NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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March 26, 2019

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Re: *Omnisec International Investigations, Inc., et al.* v. *Slavica Stone, et al.*, CL 2018-6368

Dear Ms. Esaw and Ms. Belger:

This matter is before the court on Defendants' Plea In Bar. An evidentiary hearing was held on December 19 and 20, 2018, and the parties submitted post-hearing memoranda on February 8, 2019. For the reasons that follow, the Plea In Bar is granted in part and denied in part.

FACTS

The pertinent facts are not in dispute. Background investigations allow the federal government to assess the employment suitability and security clearance eligibility for prospective federal employees for various federal agencies and programs. Tr. 159:15–160:5 (Mathews). Background investigators must possess security clearances and often carry specific credentials to carry out their work for the federal government. Tr. 160:6-16 (Mathews).

Stone possesses an active, top-level security clearance (Tr. 204:1-3 (Visich)) and has over thirty years of cumulative professional experience in her field. Tr. 41:1-7 (Stone). She worked for OPM as a background investigator from 1989 to 1996. Tr. 401:18-41:4 (Stone). Prior to working for Omnisec, Stone worked for another government contracting company, U. S. Investigative Services ("USIS"), for four years, on a classified contract for a classified intelligence customer (Tr. 39:11-40:10 (Stone)), first as a

OPINION LETTER

contract investigator, and then as an employee (District Manager) from 2000-2003. Tr. 40:11-17 (Stone). USIS originally possessed the classified government contract known as Sherlock from 1999-2012. Tr. 41:16-18 (Stone). The Sherlock contract is a classified contract for a classified government intelligence customer. Tr. 172:14-22 (Mathews). Stone managed investigators for the predecessor program to Sherlock in New England. Tr. 40:2-6 (Stone). At USIS, Stone performed work substantially similar to her work for Plaintiffs. Tr. 40:7-10 (Stone).

In August, 2003, Stone began working for Omniplex after signing a *Non-Solicitation, Non-Competition and Confidentiality Agreement for Management/Key Employees* (hereinafter "Agreement") on July 14, 2003. Onmiplex conducts security clearance background investigations for federal agencies, which involves gathering information to present to the agency so that it can evaluate a candidate's suitability and eligibility for a security clearance. Tr. at 159:15—160:5. Omniplex performs its work nationwide and overseas. Tr. 284:20-285:4, 345:3-6, 350:10-16. Every background investigator must have a security clearance and must be specially credentialed to work for certain government agencies. Tr. 160:6-16, 162:10-13.

On January 1, 2004, Stone's employer changed to a different corporate entity, Omnisec, a subsidiary of Omniplex. Stone remained at Omnisec for more than thirteen years, most recently as the Director of Federal/Civil Programs. Tr. 30:21-31:15; 38:3-39:2 (Stone).

From 2015 to her departure in April 2017, Stone did not work with government intelligence agencies like the classified Sherlock customer. Tr. 164:4-12 (Mathews). Although Stone participated in the preparation of the proposal for the Sherlock Contract, she did not participate in the proposal pricing (Tr. 35:21-36:8 (Stone)) nor did she write the proposal. Tr. 35:11-13 (Stone). Stone was originally submitted, for proposal purposes, as the Program Manager for the Sherlock contract for Omnisec, but without her knowledge, and later demoted to Deputy Program Manager. Tr. 35:14-17 (Stone). Stone did not serve in a functional role on that contract after the initial kickoff meeting with the customer in January of 2013. Tr. 36:21-37:9 (Stone). Stone did not perform the same type of work on the Sherlock contract for CSRA that she briefly performed on the Sherlock contract for Omnisec (Tr. 46:10-14 (Stone)) in that CSRA conducted the reinvestigations, not initial investigations. Tr. 25:7-9 (Stone).

