

FILED

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

GODDARD'S DISCOUNT
FURNITURE, INC.,

Plaintiff-Appellant,

vs.

AL SALMI,

Defendant-Appellee.

Filed May 31, 1979

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2-62251

Appeal from Lee District Court, D. B. Hendrickson, Judge.

Plaintiff appeals from adverse judgment in suit for injunction enforcing a
covenant not to compete. Reversed and Remanded.

Garold F. Heslinga, of Oskaloosa, for appellant.

Alan N. Waples, of Burlington, for appellee.

Heard by Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

DONELSON, J.

Plaintiff Goddard's Discount Furniture, Inc. appeals from trial court dismissal of its action in equity seeking injunctive relief to prohibit defendant Al Salini's violation of a covenant not to compete. Defendant was employed as manager of plaintiff's Fort Madison furniture store from April 1976 to August 1977, when he left to become associated with his father in a new furniture business in Fort Madison. The employment contract entered into by the parties at the time defendant began employment prohibited defendant from becoming associated with a furniture business within 30 miles of plaintiff's business location in Fort Madison for a period of three years.

The trial court found the covenant was unreasonable because plaintiff had failed to show necessity of enforcement of the covenant to protect plaintiff's business. Specifically the trial court found a failure of proof that defendant had "pirated" plaintiff's business, since he took no customer lists and did not call upon or cultivate special customers. See Ehlers v. Iowa Warehouse Company, 188 N.W.2d 368, 372-73 (Iowa 1971).

We find trial court's reading of the principles in Ehlers too narrow. The court will enforce covenants not to compete that are reasonably necessary for the protection of the employer's business and not unreasonably restrictive of the employee's rights nor prejudicial to the public interest. Farm Bureau Service Co. of Maynard v. Kohls, 203 N.W.2d 209, 211 (Iowa 1972); Ehlers, 188 N.W.2d at 369. There must be some showing that the employee, upon leaving employment, pirated or had the chance to pirate part of the employer's business; took or had the opportunity of taking some part of the good will of employer's business, or it can reasonably be expected some of the patrons or customers he or she served while in employer's employment will follow him or her to the new employment. Ehlers, 188 N.W.2d at 373, Mutual Loan Co. v. Pierce, 245 Iowa 1051, 1056-57, 65 N.W.2d 405, 408 (1954).

It is not necessary to show that defendant actually pirated plaintiff's customers by use of customer lists or special services. Plaintiff conducts his business in a non-traditional manner, and taught defendant the entire operation. Defendant had no previous skills in the business when he became employed by plaintiff. As plaintiff's general manager, he dealt with customers, prepared advertising and generally

supervised the store's operation. He took suppliers information with him when he associated with his father in the new furniture store. Neither defendant nor his father had any ties with the Fort Madison community until defendant was employed by plaintiff. In his new business, defendant carries the same or similar lines of furniture as those carried by plaintiff, and appears to conduct his new business in the same manner learned from plaintiff. These facts clearly meet plaintiff's burden to show the reasonable necessity for the enforcement of the covenant at all in order to protect its business. The terms of the covenant are not unreasonable. The time and territorial limits contained in the covenant were narrowly drawn and voluntarily entered into by defendant. We cannot see that they should not be enforced.

We therefore reverse the trial court's decision and hold that defendant should be enjoined from associating with a furniture business within 30 miles of Fort Madison for the period from August 13, 1977 to August 12, 1980. The case is remanded to the trial court for decree and writ of injunction in accordance with this opinion.

REVERSED AND REMANDED.

All judges concur, except Oxberger, C. J., who dissents.

OXBERGER, C. J. (dissenting)

I dissent. Plaintiff operates a traditional walk-in, retail sales business. There is no special feature of this operation which requires interference with defendant's right to work. I would affirm the judgment of the trial court.