

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Bettcher Industries, Inc.,

Case No. 3:18 CV 735

Plaintiff,

O R D E R

-vs-

JUDGE JACK ZOUHARY

Cutting Edge Services Limited,

Defendant.

INTRODUCTION

Plaintiff Bettcher Industries seeks a preliminary injunction and temporary restraining order prohibiting Defendant Cutting Edge Services from competing with Bettcher, from using Bettcher's confidential information, and from refusing to provide certain customer and sales information. Cutting Edge opposes, arguing this Court lacks jurisdiction to decide the Motion, and preliminary equitable relief is not justified. The Motion is fully briefed (Docs. 2, 14, 16), and this Court held a Record Hearing. (Court Reporter: Stacey Kiprotich.)

DISCUSSION

Jurisdiction

As an initial matter, this Court concludes it has personal jurisdiction over Cutting Edge for purposes of the temporary relief requested in the Motion. By agreeing to arbitrate in Ohio, Cutting Edge consented to personal jurisdiction by Ohio courts for purposes of the "interpretation, scope and enforcement of the arbitration agreement." *Reed Elsevier, Inc. v. Crockett*, 2011 WL 13159961, at

*4 (S.D. Ohio 2011). *See also Ford Dealer Comput. Servs., Inc. v. Fullerton Motors, LLC*, 42 F. App'x 770, 771 (6th Cir. 2002) (“Mr. Fullerton consented to personal jurisdiction by Michigan courts when he signed the contract agreeing to arbitrate any dispute in Michigan.”).

In the context of subject matter jurisdiction, other courts have recognized “that a grant of preliminary injunctive relief pending arbitration is particularly appropriate . . . where the withholding of injunctive relief would render the process of arbitration meaningless or a hollow formality because an arbitral award, at the time it was render, could not return the parties substantially to the status quo ante.” *Performance Unlimited, Inc. v. Questar Publishers, Inc.*, 52 F.3d 1373, 1380 (6th Cir. 1995) (quotations omitted). Further, this Court notes that the International Chamber of Commerce Arbitration Rules allow the parties to “apply to any competent judicial authority for interim or conservatory measures.” ICC Rule 28(2).

Even without consent, this Court finds that Cutting Edge has sufficient minimum contacts with Ohio to justify the exercise of personal jurisdiction. While this Court finds it difficult to reconcile the Sixth Circuit decision in *Calphalon Corp. v. Rowlette*, 228 F.3d 718 (6th Cir. 2000), with the Supreme Court ruling in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), a few distinctions are noteworthy. First, as other district courts have observed, *Calphalon* involved a request for declaratory judgment, not damages caused in the forum state. *See, e.g., Frankenmuth Mut. Ins. Co. v. Appalachian Underwriters, Inc.*, 2004 WL 1406121, at *9 (E.D. Mich. 2004). And second, Rowlette “never remitted payment for any goods to Calphalon’s headquarters, nor did he ‘reach out beyond’ Minnesota for the purpose of deriving the benefit of affiliating with a ‘nationwide organization,’ as did John Rudzewicz in the *Burger King* case.” *Id.*

In this case, Cutting Edge derived the benefit of associating with Bettcher as an exclusive distributor for twenty years. Cutting Edge submitted its purchase orders to Bettcher in Ohio (Doc.

17 at 2). Cutting Edge also sent employees and executives to Ohio for training, plant tours, and strategic discussions (*id.*). And Bettcher claims that -- absent the preliminary injunction -- it will suffer monetary damages in Ohio.

In sum, this Court concludes the requirements for personal jurisdiction are satisfied, both to preserve the bargained-for benefit of arbitration, and based on Cutting Edge's contacts with the forum state.

Merits

In deciding whether to grant a temporary restraining order or preliminary injunction, this Court considers (1) the likelihood of success on the merits; (2) whether an injunction will prevent irreparable harm; (3) whether an injunction will cause substantial harm to others; and (4) whether the public interest would be served by an injunction. *McPherson v. Mich. High Sch. Athletic Ass'n*, 119 F.3d 453, 459 (6th Cir. 1997) (en banc). These factors are not prerequisites, and no one factor is dispositive. *Id.* See also Federal Civil Rule 65.

Bettcher seeks to compel Cutting Edge to disclose certain additional customer and pricing information and to prohibit Cutting Edge from using Bettcher's confidential information or competing with Bettcher for two years. Based on the authorities cited in the briefs, this Court finds Bettcher has some likelihood of success on its competition claim and could suffer irreparable harm to its reputation and customer relationships absent preliminary relief. This Court further finds that enforcing the noncompetition agreement -- at least pending review by the arbitrator -- would not substantially harm Cutting Edge, as the contract already provides that Cutting Edge may not compete with Bettcher for two years following termination of the distribution agreement. Whether or not that provision is enforceable is a matter for arbitration. Thus, maintaining the status quo will also promote the public interest in enforcing arbitration agreements.

However, in light of the information that the parties agree has already been provided, this Court concludes Bettcher would not be irreparably harmed absent the additional disclosures it seeks. Whether that information is required by the contract is more properly decided as part of the pending arbitration, and this Court declines to compel Cutting Edge to take additional, affirmative action at this stage.

This Court emphasizes the limited nature of the relief granted, both in scope and timeframe. This Order merely maintains the status quo pending review of interim relief by the arbitrator under ICC Rule 28(2). The parties may then seek continued interim or other relief from the arbitrator, as they deem necessary. Given these limitations, this Court declines to impose a bond.

CONCLUSION

The Motion for Preliminary Injunction and Temporary Restraining Order (Doc. 2) is granted in part and denied in part. This Court will enforce the status quo, including the noncompetition clause in paragraph 16 of the Distribution Agreement (Doc. 2-4 at 10–11), pending review of interim relief by the arbitrator or arbitration panel. Counsel shall advise this Court once that occurs, and this Court retains jurisdiction to enforce this Order until that time.

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

May 10, 2018