STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0237

Amano McGann, Inc.,
Appellant,

vs.

Brett Klavon, et al.,
Respondents.

Filed November 22, 2021
Reversed and remanded
Bjorkman, Judge

Ramsey County District Court
File No. 62-CV-20-4746

Joel (O'Malley) Andersen, Dan Supalla, Katie M. Connolly, Nilan Johnson Lewis PA, Minneapolis, Minnesota (for appellant)

Jason R. Asmus, Jeremy D. Schildcrout, Taft Stettinius & Hollister LLP, Minneapolis, Minnesota; and

Lessie C. Gilstrap (pro hac vice), Fritz, Byrne, Head & Gilstrap, PLLC, Austin, Texas (for respondents)

Considered and decided by Smith, Tracy M., Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant-employer challenges the rule 12.02(e) dismissal of its claims against respondents—appellant's former employees and their new employer—for breaches of

noncompete provisions and tortious interference with contract. Because the complaint states claims upon which relief may be granted, we reverse and remand.

FACTS

Appellant Amano McGann, Inc. is in the "parking solutions" industry, providing "Parking Access and Revenue Control Systems (PARCS), computerized valet systems, and parking automation systems" to customers across North America. Amano also sells "software management systems, gates, barriers, entry and exit stations, validation solutions, parking access controls, and lane devices."[1] Amano alleges its success is in large part due to "valuable confidential, proprietary, and trade secret information and the relationships its employees have developed with the people and entities with which Amano McGann does business."

Respondents Thomas Dishman, Patrick Babb, Andrew Hennessey, and Brett Klavon (the individual respondents) worked for Amano and signed employment agreements that contained noncompete provisions. In 2020, the individual respondents' employment with Amano ended for various reasons and they were hired by respondent FlashParking, Inc., which competes with Amano in the North American parking-solutions market.

Amano brought this action alleging that the individual respondents breached the noncompete provisions of their employment agreements and that FlashParking tortiously

[1] Because we are reviewing a rule 12.02(e) dismissal, we consider only the facts alleged in Amano's complaint, accept those facts as true, and construe all reasonable inferences in favor of Amano. *See Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003).

interfered with those agreements. Respondents moved to dismiss the complaint for failure to state a claim upon which relief may be granted. They argued, as relevant to this appeal, that the noncompete provisions are unenforceable and that Amano did not adequately allege damages. The district court granted the motion, concluding that the noncompete provisions are not enforceable because they are "facially overbroad," without reaching respondents' damages argument. Amano appeals.

DECISION

A complaint is subject to dismissal if it "fail[s] to state a claim upon which relief may be granted." Minn. R. Civ. P. 12.02(e) (rule 12.02(e)). We review dismissal of an action for failure to state a claim de novo. *Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496, 500 (Minn. 2021). In doing so, we must consider and accept as true "the facts alleged in the complaint" and "construe all reasonable inferences in favor of the nonmoving party." *Id.* (quotation omitted).

A plaintiff need only make a minimal showing to survive a motion to dismiss under rule 12.02(e). *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011). Minn. R. Civ. P. 8.01 requires that a complaint "contain a short and plain statement of the claim showing that the pleader is entitled to relief." "A pleading is sufficiently detailed when it gives fair notice to the adverse party of the incident giving rise to the suit with sufficient clarity to disclose the pleader's theory upon which his claim for relief is based." *Halva*, 953 N.W.2d at 503 (quotation omitted); *see also Mumm v. Mornson*, 708 N.W.2d 475, 481 (Minn. 2006) (explaining that the object of a complaint is to "put the defendant on notice of the claims against him"). In other words, "[a] claim is sufficient against a motion to

dismiss . . . if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 602 (Minn. 2014) (emphasis omitted) (quotation omitted). Conversely, "a pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Id.* (emphasis omitted) (quotation omitted).

Amano's complaint alleges breach-of-contract claims against the individual respondents and a claim for tortious interference with contract against FlashParking. To prevail on a contract claim, a plaintiff must establish "(1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant." *Park Nicollet Clinic*, 808 N.W.2d at 833. To prevail on a tortious-interference claim, a plaintiff must establish "(1) the existence of a contract; (2) the alleged wrongdoer's knowledge of the contract; (3) intentional procurement of its breach; (4) without justification; and (5) damages." *Sysdyne Corp. v. Rousslang*, 860 N.W.2d 347, 351 (Minn. 2015) (quotation omitted).

Amano argues that the district court erred because the enforceability of its noncompete provisions is not subject to resolution under rule 12.02(e) and it adequately alleged damages arising from respondents' actions. We address each argument in turn.

