

DIXON A.C.&R. CORPORATION,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 03-01,557
	:	
ROBERT M. KIBBE and TROJAN TUBE	:	
AND FABRICATION COMPANY,	:	
	:	MEMORANDUM OPINION AND ORDER
Defendants	:	ON PRELIMINARY OBJECTIONS

Date: February 5, 2004

MEMORANDUM OPINION and ORDER

Before the Court are Preliminary Objection of Defendant to Plaintiff's Complaint. The Preliminary Objections were filed October 21, 2003. An argument was held December 12, 2003 following the submission of briefs. The Court has also heard testimony concerning the issuance of a preliminary injunction.

The Court will sustain the Preliminary Objections. The first Preliminary Objection relates to a demur to the claims against Defendant TROJAN Tube and Fabrication Company. Defendant TROJAN is asserted to be the new employer of Defendant Robert Kibbe and the Complaint asserts that Kibbe has left employment with Plaintiff Dixon and gone to work to Defendant TROJAN in violation of a restrictive covenant that Kibbe made with Dixon. Although it may be that Defendant TROJAN has intentionally interfered with a restrictive covenant, the Complaint does not assert facts, which indicate allegations that TROJAN did so. The Complaint overall asserts Kibbe's wrongdoing but not necessarily that of TROJAN. As Plaintiff's Brief in Opposition of Preliminary Objections point out there are certain facts that have come to light through the Preliminary Injunction hearings which may be the basis of an

appropriate complaint against TROJAN. However, those facts are not pleaded. Specifically, the Court cannot find through a close reading of the Complaint that it is alleged that TROJAN induced Kibbe to leave its employment and/or that TROJAN offered employment to Kibbe knowing of the restrictive covenant.

The other Preliminary Objection seeks to strike a broad statement in paragraph 28 of the Complaint, which alleged Defendants fraudulently and deceitfully, among other actions, violated the restrictive covenant. Overall, there is a significant set of facts alleged in the Complaint and paragraph 28 does start out by asserting that “by negotiating with Dixon’s customers for purposes of competing with Dixon, ...” that Kibbe and TROJAN committed the fraudulent and deceitful acts. However, the pleading should reference whether it is relying upon the factual acts set forth in the Complaint as Plaintiff apparently argues in its brief in opposition to preliminary objections or if there are other ways in which fraud and deceit occurred.

ORDER

The preliminary objections of Defendants to the Complaint are sustained, as set forth in the foregoing Opinion. Plaintiff shall have a period of twenty days after notice of entry of this Order in which to file an amended complaint.

BY THE COURT:

William S. Kieser, Judge

cc: Thomas C. Marshall, Esquire/Ryan Tira, Esquire
Joseph F. Orso, III, Esquire/Michael J. Casale, Jr.
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)