonzales worked on several products, including HPR market gateway products Riskbot and Omnibot. He acquired knowledge of HPR trade secrets relating to these products. Gonzales also worked on a few aspects of a new product, called Gen2, that HPR is developing; however, HPR witnesses made it clear that Gonzales was not the architect of any aspect of this new product.² Gonzales was given the role of “Invention Overview Patent Champion,” which allowed him to attend meetings in September 2022, where he purportedly gained confidential information about Gen2.³

² HPR describes this new product as a “matching engine technology” that promises to “create the stock exchange of the future.”

³ While HPR argues that Gonzales sought out this position to gain access to confidential information and then shortly thereafter resigned, there was no testimony offered at the hearing to support this accusation. Gonzales testified but was not asked to explain his conduct in this regard. The court, therefore, is not in a position to adopt HPR’s assertions.

Andresen testified that Headlands is a proprietary trading firm engaged in high frequency trading. It does not have any outside investors or customers. It does not sell products to any third parties. While Headlands uses technology similar to HPR products to support a small aspect of its trading, mostly its trading in the United States, Headlands has developed these technologies in-house. Andresen credibly testified that Headlands does not have any immediate intention to update those technologies, nor does it have a specific intent to have Gonzales work on those technologies. A small portion of Headlands' operations indirectly benefits from HPR's technology in that it trades through banks, such as Bank of America, that use HPR products. There is no evidence that Headlands intends to develop products for the banks to use that would replace HPR products. The vast majority of Headlands employees work on predicting stock prices. Andresen credibly testified that Headlands has no interest in HPR trade secrets,⁴ and does not consider HPR to be a competitor. In fact, the only thing he knew that HPR did was to develop and sell third party risk control products.

At HPR, Gonzales was making \$167,832 annually. He also received a bonus in the amount of \$96,750, for a total annual compensation of \$264,582. The salary Headlands offered Gonzales was a \$150,000 signing bonus, a \$250,000 base salary, and a \$250,000 minimum bonus. HPR claims that the fact that Headlands offered a substantially higher salary reflects Headlands' intent to pay Gonzales for more than his employment – namely, to get access to HPR's trade secrets. However, Andresen testified that the salary Headlands offered Gonzales was comparable to salaries for hardware engineers working for proprietary trading firms and was consistent with salaries paid to other similarly situated Headlands employees.

⁴ HPR received a form from Headlands asking HPR to list prior inventions, so that Headlands could better protect HPR intellectual property. HPR refused to complete and return that form.

In its motion papers, HPR claims that Gonzales violated the Agreement and the Massachusetts Uniform Trade Secrets Act by including trade secret information in his LinkedIn profile, resume, and an August 3rd PowerPoint presentation (the “PowerPoint Presentation”). Gonzales denies these allegations and claims he did not disclose HPR trade secrets to anyone. HPR conceded at the hearing that there is no evidence that Gonzales has revealed any HPR trade secrets, and Gonzales credibly testified that he will not disclose any HPR trade secrets in the course of his work at Headlands. Gonzales also acknowledged that HPR trade secrets must be kept confidential and that he will face serious consequences if he violates the Agreement in this regard.

DISCUSSION

HPR seeks to enjoin Gonzales from revealing its trade secrets. Gonzales does not oppose the entry of such an order. However, HPR further seeks an order preventing Gonzales from working for Headlands on the grounds that it would violate the non-compete provision of the Agreement and/or the Massachusetts Uniform Trade Secrets Act. G.L. c. 93, §§ 42-42G. Gonzales disputes HPR’s assertion that Headlands is a “Competitive Business” and opposes an order prohibiting him from working for the company.

“A preliminary injunction is an extraordinary remedy never awarded as of right,” see *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008), and “should not be granted unless the plaintiffs have made a clear showing of entitlement thereto.” *Student No. 9 v. Board of Educ.*, 440 Mass. 752, 762 (2004). Generally, “[t]he party seeking a preliminary injunction must show ‘(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party’s likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving

party in granting the injunction” (alterations omitted). *Garcia v. Department of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018) (quoting *Loyal Order of Moose, Inc., Yarmouth Lodge #2270 v. Board of Health of Yarmouth*, 439 Mass. 597, 601 (2003)).

Restrictive covenants contained in an employment contract “will be enforced if it is reasonable, based on all the circumstances.” *All Stainless, Inc. v. Colby*, 364 Mass. 773, 778 (1974). In deciding what is “reasonable,” the court must consider, among other things, the “reasonable needs of the former employer for protection against harmful conduct of the former employee[,]” the “reasonableness of the restraint imposed on the former employee[,]” and the geographic scope of the covenant and its duration, as well as the “public interest” as a whole. *Id.* Legitimate business interests include the protection of trade secrets and confidential information but does not include protection from ordinary competition, *see Boulanger v. Dunkin’ Donuts Inc.*, 442 Mass. 635, 641 (2004), and the former employer bears the burden of demonstrating the existence of a legitimate business interest. *New England Canteen Serv., Inc. v. Ashley*, 372 Mass. 671, 675 (1977).

Based on a careful consideration of the Verified Complaint, the parties’ memoranda and accompanying affidavits submitted in support and in opposition to this motion, and the testimony presented at the evidentiary hearing, the court finds that HPR has not met its burden of establishing that it is likely to succeed on the merits of its claim that Headlands is a competitive business within the meaning of the Agreement or that it will be irreparably harmed if Gonzales works for Headlands.