Omnisec assigned Stone to work on a contract for OPM (Tr. 166:14-16 (Mathews)), which is the background investigative agency for the federal government and under which multiple federal agencies fall (Tr. 171:1-16 (Mathews)), including Department of Energy, Department of Defense, Department of Commerce, Bureau of Prisons, Nuclear Regulatory Commission, and Department of Justice. Tr. 171:8-172:10 (Mathews). Other government customers for whom Stone worked on the civilian side of Omnisec were Customs and Border Patrol, Immigration and Customs Enforcement, Government Accountability Office, Social Security Administration, U.S. Postal Service, Aberdeen Proving Grounds, and National Geospatial Agency. Tr. 165:4-12, 17-19 (Mathews).

Stone resigned her employment with Omniplex to take a job with Defendant CSRA as its program manager for the Sherlock Contract (Tr. 43:14-17), which was a bridge contract awarded to CSRA to catch up a backlog of incomplete

background investigation cases. Tr. at 24:11-18 (Stone). CSRA provides a full spectrum of services to the federal government, state and local agencies, and commercial organizations. Tr. 23:10-14 (Stone). CSRA has performed background investigation work for the federal government for over a decade. Tr. 199:13-17 (Visich). CSRA had never done any work on the Sherlock Contract. Tr. 76:12-15.

Before resigning from Omniplex, but after receiving her offer from CSRA, Stone: (1) emailed various Omniplex documents to her personal email account (Tr. 78:12–79:8;9) and (2) authorized CSRA to include her as the proposed project manager on CSRA's proposal for the Sherlock Contract. Tr. 74:14-75:5, 198:19-199:4.

Stone began work on April 26, 2017 for CSRA. Tr. 23:7-9 (Stone). Stone had no involvement in the submission of the Sherlock proposal for CSRA. Tr. 43:3-13 (Stone). Stone worked as CSRA's Sherlock Program manager until she transitioned to a different program in July 2018. Tr. 24:3-6, 26:22-27:5.

Stone currently works for General Dynamics Information Technology, Inc. ("GDIT"). Tr. 22:16-17 (Stone).

THE AGREEMENT

In pertinent part, paragraph 1 of the Agreement provides:

> (a) Non-Solicitation of Employees. Employee hereby covenants and agrees that, during Employee's employment with OMNIPLEX and for a period of one (1) year immediately following the termination of such employment, whether voluntary or involuntary, Employee agrees not to (1) induce, solicit, request, recruit or aid any employee of OMNIPLEX, to leave OMNIPLEX to work for any other employer, including but not limited to, competitors of OMNIPLEX and current or former customers or clients of OMNIPLEX; (2) employ or attempt to employ in any capacity any of OMNIPLEX's employees; or (3) in any other manner for any reason induce any of OMNIPLEX's employees to leave his/her employment.
>
> (b) Non-Solicitation of Customers/Clients. Employee hereby covenants and agrees that, during Employee's employment with OMNIPLEX and for a period of one (1) year immediately following the termination of such employment, whether voluntary or involuntary, Employee will not, directly or indirectly, in competition with OMNIPLEX, whether on Employee's own behalf or on behalf of any other person or entity, solicit business from or conduct business with any Restricted Entity, as defined below; or attempt or seek to cause any Restricted Entity to refrain from doing business with OMNIPLEX. For purposes of this paragraph, a "Restricted Entity" is any customer or client or potential customer or client of OMNIPLEX that Employee solicited, called upon, conducted business with, became aware of, or identified as a potential customer or client of OMNIPLEX, during Employee's employment by OMNIPLEX.

In pertinent part, paragraph 2 of that Agreement provided:

(b) Employee's Obligations.

(i) Non-Disclosure. Employee agrees that during Employee's employment with OMNIPLEX and thereafter, Employee will not use, disclose or transfer directly or indirectly any OMNIPLEX Confidential Information or Third Party Information other than as authorized by OMNIPLEX, nor will Employee accept any employment or other professional engagement that likely will result in the use or disclosure, even if inadvertent, of OMNIPLEX Confidential information or Third Party Information. Employee agrees that he will not use in any way other than in furtherance of OMNIPLEX's business any OMNIPLEX Confidential Information or Third Party Information.

