IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

ADAM ADELMANN,

Plaintiff, Case No. 200902535

vs.

CAPSTONE NUTRITION, LLC,

Respondent.

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RULING

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BEFORE THE HONORABLE WILLIAM K. KENDALL

JULY 13, 2020

APPEARANCES:

FOR THE PLAINTIFF:

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SALT LAKE COUNTY, UTAH; JULY 13, 2020

THE COURT CLERK: Good afternoon. This is Carmella with Judge Kendall's office. We currently have Lauren Shurman on the line. We have Patrick. I apologize, Patrick. How did you pronounce your last name?

MR. LUCIGNANI: No problem. Lucignani.

THE COURT CLERK: Okay. Thank you. And Darren Reid on the line so far.

THE COURT: Okay. Thank you.

THE COURT CLERK: Uh-huh.

MS. SOKOLOWSKI: Hi, Lauren.

MS. SHURMAN: Hi. I think--is this all from our side?

MS. SOKOLOWSKI: And Patrick. I'm not sure if Lukas is going to join. I think Reed is going to join.

MS. SHURMAN: Okay.

MR. BRAITHWAITE: This is Reed Braithwaite with Capstone Nutrition.

MS. SOKOLOWSKI: Hey, Reed.

THE COURT: This is Judge Kendall.

MS. SOKOLOWSKI: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. SHURMAN: Good afternoon.

THE COURT: Do we have all the parties?

MR. LUCIGNANI: Good afternoon, Your Honor.

THE COURT: Good afternoon. Do we have all of the

parties on the telephone right now?

MR. LUCIGNANI: I believe so.

MS. SOKOLOWSKI: All on behalf of--

UNIDENTIFIED MALE: (Inaudible).

MS. SOKOLOWSKI: Yeah, we have all for the defendant, Your Honor.

THE COURT: All right. So for the record, this is case number 200902535, Adelmann v. Capstone Nutrition. For our record, may I have appearances, please.

MR. REID: Darren Reid on behalf of plaintiff.

MS. SOKOLOWSKI: Your Honor, on behalf of defendant, Joe Sokolowski and Lauren Shurman.

THE COURT: All right. And do we anticipate anyone else joining us?

UNIDENTIFIED MALE: Your Honor, (inaudible) is here as well on behalf of defendant.

THE COURT: All right. Thank you. Do we have--so, Mr. Reid, do you anticipate anyone else on behalf of plaintiffs today?

MR. LUCIGNANI: Sorry, Your Honor, this is Patrick Lucignani from Niedweske Barber for the plaintiff. My call just dropped but I'm back on. I apologize.

THE COURT: All right. No worries. It's always fun to deal with our new technological challenges to get everything done these days.

MR. LUCIGNANI: Yep.

THE COURT: All right. So we are on the record. I'm prepared to issue my ruling in this matter. In this matter, the plaintiff filed a motion for summary judgment. Defendant filed opposition, there was a reply. I did have a motion hearing on the 1st of July where I heard arguments with regard to the motion for summary judgment and then I set this hearing today to rule on that motion. And I will rule as follows, I will grant the motion for summary judgment.

With regard to the reasoning behind that, under the Robins v. Finlay case, covenants not to compete are enforceable if carefully drawn to protect only the legitimate interests of the employer. The enforceability of these covenants depend upon a number of factors including the reasonableness of the geographical, durational and business relationships, nature of employee's duties and nature of the interest which the employer seeks to protect such as trade secrets, good will of the business and an extra investment in training or education of the employee. In this case, I do find as a matter of law and based upon the plain reading of the language of the noncompete contract that the restrictive covenants are not carefully drafted and that they are overly restrictive and overly broad.

With regard to the factors, good will, pricing tools and manufacturing processes, I don't find that good will plays a role in this case. Having looked at the Rose Park Pharmacy,

Dixon and Costco cases, this was a short-term employment of Mr. Adelmann with Capstone. He's returning to his prior employment. And while there is a claim that there's some trade secret and manufacturing, I don't find any evidence to support that. Lorenza, to which Adelmann seeks to return, does not engage in these activities. The businesses are not competitors. And I find that it's theoretical at this point that he retained this pricing information. Again, these are two businesses that are not competitors. And actually, they're engaged in a partnership. They do have contracts in place and they do cooperate within the business realm.

