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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-838

Filed 02 May 2023

Mecklenburg County, No. 20CVS15886

PRECISION MACHINE DESIGN, LLC, d/b/a FEEDER INNOVATIONS CORPORATION, Plaintiff,

v.

JBD HOLDINGS, INC., f/k/a FEEDER INNOVATIONS CORPORATION, and DOUGLAS BOWEN, Defendants.

Appeal by Defendants from Order entered 27 August 2021 by Judge Casey Viser and Judgment entered 1 July 2022 by Judge Jacqueline D. Grant in Mecklenburg County Superior Court. Heard in the Court of Appeals 8 February 2023.

Hull & Chandler, P.A., by A. Joseph Volta, Jordan Burke, and Elizabeth Vennum, for plaintiff-appellee.

Jordan Price Wall Gray Jones & Carlton, PLLC, by Lori P. Jones, for defendants-appellants.

HAMPSON, Judge.

Factual and Procedural Background

JBD Holdings, Inc., f/k/a Feeder Innovations Corporation (JBD Holdings) and Douglas Bowen (Bowen) (collectively, Defendants) appeal from: (1) an Order entered 27 August 2021 denying Defendants’ Motion for Partial Summary Judgment;¹ and (2) a Judgment entered 1 July 2022 granting an award in favor of Precision Machine Design, LLC, d/b/a Feeder Innovations Corporation (PMD). The Record before us—including the trial court’s unchallenged findings of fact—tends to reflect the following:

On 15 May 2020, JBD Holdings, as the seller, and PMD, as the purchaser, entered into an Agreement for Purchase and Sale of Business Assets (Purchase Agreement) of Feeder Innovations Corporation (Feeder Innovations). Trae Olsen (Olsen) is the sole owner and manager of PMD. JBD Holdings and PMD also executed a Non-Competition Agreement (Non-Compete Agreement) on 15 May 2020. The parties acknowledged in the Non-Compete Agreement that the goodwill of Feeder Innovations was a vital component of the purchase, and the goodwill would be substantially compromised if Bowen were to engage in any competing business within three years from the date of purchase. Pursuant to the terms of the Non-Compete Agreement, Bowen agreed that for a period of three years, he would not, in any manner, participate, own any interest, act as an agent, employee, manager, or

¹ In their briefing to this Court, Defendants do not make any argument regarding the trial court’s denial of the Motion for Partial Summary Judgment, and as such, we do not address the denial on appeal.

consultant in any business which provides services or goods of the type provided by PMD within three years prior to the purchase of Feeder Innovations. Bowen also agreed he would not solicit any business, customers, or employees of PMD for a period of five years from the date of the purchase of Feeder Innovations.

In conjunction with the Purchase Agreement and Non-Compete Agreement, Bowen and PMD also executed a Lease Agreement, where Bowen leased real property to PMD on a month-to-month tenancy with a sixty-day notice to terminate. Olsen was aware prior to purchasing Feeder Innovations that the company's 2020 projected work was on hold due to the COVID-19 pandemic. After PMD purchased Feeder Innovations, the sales and revenue continued to be impacted by COVID-19. When PMD purchased Feeder Innovations, Bowen was employed by Feeder Innovations. However, on 5 October 2020, Bowen was told his services were no longer needed. On 8 October 2020, PMD was given sixty days' notice of the termination of the lease. In accordance with the termination notice, PMD was required to vacate the premises on or about 7 December 2020, but PMD elected to vacate the premises on 15 November 2020. Olsen had trouble finding an appropriate size building to meet the needs of PMD. As such, Owen started selling the tools and equipment acquired from Feeder Innovations. Olsen started selling equipment as early as 14 October 2020 with the final equipment being sold on 9 November 2020.

