

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

ELGIN SEPARATION SOLUTIONS, LLC, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:23-cv-00440

DAVID CHADWICK DILLON, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

The Court has reviewed the Plaintiffs' *Motion for Preliminary Injunction* (Document 24), the *Memorandum in Support of Motion for Preliminary Injunction* (Document 37), *Defendant David Chadwick Dillon and Dillon Industries, Inc.'s Response to Elgin Separation Solutions, LLC's Motion for Preliminary Injunction* (Document 41), *Defendant Donald Ritchie's Joinder in David Chadwick Dillon and Dillon Industries, Inc.'s Response to Elgin Separatin (sic) Solutions, LLC's Motion for Preliminary Injunction* (Document 42), the Plaintiffs' *Reply in Support of Their Motion for Preliminary Injunction* (Document 43), as well as all attached exhibits. For the reasons stated herein, the Court finds that the motion for a preliminary injunction should be denied.

FACTS¹

The Plaintiffs are Elgin Separation Solutions, LLC, and CMS/CSI LLC, formerly known as Centrifugal Services, LLC (collectively, "Plaintiffs" or "Elgin"). The Defendants are Dillon

¹ For purposes of the motion for a preliminary injunction, the facts are drawn from the evidentiary exhibits. No facts material to the consideration of the motion for a preliminary injunction are disputed, and the Court finds that a hearing would not be helpful to resolve the motion.

Industries, Inc., its owner Chad Dillon, and employee Don Ritchie. Mr. Dillon and Mr. Ritchie are former Elgin employees. Mr. Dillon left Elgin to form his company, Dillon Industries (“Dillon”); Mr. Ritchie left Elgin to work at Dillon. Although not the sole focus of their work, Elgin and Dillon are both in the business of repairing and manufacturing specialized processing equipment; specifically, decanter centrifuges.

Decanter centrifuges are mechanical devices used to separate solids from slurries in industrial processes, including coal mining and rendering. The decanter centrifuges that Dillon and Elgin repair are often decades old. Accordingly, Elgin and Dillon repair and build new decanter centrifuges based on designs, or drawings, created by other companies often referred to as Original Equipment Manufacturers (“OEM”). For example, Elgin produces “BYRD Style Centrifuges,” which are based on equipment originally designed and manufactured by Bird Machine Company (“Bird”), an OEM, in the 1960s. Elgin is not alone. Several companies in the Kanawha Valley, where Elgin and Dillon are based, have also repaired, manufactured, or supplied parts for Bird centrifuges. As a result, Dillon contends OEM drawings and other companies’ drawings of Bird centrifuges are readily available throughout the area. (Document 41-1 at 1–2.) Drawings are not required to perform repairs but are typically required to build new decanter centrifuges because they describe the location and size of the parts making up the decanter centrifuge. If OEM or similar drawings are not available, a drawing can be created by reverse engineering the equipment. This involves taking apart the existing decanter centrifuge, measuring the parts, and creating a new drawing. Dillon asserts that this is a common industry practice used by both Elgin and Dillon. (*Id.* at 2). Elgin claims that, as part of this practice, it improves upon equipment in order to outperform its peers. (Document 37 at 2). Although Elgin acknowledges

that redesigning and improving upon competitor products is common in the industry, Elgin maintains the exact manner in which it conducts its redesign process is confidential and proprietary. (*Id.*).

Mr. Dillon became involved in the business of repairing decanter centrifuges at an early age when he began working at his father's business, Industrial Process Equipment, in St. Albans, West Virginia. He eventually joined the family business full time and later took it over and expanded it significantly. Due to his management skills and relationships with customers and employees, Mr. Dillon found success in the industry. (Document 41-1 at 3.)

