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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

FARMERS INSURANCE EXCHANGE et al.,

Plaintiffs and Respondents,

v.

KETTELIE ST. FLEUR,

Defendant and Appellant.

B229509

(Los Angeles County
Super. Ct. No. EC054050)

APPEAL from an order of the Superior Court of Los Angeles County. David S. Milton, Judge. Affirmed with directions.

Law Offices of Raymond A. Greenberg and Raymond A. Greenberg for
Defendant and Appellant.

Tharpe & Howell, Christopher S. Maile, Gerald M. Siegel; Greines, Martin, Stein
& Richland, Robert A. Olson and Sheila A. Wirkus for Plaintiffs and Respondents.

* * * * *

Kettelie St. Fleur appeals from a preliminary injunction ordered in favor of Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Mid-Century Insurance Company, and Famers New World Life Insurance Company (collectively Farmers).¹ The injunction was ordered after Farmers terminated its agency relationship with St. Fleur and she threatened to transfer 1,200 policyholders to competing insurers. St. Fleur challenges two provisions of the injunction. We find her challenge to the “nonsolicitation” provision (paragraph (f)) to be moot. We agree with her that paragraph (e) of the injunction is overly broad as written.

FACTUAL AND PROCEDURAL BACKGROUND

In February 1999 St. Fleur began her agency relationship with Farmers by executing a “Reserve Agent Appointment Agreement,” pursuant to which she became a reserve trainee hired to sell insurance as an independent contractor. Six months later in August 1999 St. Fleur advanced to career agent status, and executed a “Horizontal Marketing Agent Relationship Agreement,” and the “Agent Appointment Agreement” (the Agreement) at issue here.

The Agreement refers to St. Fleur as an independent contractor (paragraph J) for the purpose of selling insurance products underwritten and issued by Farmers in District No. 91. Paragraph C provides three ways of terminating the Agreement: by either party upon three months’ written notice; by either party upon 30 days’ written notice if the other party breaches the Agreement; or immediately by Farmers if the agent abandons the agency. In the event of termination, Farmers agrees to pay the agent a “Contract Value” pursuant to a formula set forth in paragraph G.

The Agreement imposes post-termination duties on the agent. Paragraph H states: “The Agent agrees to transfer and assign all of the Agent’s interest under this Agreement and Agency (including at the request of the Companies, any interest in the telephone numbers and leased or rented office location) to the Companies at the time of payment or

¹ An order granting or denying an injunction is appealable. (Code Civ. Proc., § 904.1, subd. (a)(6).)

tender of payment to the Agent pursuant to Paragraph G of this Agreement. The Agent agrees to accept tender of Contract Value and further agrees that for a period of one year following the date of payment or tender of payment the Agent will neither directly or indirectly solicit, accept, or service the insurance business of any policyholder of record in the agencies of this district as of the date of payment or tender of payment.”

Paragraph I states: “The Agent acknowledges that all manuals, lists and records of any kind (including information pertaining to policyholders and expirations) are the confidential property of the Companies and agrees they shall not be used or divulged in any way detrimental to the Companies and shall be returned to the Companies upon termination of the agency.”

Following a meeting with St. Fleur on June 16, 2010, Farmers determined that her underwriting practices and ability to operate a Farmers agency were “insufficient.” On August 27, 2010 Farmers gave St. Fleur written notice of termination effective three months later. Through her counsel, St. Fleur informed Farmers that she was “discharged from any further obligations under the contract” and would “proceed with her business.” Farmers responded that it would treat her statements as either a resignation or abandonment of the agency, unless she affirmed her obligations under the Agreement. When Farmers received no response by the deadline, it wrote on October 1, 2010 that it had “no alternative but to treat her silence as affirmation of the abandonment of her agency and take steps to protect [its] confidential customer information,” and that her “authority to act as an insurance agent for Farmers [was] immediately revoked.” Farmers also requested assignment of St. Fleur’s interest in the telephone and fax numbers of her agency, and affirmed that it would honor its contractual financial obligations to her.² The same day, St. Fleur’s attorney responded that his client was still a Farmers agent, that he would instruct her to call the police if Farmers entered her premises, and that he would seek an injunction if Farmers tried to reassign her policyholders. In a telephone call with Farmers’s attorney the same day, St. Fleur’s attorney threatened to “help ST. FLEUR in

² Farmers calculated that St. Fleur was due \$92,514.69 as her “Contract Value,” and sent the first installment check of \$30,881.55 on October 6, 2010.

switching her 1,200 policyholders to competitors so that FARMERS would never be able to trace them.”

On October 14, 2010, Farmers sued St. Fleur for conversion, breach of the Agreement and breach of fiduciary duty, seeking injunctive relief. Farmers alleged that St. Fleur breached her duties by abandoning her agency, refusing to assign her business telephone and fax numbers and office lease to Farmers, refusing to return Farmers’s personal property, and threatening to switch Farmers’s customers to competing insurers.

