UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHRISTOPHER SCHALL,

Plaintiff,

v.

Case No. 13-13517
Hon. Gerald E. Rosen

GPP, INC.,

Defendant.
_____/

OPINION AND ORDER DENYING
DEFENDANT'S MOTION TO DISMISS OR TRANSFER VENUE

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on August 15, 2014

PRESENT: Honorable Gerald E. Rosen
Chief Judge, United States District Court

I. INTRODUCTION

Plaintiff Christopher Schall commenced this action in this Court on August 15, 2013, seeking a declaration that he has not violated a "Restrictive Practices Agreement" ("RPA") that he entered into with his former employer, Defendant GPP, Inc., and also asserting state-law claims of defamation and tortious interference against Defendant GPP arising out of this company's allegedly false and defamatory communications to Plaintiff's current employer, Crypton Fabric, LLC. The Court's subject matter jurisdiction rests upon the parties' diverse citizenship. *See* 28 U.S.C. § 1332(a).

On August 30, 2013 — just over two weeks after Plaintiff filed this suit —

Defendant brought an action against Plaintiff in the U.S. District Court for the Western District of Pennsylvania, alleging that Plaintiff had breached the same RPA giving rise to Plaintiff's claims for declaratory and injunctive relief before this Court. The parties agree that this case and the Pennsylvania suit implicate many of the same issues and arise from the same underlying facts and circumstances — most notably, Plaintiff's decision to leave Defendant's employ and begin working for Crypton Fabric.

Through the present motion filed on September 24, 2013, Defendant requests that the Court dismiss this suit as "an improper and anticipatory action," (Defendant's Motion at 1), or, alternatively, that this action be transferred to the Western District of Pennsylvania, where it presumably would be consolidated with the suit brought by Defendant. In support of this motion, Defendant recognizes that the so-called "first-to-file" rule ordinarily would dictate that Plaintiff's earlier-filed action be permitted to go forward, but it contends that the "anticipatory" suit purportedly brought by Plaintiff here should trigger an exception to this rule, where Plaintiff allegedly "raced to the courthouse" while the parties were still engaged in settlement negotiations. In response, Plaintiff argues that none of the circumstances surrounding his commencement of this litigation remove this case from the ambit of the first-to-file rule, so that this ordinary rule should govern here.[1]

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[1]Apart from responding in opposition to Defendant's motion, Plaintiff has filed a separate motion requesting that the Court enjoin Defendant from going forward with the parallel suit it commenced in the Western District of Pennsylvania. Because the Pennsylvania district court has issued an order granting Plaintiff's request that the Pennsylvania litigation be stayed pending this

Defendant's motion has been fully briefed by the parties. Having reviewed the parties' briefs in support of and opposition to Defendant's motion, as well as the remainder of the record, the Court finds that the pertinent facts, allegations, and legal issues are adequately presented in these written submissions, and that oral argument would not assist in the resolution of this motion. Accordingly, the Court will decide Defendant's motion "on the briefs." *See* Local Rule 7.1(f)(2), U.S. District Court, Eastern District of Michigan. This opinion and order sets forth the Court's rulings on this motion.

II. FACTUAL AND PROCEDURAL BACKGROUND

According to the complaint, Plaintiff Christopher Schall was hired by Defendant GPP, Inc. in February of 2006. In connection with this hiring, the parties executed a "Restrictive Practices Agreement" ("RPA"), under which Plaintiff agreed not to "directly or indirectly" contact any current or potential customer of Defendant for a period of two years after the termination of his employment with Defendant "for the purpose of introducing, offering, or selling to such [current or potential customer] any products or services that compete with the products and services offered by" Defendant. (Defendant's Motion, Ex. A, Restrictive Practices Agreement at ¶ 3.)

In January of 2013, Plaintiff resigned from his position with Defendant and accepted employment with Crypton Fabric, LLC ("Crypton"). According to the

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Court's resolution of Defendant's motion, the Court views Plaintiff's motion as moot.

complaint, both Defendant and Crypton have relationships with Guardian Protection Products, Inc. ("Guardian"), a company that manufactures furniture protection products. Plaintiff alleges in his complaint that he gave advance notice to Defendant that he intended to begin working for Crypton after he left Defendant's employ, and that, notwithstanding Defendant's "extensive knowledge regarding the type and scope of business performed by Crypton," Defendant "gave [him] permission" to accept a position with Crypton. (Complaint at ¶¶ 16-21.)[2]

On May 28, 2013, counsel for Defendant sent a "cease and desist" letter to Plaintiff and his current employer, Crypton, charging that Plaintiff had violated the terms of the RPA by divulging confidential information and "engag[ing] in competitive conduct" with Defendant. (Defendant's Motion, Ex. B, 5/28/2013 Letter at 1.) Defendant demanded that Plaintiff "immediately cease and desist from any further violation of" the RPA, and warned Plaintiff that "a legal action will be commenced against you seeking both injunctive relief and compensatory and punitive damages." (*Id.*) Finally, the letter stated that if Plaintiff "would like to avoid" this threatened suit, he or

[2]Defendant disputes these allegations in its motion, asserting that Plaintiff assured the company upon his resignation that his position with Crypton would not entail any competition with Defendant. (Defendant's Motion, Br. in Support at 4.) Defendant further states that since Plaintiff left Defendant's employ and began working for Crypton, Defendant has learned that Plaintiff "is taking actions in violation of the [RPA] and has disparaged" Defendant. (*Id.* at 4-5.) Notably, however, Defendant fails to identify any support in the record for these assertions, but instead offers only the bare statements of its counsel in the brief in support of its motion. *See United States v. Webb,* 616 F.3d 605, 610 (6th Cir. 2010) (observing that the assertions of a party's counsel are "not evidence").

his attorney "should contact [Defendant's counsel] on or before June 1, 2013 in order to enter into a consent judgment and decree." (*Id.*)

Plaintiff's counsel responded to this letter on May 30, 2013, opining that the allegations in Defendant's May 28 letter were "completely without merit," and asserting that "[a]s a Crypton employee, [Plaintiff] has conducted himself in full compliance with the RPA and has not contacted or solicited any GPP customer or prospect for the purpose of selling competing products or services." (Defendant's Motion, Ex. C, 5/30/2013 Letter at 1.) Plaintiff's counsel further stated that if Defendant could provide "some specifics as to any of the allegations contained in [the May 28] letter," he would "respond in greater detail," but that he otherwise "assume[d] that this letter resolves the matter in full." (*Id.* at 2.)

Following this initial exchange of letters, the parties and their counsel engaged in a series of discussions and exchanged more correspondence over the next several weeks in an effort to resolve the parties' differences without resort to litigation. On July 18, 2013, for example, Defendant's counsel sent Plaintiff's attorney a draft settlement agreement and asked him to review it with his client. (*See* Defendant's Motion, Ex. G, 7/18/2013 Letter.) Plaintiff's counsel, in turn, sent a revised settlement agreement to Defendant's attorney on July 26, 2013. (*See* Defendant's Motion, Ex. H, 7/26/2013 E-mail.) On August 13, 2013, Defendant's counsel stated in an e-mail that the most recent settlement offer made by counsel for Plaintiff's employer, Crypton, was "not acceptable and is a

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