The Agreement defines confidential information as:

any and all confidential and/or proprietary information of OMNIPLEX. By way of illustration but not limitation, OMNIPLEX Confidential Information includes: information and materials related to proprietary computer software and hardware (including any and all information related to "IRMA"), research pricing information, business procedures, strategies, and methodologies, (including but not limited to procedures and methodologies for carrying out investigations), marketing plans and strategies, client lists and business histories, analyses of client information, employee or prospective employee information, information relating to contract investigators, consultants, or independent contractors, financial data of OMNIPLEX, technical data and/or specifications related to OMNIPLEX's services, and any other information that is not generally known to the public or within the industry in which OMNIPLEX competes.

It is these provisions which are at issue in the Plea In Bar.

THE PLEA IN BAR IS NOT A PLEA OF THE GENERAL ISSUE

Plaintiffs assert that a plea in bar is an improper procedure to determine the enforceability *vel non* of non-solicitation and non-disclosure clauses because it is in actuality a plea of the general issue, *i.e.*, "a general denial of the plaintiff's whole declaration or an attack upon some fact the plaintiff would be required to prove in order to prevail on the merits." *Stockbridge v. Gemini Air Cargo, Inc.*, 269 Va. 609, 617-618 (2005). The court finds that the issue here, *i.e.*, whether the above clauses are enforceable, is not a plea of the general issue. Rather, Defendants' plea in bar "asserts a single issue, which, if proved, creates a bar to a plaintiff's recovery." *Hawthorne v. VanMarter,* 279 Va. 566, 577 (2010). Thus, the parties have presented to the court "a discrete body of facts . . . developed through the presentation of evidence supporting or opposing the plea." *Id.*

Moreover, because the issue of whether "a restrictive covenant is enforceable is a question of law to be determined by the court," *Simmons v. Miller,* 261 Va. 561, 581 (2001), it is particularly appropriate to resolve the enforceability of a restrictive covenant in a plea in bar. Indeed, *Assurance Data, Inc. v. Malyevac,* 286 Va. 137 (2013) held that the other primary

procedural mechanism to resolve questions of law at the inception of litigation, a demurrer, was not the procedural mechanism to challenge the enforceability of restrictive covenants because they are "are neither enforceable nor unenforceable in a factual vacuum." 286 Va. at 144. And, in *Home Paramount Pest Control v. Shaffer,* 282 Va. 412 (2011), the Court resolved a challenge to the enforceability of a restrictive covenant in a plea in bar:

> The defendants filed a plea in bar to these claims, asserting that the Provision is overbroad and therefore unenforceable. After an evidentiary hearing, the circuit court granted the plea in bar and dismissed the relevant counts of the amended complaint.

282 Va. at 415.

Notably, *Assurance Data, Inc.* did not endorse the plea in bar as a procedural mechanism to challenge the enforceability of a restrictive covenant; indeed, the Court does not even mention pleas in bar. Yet, in rejecting the use of a demurrer as a procedural mechanism to challenge the enforceability of restrictive covenants, *Assurance Data, Inc.* cited *Home Paramount Pest Control* as authority, thereby (at least *sub silentio*) endorsing the use of a plea in bar as the procedural mechanism to challenge the enforceability of a restrictive covenant. This court finds that the enforceability of restrictive covenants may be resolved in a plea in bar.

In opposing the use of a plea in bar as a procedural mechanism to challenge the enforceability of restrictive covenants, Plaintiffs assert that, "[a]lthough [Defendants] ha[ve] the burden at the plea in bar stage to demonstrate the unreasonableness of the restrictive covenants, Omniplex has the ultimate burden at trial of proving the same issue -- whether the same restrictive covenants are reasonable." Plaintiffs' Memorandum 10. Yet, in *Home Paramount Pest Control*, where the issue of the enforceability of a restrictive covenant was resolved in a plea in bar, the Court stated that the "employer bears the burden of proving each of these factors" (282 Va. at 415), *i.e.*, whether a clause that restricts competition "is narrowly drawn to protect the employer's legitimate business interest, is not unduly burdensome on the employee's ability to earn a living, and is not against public policy." *Id.* (citing *Omniplex World Servs. Corp. v. US Investigations Servs., Inc.*, 270 Va. 246, 249 (2005)).

