

THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * * *

MARINA DISTRICT DEVELOPMENT COMPANY, LLC,
doing business as
Borgata Hotel Casino & Spa,

Plaintiff,

vs.

AC OCEAN WALK, LLC,
doing business as
Ocean Casino Resort, *et al.*,

Defendants.

2:20-cv-01592-GMN-BNW

DATE: October 13, 2020

Courtroom 7D

THE HONORABLE GLORIA M. NAVARRO, UNITED STATES DISTRICT JUDGE

DEPUTY CLERK: Aaron Blazeovich COURT RECORDER: Araceli Bareng

COUNSEL FOR PLAINTIFF: Paul Trimmer, Joshua Sliker, and Ashley Eddy (Client Representative)

COUNSEL FOR DEFENDANTS: I. Scott Bogatz, Kerry Kleiman, Leigh Ann Buziak, Joseph Muskett, James Maggs, and Defendants Bill Callahan and Kelly Burke

MINUTES OF PROCEEDINGS: Motion Hearing (Day 2)

12:14 p.m. The parties are all present via Zoom videoconference. The Court makes preliminary statements and hears representations from counsel.

12:15 p.m. **HUGH TURNER, JR.**, called on behalf of the Plaintiff, is sworn again and testifies on cross examination by Ms. Buziak on behalf of the Defendants. **EXHIBIT D31 and D32 are marked but not admitted into evidence at this time.** Ms. Buziak **WITHDRAWS EXHIBITS D31 and D32** after objections are made by Mr. Trimmer on behalf of Plaintiff. Mr. Trimmer conducts redirect examination. Ms. Buziak conducts recross examination on behalf of Defendants. The witness is thanked and excused.

1:09 p.m. The Court provides further questions it has regarding this matter. Ms. Buziak and Mr. Trimmer respond. **The Court ADMITS Exhibits 3, 4, and 5.** The Court and parties discuss **EXHIBIT 16.** The Court will accept the Exhibit without requiring testimony.

1:30 p.m. The Court stands at recess for an afternoon break.

1:40 p.m. The Court reconvenes. Ms. Buziak responds to the Court's prior questions.

2:37 p.m. The Court stands at recess for an afternoon break.

2:46 p.m. The Court reconvenes Mr. Trimmer responds to the Court's prior questions.

3:05 p.m. The Court makes findings as stated on the record. **IT IS HEREBY ORDERED** that Plaintiff's Motion for Preliminary Injunction, (ECF No. 9), is **GRANTED in part and DENIED in part**, consistent with the Court's ruling as stated on the record and the following:

- A. As to Defendant Bill Callahan
- i. The Court **GRANTS** Plaintiff's preliminary injunction against Callahan's trade secret misappropriation, but not based on his alleged breach of the non-competition agreement.
 - ii. The Court will not turn over Callahan's cell phone for Plaintiff to engage in a fishing expedition. Plaintiff and Callahan must:
 - 1) Choose a third-party forensic expert who will determine which Borgata trade secrets Callahan possesses;
 - 2) Plaintiff must identify the names and the contact information of the customers for whom Plaintiff believes Callahan retains trade secret information;
 - 3) Callahan must turn over his May 21 phone, any forensic copies of his May 21 phone or Borgata phone, his personal computers, any other devices linked to his Apple iCloud account or other cloud-based storage account, and all log-in credentials for his iCloud storage or any other cloud-based storage programs that may contain the alleged trade secrets; and
 - 4) The third-party forensic expert shall assess whether Callahan's devices or accounts possess any
 - a) Borgata customer names;
 - b) Borgata customer contact information'
 - c) conversations with or messages from Borgata customers; and
 - d) any notes relating to the preferences of Borgata customers.
 - iii. Callahan must also continue to refrain from using or disclosing Plaintiff's trade secrets, including the identifies, preferences, and contact information of Plaintiff's customers, during his employment with Ocean.
 - iv. The Court **DENIES** Plaintiff's request for an injunction against Callahan's employment. Plaintiff has not shown a likelihood of success on the merits against Callahan for breach of his non-compete. Callahan cannot be enjoined from his employment under the federal Defend Trade Secrets Act. And Plaintiff has not shown a likelihood of success on the merits under the New Jersey Trade Secrets Act because it has not presented evidence that Callahan used Plaintiff's trade secrets to Ocean's detriment.
 - v. The Court **DENIES** Plaintiff's request for Callahan to produce his employment agreement or evidence relating to his employment negotiations with Ocean. The relief sought is not injunctive in nature, and the Court will leave to the arbitrator the appropriate scope of discovery to be ordered against Callahan.
- B. As to Defendant Kelly Burke
- i. The Court **GRANTS** an injunction against Burke's use or disclosure of Borgata's trade secrets.
 - ii. Burke must **DESTROY** any copies she or Ocean have of files relating to Borgata's 2020 marketing strategies.
 - iii. The Court **GRANTS** an injunction against Burke's continued employment with Ocean until the termination of the arbitration proceedings or the termination of the agreement, whichever comes first.

///

3:22 p.m. The Court **GRANTS** the Motions to Seal, (ECF Nos. 88 and 90). Ms. Buziak makes an oral motion for the posting of a bond in the amount of \$400,000.00. Mr. Trimmer responds. The Court orders Plaintiff to file and pay a \$50,000.00 bond. The parties shall file a Joint Status Report by Monday, December 14, 2020, and joint status reports shall be filed every 60 days thereafter. The case will otherwise be stayed.

3:34 p.m. Court adjourns.

DEBRA K. KEMPI, CLERK
U.S. DISTRICT COURT

BY: _____/S/_____
Aaron Blazeovich, Deputy Clerk