

IN THE SUPREME COURT OF THE STATE OF NEVADA

UNIVERSAL CONSULTING
CORPORATION, D/B/A A-1 CONCRETE
CUTTING & DEMOLITION,
Appellant,
vs.
GORDON MICHAEL HENRY, A/K/A
MIKE HENRY,
Respondent.

No. 41042

FILED

APR 08 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying appellant's motion for a preliminary injunction seeking to enforce a non-competition agreement. Appellant moved for a stay of the district court's order, essentially asking us to impose the injunction that the district court denied.

Having reviewed the motion and its attachments, as well as respondent's opposition,¹ we conclude that our normal rules of procedure should be suspended,² and that this case should be disposed of summarily.

A preliminary injunction is available if an applicant can show a likelihood of success on the merits and a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable

¹Although respondent has neither sought nor been granted leave to appear in proper person, see NRAP 46(b), we nevertheless considered his response to appellant's motion for stay. We therefore direct the clerk of this court to file the opposition received on March 13, 2003.

²See NRAP 2.

harm for which compensatory damage is an inadequate remedy.³ We review a district court order denying an injunction for abuse of discretion.⁴

Here, the district court denied appellant's motion for a preliminary injunction based on its conclusion that, as a matter of Nevada case law, a non-competition agreement covering two counties for two years was unreasonable. A review of our cases, however, indicates that such agreements have been enforced. In particular, we have held that a non-competition agreement covering the geographic area in which the party seeking to enforce the agreement actually does business is reasonable.⁵ In addition, this court has upheld two-year non-competition agreements.⁶ It thus appears that the district court abused its discretion in denying a preliminary injunction based on an incorrect legal conclusion.

The other requirement for an injunction is that the movant will suffer irreparable harm if an injunction is not granted. Generally, the harm that results when one party to a non-competition agreement violates it is considered irreparable.⁷ Here, respondent admits that he violated the terms of the agreement by accepting employment with appellant's

³See Dangberg Holdings v. Douglas Co., 115 Nev. 129, 978 P.2d 311 (1999).

⁴See id.

⁵See Camco, Inc. v. Baker, 113 Nev. 512, 936 P.2d 829 (1997).

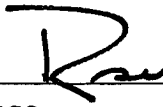
⁶See id.; Ellis v. McDaniel, 95 Nev. 455, 596 P.2d 222 (1979).

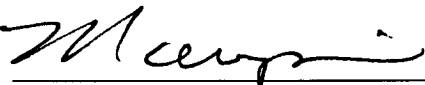
⁷See Hansen v. Edwards, 83 Nev. 189, 192, 426 P.2d 792, 793-94 (1967).


competitor.⁸ Appellant alleges that one of its customers indicated that it might give work to the competitor based on respondent's solicitation; this allegation is supported by affidavit.

In these circumstances, we conclude that the district court abused its discretion in failing to enforce the agreement pending a trial on the merits. Accordingly, we reverse the district court's order denying a preliminary injunction, and remand this matter to the district court for proceedings consistent with this order.

It is so ORDERED.⁹


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Lee A. Gates, District Judge
Wright Judd & Winckler
Gordon Michael Henry
Clark County Clerk

⁸Respondent nevertheless asks this court not to enforce the agreement so that he may seek work in his accustomed field. We make no comment on whether respondent's circumstances may affect the ultimate resolution of this case after a full trial, but simply conclude that, based on the information contained in the motion and its attachments, appellant satisfied the requirements for a preliminary injunction.

⁹In light of this order, we deny appellant's motion for stay as moot.