Following Bowen's termination of employment, Bowen contacted clients to notify them he was no longer employed by PMD. Bowen also made follow-up calls

and sent text messages to some clients regarding more substantive matters. On 1 October 2020, PMD customer, Turnkey Technologies (Turnkey), advised Olsen Turnkey would not be doing any further business with PMD. Bowen provided Turnkey with the contact information of Bill Remmel (Remmel), a former employee of Feeder Innovations,² but Turnkey did not elect to use Remmel's services. On 5 October 2020, Bowen exchanged several emails with PMD customer Universal Instruments (Universal). On 2 November 2020, Bowen sent an email to another PMD customer Hitachi Metals (Hitachi), advising the company of his new email address and the new name of his company, JBD Holdings. However, on 10 November 2020, Bowen also advised Hitachi he signed a Non-Compete Agreement and Hitachi should contact Olsen regarding an issue Hitachi was having with one of its feeder bowls. Bowen also exchanged text messages with Aerojet, another PMD customer, providing advice on how to fix a problem Aerojet was having with one of its feeder bowls. Bowen did not receive any compensation for the advice he provided to Aerojet because feeder bowl fabricators do not charge for this type of work in the feeder bowl industry.

After terminating the services of Bowen, Olsen was unable to complete a project order for the Schaeffler Group (Schaeffler); Olsen agreed to refund the initial payment made by Schaeffler, and Schaeffler agreed to "cancel the order for now." Schaeffler never contacted Olsen again to complete the project; instead, Schaeffler

² Remmel was an independent contractor for Feeder Innovations. The last day Remmel worked at Feeder Innovations was 2 October 2020.

contacted Bowen. Bowen connected Schaeffler with Rimmel so Rimmel could complete the work. On 9 November 2020, Bowen submitted, via JBD Holdings, a new quote to Schaeffler for the project. Schaeffler hired Rimmel to fabricate the vibratory feeding system for the RTSM Housing, but Rimmel was unable to complete the project. Schaeffler paid JBD Holdings \$7,800.00 for the work that was completed, and JBD Holdings then paid Rimmel's company, Feeder Tech, the \$7,800.00. Bowen reached out to various vendors to get the parts Rimmel needed for the Schaeffler project.

On 2 December 2020, PMD filed a Complaint against Defendants, alleging (1) Breach of the Purchase Agreement; (2) Breach of the Lease Agreement; (3) Breach of the Non-Compete Agreement; (4) Tortious Interference with a Contract; and (5) Conversion. Defendants filed a Motion to Dismiss, Affirmative Defenses, Answer, and Counterclaim on 31 December 2020. On 9 July 2021, Defendants filed a Motion for Partial Summary Judgment, but the trial court entered an Order denying the Motion on 27 August 2021. The matter came on for a bench trial on 21 March 2022. At the close of the evidence, PMD dismissed its Tortious Interference with a Contract claim. On 1 July 2022, the trial court entered its final Judgment in favor of Plaintiff on the Breach of the Non-Compete Agreement, concluding in relevant part:³

³ The trial court ruled in favor of Defendants on Plaintiff's claims for Breach of the Purchase Agreement, Breach of the Lease Agreement, and Conversion. Plaintiff has not cross-appealed the trial court's rulings on these claims.

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1. Bowen breached the terms of the Non-Competition Agreement by acting as an agent on behalf of Feeder Tech in facilitating [the work on the project] for the Schaeffler Group, within the restrictive time period.

2. Bowen breached the terms of the Non-Competition Agreement by acting as an agent on behalf of Feeder Tech and providing [PMD]'s customers with Remmel's contact information for the purpose of fabricating or repairing feeder bowl systems.

3. The non-compete and non-solicitation of customers was a component of the goodwill of Feeder Innovations.

. . . .

11. To the extent [PMD]'s goodwill was negatively impacted, it was impacted in part by Olsen's interactions with customers and inability to complete pending orders after he terminated Bowen's services and sold Feeder Innovations' tools.

12. Since the parties agreed at the time of the Plaintiff's purchase of the assets of Feeder Innovations that Bowen's agreement not to compete or solicit customers was a component of Feeder Innovations' goodwill, and Bowen breached the terms of the Non-Competition Agreement, Plaintiff is entitled to recover a portion of the amount paid for the goodwill of the company.