First, the language in the Agreement is less than clear. It suffers from several problems, not the least of which is that it is grammatically flawed. The only way the definition in the Agreement of a competitive business makes sense is if the court inserts the word “providing”

before the second clause so that it reads: “(ii) providing any other products or services that at the time of such termination are, or are proposed to be, sold, licensed, leased or provided by [HPR], anywhere in the world.”

The evidence does not establish that Headlands “provides” any of the products or services for which Gonzales possesses trade secrets. Headlands is a proprietary trading firm that has no customers and does no marketing. While it uses similar technology to support a small aspect of its trading, it has developed those technologies in-house, and there is no evidence that it has any immediate intention to revise or update those particular technologies or that Headlands intends to have Gonzales work on those technologies. The only aspect of Headlands’s business that benefits from HPR’s technology is the trading it does in the United States through banks, such as Bank of America, which use HPR products in connection with these trades. However, there is no evidence that Headlands intends to develop products for the banks to use that would replace HPR products or that it has any ability to impact the banks’ use of HPR products. Under these circumstances, the court cannot conclude that Headlands is a “Competitive Business” within the meaning of the Agreement.⁵

HPR next urges the court to prevent Gonzales from working for Headlands under its authority under the Massachusetts Uniform Trades Secrets Act, which provides, in pertinent part, that “[a]ctual or threatened misappropriation may be enjoined upon principles of equity, including but not limited to consideration of prior party conduct and circumstances of potential use, upon a showing that information qualifying as a trade secret has been or is threatened to be misappropriated” (emphasis added). G.L. c. 93, § 42A. In support of its argument, HPR alleges in its motion papers that, during the course of his job search, Gonzales “improperly disclosed and

⁵ The difference in salary structure between HPR, a technology developer, and Headlands, a proprietary trading firm, is further evidence that they are not competitive businesses.

traded on HPR's trade secrets in connection with his efforts to secure employment with an HPR competitor." However, based on the credible evidence presented at the evidentiary hearing, these allegations proved to be entirely false.⁶ Thus, an injunction under the Massachusetts Uniform Trade Secrets Act is not warranted based on any "actual" disclosures.

HPR further alleges in its motion papers that Gonzales threatened to disclose HPR trade secrets; however, there is no evidence to support this allegation either. Rather, Gonzales credibly testified that he is aware of his obligation to protect HPR trade secrets and that he has no intention of revealing them.

Nevertheless, HPR argues that Gonzales should be enjoined from working at Headlands because his work there would result in inevitable disclosure of HPR trade secrets, causing irreparable harm to HPR. *See Architext, Inc. v. Kikuchi*, 2005 WL 2864244 at *3 (Mass. Super. 2005). The disclosure of a trade secret is generally found to constitute irreparable harm. *TouchPoint Solutions, Inc. v. Eastman Kodak Co.*, 345 F. Supp. 2d 23, 32 (D. Mass. 2004). However, "[t]he mere fact that a person assumes a similar position at a competitor does not, without more, make it inevitable that he will use or disclose trade secret information so as to demonstrate irreparable harm" (alterations and quotations omitted). *CSC Consulting, Inc. v. Arnold*, 2001 WL 1174183 (Mass. Super. 2001) (quoting *Pepsico, Inc. v. Redmond, Jr.*, 54 F.3d 1262, 1269 (7th Cir. 1995)).

In Massachusetts, a court should enforce a covenant not to compete to the extent that it is necessary to protect a company's business interests, i.e., only to the extent the employee is in a position "where he can harm" the company by use of its trade secrets or confidential information.

⁶ These blatant misrepresentations in HPR's papers are concerning. While it would have been accurate for HPR to state that based on a variety of facts, including the content in Gonzales's LinkedIn profile, resume, and the PowerPoint presentation, it had concerns about whether trade secret information may have been disclosed, it opted to make assertions, the falsity of which the court was only able to discern after the evidentiary hearing.

See All Stainless, Inc., 364 Mass. at 778-779. Although HPR has established that Gonzales possesses HPR trade secrets that could be used if Gonzales were to work on similar products at Headlands, since Headlands does not provide, sell, or market these products, the risk of harm to HPR is minimal at best. There appears to be no risk that anything Gonzales might improperly reveal at Headlands, whether intentional or inadvertent, would impact HPR's standing in the marketplace. Moreover, since Andresen credibly testified that Headlands has no interest in HPR's trade secrets, and Gonzales credibly testified that he knows that he cannot reveal any HPR trade secrets while working at Headlands, the court is satisfied that HPR's legitimate interests in protecting its trade secrets can be accomplished without the broad relief it requests. To the extent that it is impossible to work on the same product without using HPR trade secret information, that risk can be assuaged by ordering Gonzales not to work on similar products, a restriction that Gonzales and Headlands do not oppose. Accordingly, HPR's motion for a preliminary injunction preventing Gonzales from working at Headlands is **DENIED**.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that Hyannis Port Research Inc.'s motion for a preliminary injunction preventing Gonzales from working at Headlands is **DENIED**.

However, it is further **ORDERED** that Gonzales is **ENJOINED** from:

- (1) Taking, receiving, concealing, assigning, transferring, leasing, pledging, copying, or otherwise using or disposing of a trade secret, regardless of value, see G.L. c. 93 § 42A, that is the property of Hyannis Port Research, Inc.; and
- (2) Working on any products at Headlands that would be competitive with Hyannis Port Research, Inc.'s product offerings.

Dated: December 23, 2022

Hélène Kazanjian
Justice of the Superior Court