In 2013, Mr. Dillon sold the family business to Centrifugal Services, an Elgin subsidiary. At that time, the parties entered into two contracts: (1) an Asset Purchase and Contribution Agreement (the "APC Agreement") governing the sale of the business, and (2) an Employment Agreement governing Mr. Dillon's employment with Elgin. Mr. Dillon did not seek compensation in the sale for drawings or intellectual property beyond that listed in the APC Agreement, namely: "(i) corporate name; (ii) telephone number; (iii) facsimile number; (iv) domain numbers; (v) websites; and (vi) common law right to the company logo." (Documents 41-1 at 2; 21-1.) Following the sale, Mr. Dillon continued running the business as president of Elgin's Poca, West Virginia, division. In this position, he oversaw all facility operations, including the development and maintenance of customer relationships, defining the roles and responsibilities of the workforce, recruitment and hiring, and ensuring compliance with industry and customer standards. As a result, Elgin asserts that it came to entrust Mr. Dillon with its confidential information, customers, and suppliers. (*See* Document 37 at 7.)

In November 2021, Mr. Dillon decided to leave Elgin with the intention of starting his own competing business. Elgin requested he stay on until Elgin found a suitable replacement, to which Mr. Dillon agreed on the condition that the one-year non-competition and non-solicitation provisions in his Employment Agreement would begin to run from the effective date of his resignation, December 14, 2021. Elgin does not dispute that the one-year period began to run from this time. During this period, Mr. Dillon attests that he prepared to compete with Elgin by arranging office space, equipment, and financing for his new business, but was careful not to compete with Elgin or solicit Elgin employees. (Document 41-1 at 3.)² Mr. Dillon admits that he executed purchase orders for some Elgin customers, but maintains the orders were for shafts, a product Elgin does not sell. (*Id.*) In April 2022, Mr. Dillon forwarded an email from his Elgin email account to his Dillon Industries email account which contained a copy of a 24x60 Manual which Elgin had previously prepared in response to a customer request. Dillon asserts that it has never used the Manual. (Document 41-1 at 5.) Upon later discovering this email, Elgin initiated the process of registering its copyright in the 24x60 Manual. Two days after the United States Copyright Office granted Elgin's application, Elgin initiated the present suit.

Around October or December 2022, Elgin found a suitable replacement for Mr. Dillon, and Mr. Dillon left his employment with Elgin. On December 14, 2022, the one-year restrictive covenant period expired. Dillon Industries placed an ad for employment online the next day, at which time Dillon maintains several Elgin employees learned about the ad and applied to work for Dillon. Dillon hired some of these employees. In January 2023, Mr. Dillon claims he received

² Elgin submitted the affidavit of Christopher Henley, a General Manager at Elgin's Poca division, in support of its contention that Dillon solicited Elgin employees. (*See* Document 37 at 59). Henley's affidavit states without further support that Dillon contacted "many Elgin employees, offering them 10% more than their current salary" to resign. (*Id.*)

a call from Elgin's CEO with a request to cease hiring former Elgin employees. (Document 41-1 at 4.) Mr. Dillon completed the hiring of two Elgin employees to whom he had previously extended offers but maintains that since then he has ceased hiring Elgin employees.

Mr. Ritchie is a machinist by trade and is proficient in the use of computer-aided drawing programs, such as AutoCAD. (Document 41-2 at 1.) He previously worked for a company called Control Point where he acquired and created drawings of decanter centrifuges. (*Id.*) In 2018, Ritchie began working at Elgin's Poca Division and claims he brought with him many of the drawings he created at Control Point. (*Id.*) Ritchie's job duties at Elgin involved creating and modifying drawings, assisting in the drafting of maintenance and operations manuals, procurement, and issuing work orders. Following Mr. Dillon's departure, Ritchie attests that he found the Poca Division to be a difficult place to work. According to Ritchie, business was disorganized, and customers were unhappy. (*Id.*) Consequently, he claims he reached out to Mr. Dillon and asked to work for Dillon Industries. Mr. Dillon initially advised against leaving Elgin, citing his inability to pay Ritchie the same salary and benefits. (*Id.* at 2). However, Mr. Dillon eventually agreed, and Ritchie left Elgin in January 2023 to work for Dillon. Upon his resignation, Ritchie returned one external hard drive to Elgin. Prior to leaving, however, he downloaded drawings he claims he acquired or created while at Control Point and Elgin. (*Id.*) Elgin represents that a forensic investigation revealed Ritchie connected fifteen different external drives to his work computer. (Document 37 at 20.) Ritchie does not dispute this number but maintains that he has diligently searched for these devices and found only six thumb drives in his possession, which he returned to Elgin for further examination. (Document 41-2 at 2-3).

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