13. Plaintiff is entitled to recover half the amount paid for the goodwill of Feeder Innovations for Bowen's breach of the Non-Competition Agreement.

The trial court also ordered:

The Defendant Bowen breached the terms of the Non-Competition Agreement, thereby impacting the goodwill of the company. Therefore, Judgment is entered against the Defendants and [PMD] shall have and recover from the Defendants on the Breach of Contract claim for breach of the Non-Competition Agreement the sum of Sixty-One Thousand, Seven Hundred Sixty-Eight and 94/100 (\$61,768.94), together with interest thereon at the legal rate of eight percent (8%) per annum

from the date the action was commenced until the judgment is satisfied.

Defendants timely filed written Notice of Appeal on 29 July 2022.

Issues

The dispositive issues on appeal are whether: (I) the trial court erred in determining the Non-Compete Agreement was enforceable; (II) the trial court's Findings of Fact support its Conclusion Defendants breached the Non-Compete Agreement; and (III) the trial court's Conclusions of Law support its award of damages.

Analysis

Appeal lies before this Court from any final judgment of a district court in a civil action. N.C. Gen. Stat. § 7A-27(b)(2) (2021). In a bench trial, “[t]he trial judge becomes both judge and juror, and it is his duty to consider and weigh all the competent evidence before him.” *Knutton v. Cofield*, 273 N.C. 355, 359, 160 S.E.2d 29, 33 (1968). On appeal, this Court considers whether the trial court's findings of fact are supported by competent evidence. *Hollerbach v. Hollerbach*, 90 N.C. App. 384, 387, 368 S.E.2d 413, 415 (1988). “If the court's factual findings are supported by competent evidence, they are conclusive on appeal, even though there is evidence to the contrary.” *Lagies v. Myers*, 142 N.C. App. 239, 246, 542 S.E.2d 336, 341 (2001). “In contrast, the trial court's conclusions of law are reviewable *de novo*.” *Id.* at 247, 542 S.E.2d at 341 (quotation marks and citations omitted). “Furthermore, in

examining the conclusions of law, we must determine whether they are supported by the court's factual findings." *Id.* (citation omitted).

I. Enforceability of the Non-Compete Agreement

As an initial matter, Defendants claim they take no issue with the trial court's Findings of Fact. Indeed, Defendants have not included the trial transcript or narration of the evidence as part of the Record on Appeal. Where "[t]he record does not contain the oral testimony; therefore, the trial court's findings of fact are presumed to be supported by competent evidence." *Fellows v. Fellows*, 27 N.C. App. 407, 408, 219 S.E.2d 285, 286 (1975) (citing *Christie v. Powell*, 15 N.C. App. 508, 190 S.E.2d 367 (1972), *cert. denied*, 281 N.C. 756, 191 S.E.2d 361)); *see also Dolbow v. Holland Industrial*, 64 N.C. App. 695, 696, 308 S.E.2d 335, 336 (1983), *disc. rev. denied*, 310 N.C. 308, 312 S.E.2d 651 (1984) ("We are hampered in our review of defendants' first contention, however, because defendants have included no transcript or narration of the evidence upon which this Court can fully review [the alleged error]. The burden is on an appealing party to show, by presenting a full and complete record, that the record is lacking in evidence to support the [trial court's] findings of fact."). Thus, here, we presume the trial court's Findings are supported by competent evidence, and those findings are binding on appeal. *Fellows*, 27 N.C. App. at 408, 219 S.E.2d at 286.

Defendants contend the trial court erred by enforcing the Non-Compete Agreement. Specifically, Defendants contend PMD “had no legitimate business interest to be protected by the Non-Compete Agreement.” We disagree.