Accordingly, the court finds that, at the plea in bar hearing, the employer has the burden to prove that a challenged restrictive covenant "is narrowly drawn to protect the employer's legitimate business interest, is not unduly burdensome on the employee's ability to earn a living, and is not against public policy." *Id.* It is not the burden of the employee to demonstrate the unreasonableness of the restrictive covenants.[1]

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[1] While the party "asserting a plea in bar bears the burden of proof on the issue presented," *Hawthorne v. VanMarter,* supra, 279 Va. at 577, that burden is the "burden of proof on that *issue of fact.*" *Tomlin v. McKenzie,* 251 Va. 478, 480 (1996) (Emphasis added). This is a different burden than the burden of the employer to prove that a clause that restricts competition "is narrowly drawn to protect the employer's legitimate business interest, is not unduly burdensome on the employee's ability to earn a living, and is not against public policy." *Omniplex World Servs. Corp. v. US Investigations Servs., Inc.*, 270 Va. at 249.

ANALYSIS

Introduction

Out the outset, it is important to note that Defendants do not challenge the actual non-compete clause of the Agreement; they challenge only the non-solicitation and non-disclosure clauses.[2] Thus, while *Assurance Data, Inc., supra,* implicitly suggested that non-solicitation and non-disclosure clauses are subject to the same standard of review as non-compete clauses (by stating that the Court would address the non-compete, the non-solicitation, and the non-disclosure clauses "collectively" (286 Va. at 142, n.1) and then repeating the well-established standards for determining "the enforceability of a restraint on competition" (286 Va. at 144)),[3] none of the Court's decisions have actually addressed the validity of non-solicitation and non-disclosure clauses.[4]

The standards for determining "the enforceability of a restraint on competition" (286 Va. at 144) "have been developed over the years to strike a balance between an employee's right to secure gainful employment and the employer's legitimate interest in protection from competition by a former

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[2] The non-disclosure of employer information clause also contains what is actually a non-compete clause, which the court will address, *infra*.

[3] Those standards are that the "employer bears the 'burden to show that the restraint is no greater than necessary to protect a legitimate business interest, is not unduly harsh or oppressive in curtailing an employee's ability to earn a livelihood, and is reasonable in light of sound public policy.' (Citation omitted)." *Assurance Data, Inc.,* 286 Va. at 144.

[4] *See e.g., Meissel v. Finley,* 198 Va. 577, 579 (1956) (employee will not "enter into the insurance business . . . or associate himself or herself with any" insurance agency); *Richardson v. Paxton Co.,* 203 Va. 790, 793 (1962) ("employee will not . . . engage in any branch of marine or industrial supplies, equipment, services business in the territory, without written consent . . . of Company"); *Roanoke Engineering Sales Co., Inc. v. Rosenbaum,* 223 Va. 548, 551 (1982) (employee will not "directly or indirectly . . . be employed by" any competing business); *Paramount Termite Control Co., Inc. v. Rector,* 238 Va. 171, 172 (1989) (employee "will not engage . . . in the carrying on or conducting the business of" former employer); *Blue Ridge Anesthesia & Critical Care, Inc. v. Gidick,* 239 Va. 369, 370 (1990) (employee will not "be employed by" any competitor); *New River Media Group, Inc. v. Knighton,* 245 Va. 367, 368 (1993) (employee "would not engage in a business that competed"); *Rash v. Hilb, Rogal & Hamilton Co.,* 251 Va. 281, 285 (1996) (employee "shall not directly or indirectly as an . . . employee . . . or other participant . . . engage in any manner in any" competing business); *Simmons v. Miller,* 261 Va. 561, 580 (2001) ("Employee shall not own, manage, control, be employed by, participate in, or be connected in any manner with ownership, management, operation, or control of any business similar to the type of business conducted by Employer"); *Modern Environments, Inc. v. Stinnett,* 263 Va. 491, 492 (2002) (former employee prohibited from being employed in any capacity by a competitor); *Omniplex World Services v. US Invest. Services,* 270 Va. 246, 248 (2005) ("Employee shall not . . . become employed by, or perform any services for OMNIPLEX's Customer for whom Employee provided services or for any other employer in a position supporting OMNIPLEX's Customer"); and *Home Paramount Pest Control* v. *Shaffer,* 282 Va. 412, 414-415 (2011) ("Employee will not engage . . . in the carrying on or conducting the business of exterminating, pest control, termite control and/or fumigation services").