I do find that there is harm to Adelmann and that this case does contrast with the Dixon case. In Dixon, the party there went back to a direct competitor in the cable business. This is not what happened here or what Mr. Adelmann seeks to do. And so I don't find that there is sufficient or competent evidence to support that Adelmann possesses any particular trade secret information regarding manufacturing. I don't find that there was any extraordinary investment in Adelmann, nor do I find that any of his duties were special, unique or extraordinary.

With regard to section 9 and 11, they are overbroad business restrictions, particularly when they are sought to be applied to any business in the industry. Again, Capstone does not particular in the same business as Lorenza.

With regard to the time restrictions as well, in section 6 and 9, they are proposed with greater than a year, and those are unenforceable. Again, I do find as a matter of law that the restrictive covenants of a noncompete are overbroad, that they don't--and I find that they don't serve legitimate interests and needs, similar to the reasoning in Franks and Hall cases.

Again, Lorenza and Capstone are not direct competitors. And so I do find as a matter of law that there is no genuine issue of material fact with regard to interpreting the plain language of the contract and, therefore, I do grant the motion for summary judgment. I do find that the restrictions are overbroad and unenforceable and I declare them to be void and unenforceable with respect to Adelmann returning to his employment at Lorenza.

That is my ruling on the motion for summary judgment. My proposal would be to have my oral ruling stand as the order of the Court unless one or the other of the parties would request that someone prepare a written ruling that encompasses the reasoning of my ruling here today. Does either side wish to have that done or is the oral ruling sufficient to stand as the order of the court?

MS. SOKOLOWSKI: Your Honor, Joe Sokolowski, on behalf of defendant. Has your oral ruling been recorded? In other words, is--

THE COURT: It has been.

MS. SOKOLOWSKI: --(inaudible) recorded record. And if we subsequently wish to have that reduced to writing, we could make that request?

THE COURT: Yes, sir. Yeah. So we are on the record. It is recorded. And so I would simply put a minute entry into the docket indicating that the Court's oral ruling was on the record and that would stand as the order of the Court.

MS. SOKOLOWSKI: Can I--

MR. REID: That works for the plaintiff, Your Honor.

MS. SOKOLOWSKI: Can I discuss that matter with our clients and let the Court know after this call, or do you require our decision right now?

THE COURT: I would give you time to consult with your clients. That's fine.

MS. SOKOLOWSKI: Okay.

THE COURT: So if you wish to do that. And then if you decide that you would prefer to have a written ruling, I would request that you contact plaintiff in this matter. And I would, if that is the case, I would ask that the plaintiff prepare a ruling that is consistent with what I have said on the record today.

MR. REID: Sounds good, Your Honor.

THE COURT: So with that, is there anything else? Is there anything else we need to handle this afternoon?

MS. SOKOLOWSKI: Nothing further from defendant, Your Honor.

MR. REID: Same here, Your Honor.

THE COURT: All right. Thank you. I appreciate the briefing and the arguments on this matter. They were very helpful and thorough and well done. So I appreciate the lawyering in this case. And thank you so much for your time.

MR. REID: Thank you, Your Honor.

MS. SOKOLOWSKI: Thank you, Your Honor.

MR. LUCIGNANI: Thank you, Judge.

THE COURT: All right. Thank you. With that, we'll be in recess.

(PROCEEDING CONCLUDED)

C E R T I F I C A T E

I, Jayme Mackay, do hereby certify that the foregoing pages contain a true and accurate transcript of the electronically recorded proceedings and was transcribed by me to the best of my ability.

Jayme Mackay

I, Scott Knight, do certify this transcription was prepared under my supervision and direction.

Scott M. Knight, RPR

Scott Knight