In the context of business purchase agreements, to be enforceable, covenants not to compete “must be (1) in writing, (2) based upon valuable consideration, (3) reasonably necessary for the protection of legitimate business interests, (4) reasonable as to time and territory, and (5) not otherwise against public policy.” *Kennedy v. Kennedy*, 160 N.C. App. 1, 9, 584 S.E.2d 328, 333 (2003) (citing *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 302 S.E.2d 754 (1983)). Here, the only requirement at issue is whether the Non-Compete Agreement was designed to protect a legitimate business interest. This Court has long held that “[t]he protection of customer relations against misappropriation by a departing employee is well recognized as a legitimate business interest of an employer.” *Farr Assocs. v. Baskin*, 138 N.C. App. 276, 280, 530 S.E.2d 878, 881 (2000) (citation omitted).

In the case *sub judice*, Defendants contend PMD had no legitimate business interest to be protected by the Non-Compete Agreement solely because PMD ceased operations. However, the trial court did not make a Finding that PMD had, in fact, ceased operations. We note “[t]he trial court need not recite in its order every evidentiary fact presented at hearing, but only must make specific findings on the ultimate facts established by the evidence . . . that are determinative of the questions raised in the action and essential to support the conclusions of law reached.” *Mitchell*

v. Lowery, 90 N.C. App. 177, 184, 368 S.E.2d 7, 11 (1988) (citing *Quick v. Quick*, 305 N.C. 446, 452, 290 S.E.2d 653, 658 (1982)). Moreover, “[t]he trial court must itself determine what pertinent facts are actually established by the evidence before it, and it is not for an appellate court to determine *de novo* the weight and credibility to be given to evidence disclosed by the record on appeal.” *Coble v. Coble*, 300 N.C. 708, 712-13, 268 S.E.2d 185, 189 (1980) (citations omitted).

Here, the trial court made extensive Findings detailing the parties’ dealings and actions. These Findings are deemed supported by competent evidence and are binding on appeal. It is true, as the trial court found, Plaintiff was unable to find a suitable new location for the business and, instead, began selling off equipment between October and November 2020. However, it is also true, as found by the trial court, during this timeframe, Bowen undertook the actions deemed to be in breach of the Non-Compete Agreement, including providing Remmel’s contact information to prospective customers. Specifically, after terminating the services of Bowen, Olsen was unable to complete a project order for Schaeffler; Olsen agreed to refund the initial payment made by Schaeffler, and Schaeffler agreed to “cancel the order for now.” Schaeffler never contacted Olsen again to complete the project; instead, Schaeffler contacted Bowen, who, in turn, connected Schaeffler with Remmel to perform the work. On 9 November 2020, Bowen submitted, via JBD Holdings, a new quote to Schaeffler for the project. Remmel was hired to perform the work, and although the project was ultimately never completed, Schaeffler paid JBD Holdings

\$7,800.00 for the work that was completed, which was then paid to Remmel. Further, Bowen reached out to various vendors to get the parts Remmel needed for the Schaeffler project.

Based on these Findings, the trial court did not err by failing to conclude the Non-Compete Agreement was not enforceable. To the contrary, the facts as found by the trial court establish at the time of the alleged breach of the Non-Compete, Plaintiff still had legitimate business interests to protect by enforcement of the Non-Compete Agreement. Thus, the trial court did not err by enforcing the Non-Compete Agreement.

II. Breach of the Non-Compete Agreement

Next, Defendants contend the trial court erred in concluding Defendants actions constituted a breach of the Non-Compete Agreement. We, again, disagree.

“Generally, when deciding whether a party has breached a restrictive covenant ancillary to the sale of a business, courts will interpret the covenant in the light of the purpose of the parties to provide against competition by the covenantor and hold that in order to carry out such purpose, the parties must comply not only with the letter of the contract but its spirit as well.” *Bicycle Transit Auth., Inc.*, 314 N.C. 219, 228, 333 S.E.2d 299, 305 (1985).