employee based on the employee's ability to use information or other elements associated with the employee's former employment . . . ." *Omniplex World Services v. US Invest. Services,* 270 Va. at 246. To repeat, those standards are that the "employer bears the 'burden to show that the restraint is no greater than necessary to protect a legitimate business interest, is not unduly harsh or oppressive in curtailing an employee's ability to earn a livelihood, and is reasonable in light of sound public policy.' (Citation omitted)." *Assurance Data, Inc.,* 286 Va. at 144.

Non-Solicitation Of Employees

The court finds that the non-solicitation of employees clause is narrowly drawn to protect the employer's legitimate business interest, *i.e.,* to retain a stable workforce; is not burdensome, let alone unduly burdensome, on the employee's ability to earn a living; and not contrary to public policy. It is thus enforceable.

Defendants make several arguments concerning the unenforceability of the non-solicitation of employees clause: that such clauses are "unreasonable when they prohibit employees from performing services in noncompetitive roles," citing *Omniplex,* 270 Va. at 250 and *Modern Environments,* 263 Va. at 495; and that "an Omniplex employee would run afoul of the employee's obligations by urging them to leave the company for any reason, even their health" and that "similar overbroad covenants" have been found "to be unenforceable," citing *Omniplex,* 270 Va. at 250(ruling that where covenant "not limited to employment that would be in competition with Omniplex, the covenant is overbroad and unenforceable."). Defendants' Memorandum 16.

Defendants have misread *Omniplex* and *Modern Environments.* In both cases, the Court was addressing whether the former employee *himself,* not another employee who was still employed by the employer, was barred from performing services in noncompetitive roles. Thus, *Omniplex* and *Modern Environments* provide no support to Defendants' position. The fact that a former employee would "run afoul" of his/her obligations by urging a current employee to leave the company for any reason, even his/her health, is not objectionable as a restraint of trade because it in no way affects an employee's right to secure gainful employment.

Non-Disclosure of Employer Information

Defendants make several arguments concerning the invalidity of the non-disclosure clause.

First, Defendants contend that the "protection afforded to confidential information should reflect a balance between an employer who has invested time, money, and effort into developing such information and an employee's general right to make use of knowledge and skills acquired through experience in a field or industry for which he is best suited," citing *Lasership Inc. v. Watson,* 19 Cir. CL20091219, 79 Va. Cir. 205 (2009), in which another judge of this court held that a clause which precluded an employee from "disclos[ing] to *any* person . . . any information concerning . . . the business of Lasership," was overly broad and unenforceable as a matter of law. Defendants' Memorandum 17-18. Thus, according to Defendants, the non-disclosure clause at issue here is overly broad and unenforceable because it

encompasses "any and all confidential and/or propriety information of Omniplex."

The court disagrees. Unlike in *Lasership Inc.*, where the prohibition extended to "any information," the non-disclosable information here is limited to "confidential and/or propriety information," which does not suffer from the overbreadth from which the phrase "any information" suffers.