The trial court granted Farmers a temporary restraining order, writ of possession and preliminary injunction. At issue here are two provisions of the preliminary injunction, issued November 8, 2010: **Paragraph (e)**, which enjoins St. Fleur pending trial of this action from “[c]ontacting or communicating with current policyholders of FARMERS in ST. FLEUR’s agent code number as of October 1, 2010, other than for referring the policyholder to District Manager James Mulligan . . . except: (1) as to defendant’s parents, siblings or in-laws; or (2) where the FARMERS’s policyholder initiated contact with the defendant for securing defendant’s services as his/her/its insurance agent,” and **Paragraph (f)**, which enjoins St. Fleur from “[s]oliciting, accepting, or servicing the insurance business of any FARMERS’ policyholder in her district for the 12-month period between October 1, 2010 to October 1, 2011, except: (1) as to defendant’s parents, siblings or in-laws; or (2) where the FARMERS’ policyholder initiated contact with the defendant for securing defendant’s services as his/her/its insurance agent.”³ This appeal followed.

³ St. Fleur was also enjoined from engaging in the following activities:

“(a) Utilizing, divulging, receiving, retaining, disseminating, misappropriating, transferring, copying, selling, altering, destroying, or making use in any manner of policyholder information (including policy renewal and expiration information) obtained by, or to which defendant gained access by virtue of or during her service as a FARMERS agent, and operational and procedural manuals belonging to FARMERS; [¶] (b) Utilizing or making use in any manner of telephone numbers, facsimile numbers, and contact information that ST. FLEUR used as a FARMERS agent; [¶] (c) Holding herself out or representing herself as an agent of FARMERS or in any way misrepresenting

DISCUSSION

I. Standard of Review

“In deciding whether to issue a preliminary injunction, a trial court weighs two interrelated factors: the likelihood the moving party ultimately will prevail on the merits, and the relative interim harm to the parties from the issuance or nonissuance of the injunction.’ [Citation.] “Generally, the ruling on an application for preliminary injunction rests in the sound discretion of the trial court. The exercise of that discretion will not be disturbed on appeal absent a showing that it has been abused. [Citations.]”” (Whyte v. Schlage Lock Co. (2002) 101 Cal.App.4th 1443, 1449–1450; Ketchens v. Reiner (1987) 194 Cal.App.3d 470, 474; Code Civ. Proc. § 526.)⁴

II. Injunction

In her opening brief, St. Fleur asserts that the nonsolicitation covenant in the Agreement “is the subject of this appeal,” and that her appeal focuses on paragraphs (e) and (f) of the injunction. She challenges paragraph (f), the nonsolicitation provision of the injunction, on the ground that Farmers failed to present evidence that it possessed a trade secret that was legally protectable by a covenant not to solicit policyholders. Because paragraph (f) expired by its terms on October 1, 2011, we asked the parties for supplemental briefing on the issue of whether appellant’s challenge to paragraph (f) was moot. St. Fleur conceded that paragraph (f) had expired, and provided no argument or authority as to why her challenge was not moot. It is well established that an appeal

herself as authorized to act as a FARMERS agent in communications with FARMERS policyholders; [¶] (d) Accepting any money, premiums, or other payments from current policyholders of FARMERS.”

⁴ St. Fleur does not raise any challenge regarding interim harm to Farmers, which we therefore deem to exist. (See *Addam v. Superior Court* (2004) 116 Cal.App.4th 368, 373 [irreparable harm issue waived on appeal by failure to present reasoned argument or authorities]; *Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1311 [under abuse of discretion standard, appellant must show error in balancing harms between the parties].)

becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315–1316.) Because St. Fleur can no longer be held in contempt for violating paragraph (f) of the injunction, her challenge to paragraph (f) is moot.

But St. Fleur’s challenge to paragraph (e) of the injunction has merit. We note that she repeatedly and erroneously asserts that this provision prevents her from contacting and communicating with any current policyholders “indefinitely.” But the injunction expressly states that this provision will remain in force “pending trial,” which the parties have advised is set for March 2012. Thus, while this provision is not overly broad in terms of its time frame, it is overly broad in prohibiting St. Fleur from having any contact or communication with current policy holders, even those who are friends. As written, paragraph (e) is not limited to precluding St. Fleur from having contact and communication related to the business of insurance. Rather, it precludes her from having *any* contact with policyholders, except under two narrow circumstances. St. Fleur’s evidence indicates that she “procured insurance policies” with Farmers “from family, friends, neighbors and other people with whom [she had] been associated, and those [she had] solicited,” and that she did not recall “placing insurance for anyone that Farmers had referred to [her].” Yet, as St. Fleur notes, paragraph (e) prevents her from even sending holiday cards to these people.

Moreover, St. Fleur’s district manager sent written notification to policyholders for whom she was an agent that she was no longer with Farmers and that their policies would be transferred to a new agent. It is reasonable to assume that many, if not all, of these policyholders would contact her about the district manager’s letter. But St. Fleur could be held in contempt of paragraph (e) if these policyholders initiated contact with her for purposes of mere inquiry or for any reason other than solicitation of her business.

We agree with St. Fleur that paragraph (e) of the injunction is overly broad to the extent it prohibits her from having any contact or communication with policyholders that is beyond the business of insurance. Accordingly, the matter is remanded to the trial

court to modify paragraph (e). (See *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1266, 1268 [injunction may not be broader than necessary].)

DISPOSITION

The trial court is directed to modify paragraph (e) of the preliminary injunction by inserting after “as of October 1, 2010” the words “regarding the business of insurance.” In all other respects, the order granting the preliminary injunction is affirmed. Each party to bear its own costs on appeal.

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_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