Here, the Non-Compete Agreement provided for a period of three years, Bowen would not “in any manner, participate, own any interest, act as an agent, employee, manager or consultant in any business which provides services or goods of the type

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provided by Feeder Innovations” and “would not solicit any business, customers, or employees of PMD” for a period of five years from the date of the purchase of Feeder Innovations. The trial court’s Conclusions Defendants breached the Non-Compete Agreement are, again, supported by its Findings, as evidenced in the express language of the Conclusions:

1. Bowen breached the terms of the Non-Competition Agreement by acting as an agent on behalf of Feeder Tech in facilitating [the work on the project] for the Schaeffler Group, within the restrictive time period.
2. Bowen breached the terms of the Non-Competition Agreement by acting as an agent on behalf of Feeder Tech and providing [PMD]’s customers with Remmel’s contact information for the purpose of fabricating or requiring feeder bowl systems.

In support of these Conclusions, the trial court made the following Findings:

138. Bowen provided [Turnkey] with Remmel’s contact information, but Turnkey has not elected to use Remmel’s services.

. . . .

160. [Schaeffler] contacted Bowen after Olsen advised him that [PMD] could not complete Schaeffler’s Order. Bowen connected [Schaeffler] with Remmel so Remmel could do the work.

161. Bowen submitted, via JBD Holdings, a new quote to Schaeffler for the *vibratory parts feeding system for the RSTM Housings* on November 9, 2020.

162. Schaeffler hired Remmel to fabricate *the vibratory feeding system for the RSTM Housing*, but Remmel was unable to complete the project.

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163. Schaeffler paid JBD Holdings \$7,800.00 for the work Remmel did on the vibratory feeding system. JBD Holdings then paid Remmel's company, Feeder Tech, the \$7,800.00.

164. Bowen reached out to various vendors . . . in order to get the parts Remmel would need to do the Schaeffler project.

Thus, the trial court's Findings, which again, are binding on appeal, support its Conclusions Defendants breached the Non-Compete Agreement. Therefore, the trial court did not err in concluding Defendants breached the terms of the Non-Compete Agreement, thereby impacting the goodwill of the company.⁴ Consequently, we affirm the trial court's Judgment with respect to its Conclusions of Law.

III. Award of Damages

Finally, Defendants contend the trial court had no basis for its award of damages. We disagree.

With respect to the impact of PMD's goodwill, the trial court concluded:

3. The non-compete and non-solicitation of customers was a component of the goodwill of Feeder Innovations.

. . . .

10. A company's "Good will is a property right which consists of intangibles associated with favorable community relations and identification of the business name." *Budd Tire Corp. v. Pierce Tire Co.*, 90 N.C. App. 684, 688, 370 S.E.2d 267, 270 (1988).

11. To the extent Plaintiff's goodwill was negatively impacted, it was impacted in part by Olsen's interactions with customers and

⁴ Defendants cite no authority to support their position their actions did not constitute a breach of the Non-Compete Agreement or that their breach did not have any negative impact on the goodwill of Plaintiff's business.

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inability to complete pending orders after he terminated Bowen's services and sold Feeder Innovations' tools.

12. Since the parties agreed at the time of the Plaintiff's purchase of the assets of Feeder Innovations that Bowen's agreement not to compete or solicit customers was a component of Feeder Innovations' goodwill, and Bowen breached the terms of the Non-Competition Agreement, [PMD] is entitled to recover a portion of the amount paid for the goodwill of the company.

13. [PMD] is entitled to recover half the amount paid for the goodwill of Feeder Innovations for Bowen's breach of the Non-Competition Agreement.

Based on these Conclusions, the trial court awarded PMD \$61,768.94 in damages.

These Conclusions, and the award of damages, are supported by the binding Findings. Indeed, the trial court found:

The parties acknowledged in the Non-Competition Agreement that the goodwill of Feeder Innovations was a vital component of the purchase of Feeder Innovations, and that the goodwill would be substantially compromised if Bowen were to engage in any competing business within three (3) years from the date of the purchase of the business.

Thus, the trial court properly concluded Defendants negatively impacted the goodwill of Feeder Innovations. Therefore, the trial court did not err in awarding damages to PMD. Consequently, we affirm the trial court's Judgment.

Conclusion

Accordingly, for the foregoing reasons, we affirm the trial court's 1 July 2022 Judgment.

AFFIRMED.

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Judges MURPHY and STADING concur.

Report per Rule 30(e).