Plaintiffs respond to Defendants' argument that the non-disclosure clause restricts Stone's ability to accept employment "in perpetuity" by contending that the restrictions are "impliedly limited to the period of the employee's employment with Omniplex and the period immediately after the termination of that employment." Plaintiffs' Memorandum 18. There is, however, nothing in the language of the non-disclosure clause which "implies" that it is limited to the "period immediately after" the termination of employment. On the contrary, the plain language of the non-disclosure clause - "and thereafter" - demonstrates that the non-disclosure clause restricts Stone's ability to "use, disclose or transfer" Confidential Information or Third Party Information in perpetuity.

Despite the perpetual bar on non-disclosure, the court finds that this prohibition does not impair Stone's ability to earn a living and is thus enforceable.

Second, Defendants contend that the part of the non-disclosure clause which restricts Stone from "accept[ing] any employment or other professional engagement that likely will result in the use or disclosure, even if inadvertent, of OMNIPLEX Confidential Information or Third-Party Information" - which is, in effect, a non-compete clause - is overly broad and unenforceable because it: (1) fails to identify or define what "employment or other professional engagement that likely will result in the use or disclosure, even if inadvertent, of OMNIPLEX Confidential Information or Third-Party Information"; (2) restricts Stone's ability to accept such employment in perpetuity; and (3) is not narrowly tailored to competitive business interests. Defendants' Memorandum 18.

Plaintiffs justify the non-compete provision of the non-disclosure clause with a vague response: "it is not unduly harsh in curtailing her legitimate efforts to earn a living," it "does not prevent Stone from continuing employment in her chosen profession," and she "can work anywhere she wishes as long as she does not use for her own benefit (or for the benefit of her new employer) Omniplex's confidential information, not otherwise known to the public or within Omniplex's industry." Plaintiffs' Memorandum 20. Plaintiffs do not, however, demonstrate how Stone is to determine whether any future employment "likely will result in the use or disclosure, even if inadvertent," of Confidential Information or Third-Party Information.

The court thus finds that, while Omnisec has a legitimate business interest in preventing the disclosure of Confidential Information or Third-Party Information, the non-compete provision of the non-disclosure clause is not "narrowly drawn" and is "unduly burdensome on the employee's ability to earn a living" in that Stone cannot know which potential future employment "likely will result in the use or disclosure, even if inadvertent," of Confidential Information or Third-Party Information.

Moreover, the bar is perpetual. While it is appropriate for an employer to restrict a former employee's ability to use confidential information in perpetuity since that is a legitimate business interest of an employer which, in and of itself, is not unduly burdensome on the employee's ability to earn a living, it is a bridge too far to restrict an employee's future employment in perpetuity with a restriction pursuant to which the employee cannot know which potential future employment she may undertake because she cannot know which future employment "likely will result in the use or disclosure, even if inadvertent," of Confidential Information or Third-Party Information.

The non-compete provision of the non-disclosure clause is thus not enforceable.

Because the court finds that the non-compete provision of the non-disclosure clause is unenforceable, *i.e.*, "nor will Employee accept any employment or other professional engagement that likely will result in the use or disclosure, even if inadvertent, of OMNIPLEX Confidential information or Third Party Information," the court will sever that language from the Agreement pursuant to Paragraph 7(c) of the Agreement:

> Severability. If any clause of this Agreement is held to be invalid, illegal, or unenforceable for any reason, the validity, legality and enforceability of the remaining clauses will not it (*sic*)[5] any way affected or impaired thereby.

Accordingly, Paragraph 2(b) of the Agreement is enforceable, except for the phrase "nor will Employee accept any employment or other professional engagement that likely will result in the use or disclosure, even if inadvertent, of OMNIPLEX Confidential information or Third Party Information . . . ."[6]

Non-Solicitation Of Customers/Clients

Defendants argue that the restriction is not limited to "specific areas of competition, or Ms. Stone's past activities, or areas in which Omniplex currently does business, or to activities in which Ms. Stone was specifically engaged" and that restraints that "cover every conceivable customer of a company and every conceivable service are overbroad." Defendants' Memorandum 17. Defendants also contend that the restriction "prohibits Ms. Stone from providing business to 'potential customers or clients'" and that such "broad restrictions are unenforceable." Defendants' Memorandum 17.

