

NOTIFY

NOTICE IN HAND
01.10.22
T. & W.

12

COMMONWEALTH OF MASSACHUSETTS

(LAT)

SUFFOLK, ss.

SUPERIOR COURT
NO. 22-0002-C

BARTON & ASSOCIATES, INC.

v.

**CAMDEN GREEN, CURA SEARCH LLC and
CURA RECRUITING, INC.**

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

The Court has reviewed the parties' submissions in this case and conducted a non-evidentiary hearing on January 6, 2022. It is the conclusion of the Court that Plaintiff Barton & Associates, Inc. ("Barton") has demonstrated a substantial likelihood of success on the merits of its claims against Defendant Camden Green and any corporate entities (including, without limitation, Cura Search LLC and Cura Recruiting, Inc.) through which Green may be conducting business (collectively, "Green"). It is the further conclusion of the Court that continued violations of the no solicitation/no hire provisions of these parties' Confidentiality, Restrictive Covenants and Proprietary Rights Agreement (the "Agreement"), unconstrained, threaten Barton with severe and irreparable harm that outweighs any countervailing harm to Green that might result from the issuance of preliminary equitable relief.

notice sent
01.11.22
CRO
T+WL
AAG
RTR
Lup
mo

Accordingly, the Court hereby **ALLOWS** the Plaintiff's Motion for Preliminary Injunction, as follows:

1. Green shall be restrained and preliminarily enjoined from soliciting, hiring, recruiting, and/or otherwise inducing or attempting to induce any employee of Barton to terminate their employment with Barton. For purposes of this restriction, an “employee” of Barton shall be deemed to include any person so employed within the preceding six months.
2. The foregoing restrictions shall remain in effect for a period terminating on March 22, 2022.
3. For good cause shown, and in the exercise of the Court’s discretion under Mass. R. Civ. P. 65(c), Barton shall not be required to post security in connection with the issuance of this preliminary injunction.

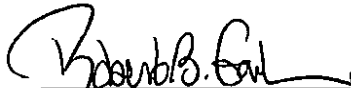
For the avoidance of doubt, the Court has determined that it will *not* enjoin Green’s continued employment of Rachel Koehler (“Koehler”), and will *not* treat the hiring of Koehler as the sort of violation that implicates the tolling provisions of Section 8 of the parties’ Agreement. As a textual matter, the “hiring” of Koehler in violation of Section 3(b) of the Agreement – the only contract provision Green is alleged to have breached¹ – is not continuing in nature. The hiring violation was complete upon its occurrence. Further, enjoining the non-competitive “employment” of Koehler via injunctive order enforces a restriction to which the parties did not actually agree in Section 3(b). More troubling still, such an order would visit the greatest harm (job loss) on a non-party who has neither violated any contract, committed any tort, misappropriated any confidential or proprietary information, nor threatened Barton with

¹ The evidence is undisputed that Green did not recruit, solicit or otherwise induce Koehler to terminate her employment at Barton. Koehler pursued job opportunities with Green and others at her own initiative.

any manner of business harm. No purpose in logic or law would be served by collaterally damaging an innocent in such a manner.

The Court believes that, taking all circumstances into fair consideration, the terms of the preliminary injunction issued today provide Barton more than adequate protection going forward. Green is now prohibited by order of the Court from hiring Barton employees through the one-year period of his agreed restrictive covenant.² Barton may likewise pursue its economic claims against Green to conclusion, and recover remedies for demonstrated breach under both the Agreement and Stock Appreciation Rights Agreement for any damages and attorney's fees it proves. Finally, and with hope, the parties may yet resolve this litigation by a private settlement agreement that resolves all outstanding issues between and among them and Koehler.

SO ORDERED.



Robert B. Gordon
Justice of the Superior Court

Dated: January 6, 2022

² Although Green might be said to be benefitting in this instance from his breach of contract, the continued retention of Koehler is in no sense visiting *any* kind of harm (irreparable or otherwise) on Barton. Koehler was, without prompting or solicitation, seeking new job opportunities with multiple employers at or near the time of her hire by Green; and Green thus cannot be considered the procuring cause of her separation from Barton. The Court discerns no erosion of Barton's good will with its personnel under the circumstances of this case, and nothing that would be restored by the exercise of its equitable power to remove Koehler from her non-competitive (and harmless) employment with Green.