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[5] The court believes that "it" is a typographical error which should have been "in".

[6] In exercising its severability clause authority, the court is not "blue penciling" the Agreement since the court is not "modify[ing] an otherwise unenforceable restriction to make it reasonable where it is clear from the terms of the agreement that it is severable." *Strategic Enterprise Solutions, Inc. v. Ikuma*, 19 Cir. CL20088153, 77 Va. Cir. 179 (2008). While severing an unenforceable clause is expressly authorized by the Agreement, and is thus enforcing the Agreement as written, changing the language of an otherwise unenforceable clause to make it enforceable would be rewriting the Agreement, which exceeds the court's authority.

These arguments are belied by the plain language of the non-solicitation clause, which defines "Restricted Entity" as:

> any customer or client or potential customer or client of OMNIPLEX that Employee solicited, called upon, conducted business with, became aware of, or identified as a potential customer or client of OMNIPLEX, during Employee's employment by OMNIPLEX.

Thus, because Stone worked only in a specific area for Omnisec, *i.e.*, security clearance background investigations for federal agencies, the restriction is effectively limited to a "specific area[] of competition" since Stone would have no knowledge of customers or clients in other areas. Moreover, because Stone did only security clearance background investigations for federal agencies, the restriction is effectively limited to Stone's past activities and to activities in which Stone was specifically engaged.

Further, while it is certainly the case that restraints that cover every conceivable customer and service of a company are overbroad, that is not the case here in that the restraint is limited to customers or clients, or potential customers or clients, that Stone "solicited, called upon, conducted business with, became aware of, or identified as a potential customer or client" during her employment.

In support of the fact that the universe of customers or clients, or potential customers or clients, is limited, Plaintiffs point out that the evidence at the hearing showed that there are "approximately nine entities which qualify" as a "Restricted Entity" (Plaintiffs' Memorandum 14) so that Stone could work "directly for, or even solicit[] for another entity, the Federal Bureau of Investigations or the Department of State" (Plaintiffs' Memorandum 14, citing Tr. 394) or she could work "directly for, or even solicit for, any bank or other commercial client, or even any of the forty-nine state governments and numerous local governments for which Omniplex performed no work." Plaintiffs' Memorandum 14, citing Tr. 395.

In sum, the court finds that the non-solicitation of customers/clients clause is enforceable as it is not a invalid restraint on trade because it protects the employer's legitimate business interest and is not unduly burdensome on the employee's ability to earn a living.

An appropriate order will enter.

Sincerely yours,

[redacted]

Richard E. Gardiner
Judge

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

OMNISEC INTERNATIONAL INVESTIGATIONS, INC., *et al.*	)	
Plaintiffs	)	
v.	)	CL 2018-6368
SLAVICA STONE, *et al.*	)	
Defendants	)	

ORDER

THIS MATTER came before the court on Defendants' plea in bar challenging the enforceability of three (3) clauses in Defendant Stone's employment agreement with Plaintiffs, to wit, Paragraph 1(a) (Non-Solicitation of Employees); Paragraph 1(b) (Non-Solicitation of Customers/Clients); and Paragraph 2(b)(i) (Non-Disclosure).

THE COURT, for the reasons set forth in the court's letter opinion of today's date, hereby SUSTAINS Defendants' plea in bar in part (as to part of Paragraph 2(b)(i) (Non-Disclosure)) and OVERRULES Defendants' plea in bar in part (as to Paragraph 1(a) and 1(b)).

ENTERED this 26th day of March, 2019.

[redacted]

Richard E. Gardiner
Judge

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA

Copies to:

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