I. Amano pleaded facts sufficient to survive the rule 12.02(e) motion on the issue of whether its noncompete provisions are enforceable.

Noncompete agreements are "looked upon with disfavor, cautiously considered, and carefully scrutinized." *Bennett v. Storz Broad. Co.*, 134 N.W.2d 892, 898 (Minn. 1965). This is so because an employee's right to earn a living is at stake. *Kallok v. Medtronic, Inc.*, 573 N.W.2d 356, 361 (Minn. 1998). But a noncompete agreement is enforceable when it is (1) necessary to protect the employer's business or goodwill, (2) is not more restrictive than is reasonably necessary considering "the nature and character of the employment" and the duration and geographic scope of the restriction, and (3) "not injurious to the public." *Walker Emp. Serv., Inc. v. Parkhurst*, 219 N.W.2d 437, 441 (Minn. 1974). An employment restriction that is broader than what is reasonably necessary to protect the employer's legitimate business is unenforceable. *Kallok*, 573 N.W.2d at 361.

The enforceability of a noncompete agreement "depends upon numerous circumstances" and "cannot always be determined by an examination of the contract itself" but instead "must be determined on its own facts and a reasonable balance must be maintained between the interests of the employer and the employee." *Bennett*, 134 N.W.2d at 899-900. In other words, determining the enforceability of a noncompete provision requires a court to consider the circumstances of the underlying employment. *See Walker Emp. Serv.*, 219 N.W.2d at 441-42 (examining circumstances of employment to conclude noncompete provision enforceable); *Alside, Inc. v. Larson*, 220 N.W.2d 274, 280 (Minn. 1974) (same); *Eutectic Welding Alloys Corp. v. West*, 160 N.W.2d 566, 570-71 (Minn. 1968) (examining circumstances of employment to determine noncompete provision

unenforceable, holding that "plaintiffs had unreasonably extracted from defendant a commitment far broader than his actual functions and status could reasonably require").

With these principles in mind, we examine the specific terms of the noncompete provisions and underlying employment activities alleged in this case. According to Amano's complaint, each of the individual respondents signed an employment agreement that contains the following provisions:

> In consideration of Employer's offer of employment and the compensation, benefits, and other advantages of employment with Employer, for a period of twelve (12) months after termination of Applicant's employment with Employer:
>
> . . . .
>
> b. If Applicant has been or is employed by Employer in a sales capacity, Applicant will not render services in the United States, directly or indirectly, in any capacity, to any competitor or customer of Employer in the Business in connection with the development, manufacture, marketing, sale, merchandising, leasing, servicing or promotion of any "Conflicting Product" to any person or organization upon whom Applicant called, or whose account Applicant supervised on behalf of Employer, at any time during the last three (3) years of Applicant's employment by Employer.[2] A "Conflicting Product" means any product, method or process, system or service of any person or organization other than Employer, in existence or under development, which is the same as or similar to or competes with, or has a usage allied to, a product, method or process, system or service upon which Applicant worked (in either a sales or nonsales capacity) during the last three (3) years of Applicant's employment by Employer, or about which Applicant acquires Confidential Information.

[2] Hennessey's employment agreement differs slightly from the others, prohibiting him from selling a "Conflicting Product" to any person or organization whose account employee worked on in the last 18 months of his employment.

> c. If Applicant has been or is employed by Employer in a nonsales capacity, Applicant will not render services to any competitor or customer of Employer in the Business, directly or indirectly, in any capacity, in the United States or in any country in which Employer conducts the Business and offers a product, method or process, system or service upon which Applicant worked during Applicant's employment.
>
> However, Applicant may accept employment with another entity whose business is diversified and which as to part of its business is not in competition with Employer, provided Employer, prior to Applicant accepting such employment, will receive separate written assurances satisfactory to Employer from such entity and from Applicant, that Applicant will not render services directly or indirectly in connection with any Conflicting Product.

The complaint alleges that Dishman and Hennessey worked for Amano in both sales and nonsales positions and that Babb and Klavon worked in only nonsales positions. And the complaint alleges that Amano required certain employees to agree to the restrictions stated in the noncompete provisions as a "reasonable measure[] to protect the goodwill and value it has developed in its workforce." Respondents do not dispute that the interests Amano seeks to protect through the noncompete provisions are legitimate or argue that the provisions are injurious to the public. Nor do they challenge the provisions' duration or geographic scope. Rather, respondents challenge the scope of the restricted conduct—particularly the prohibition on working for a competitor or customer of Amano "directly or indirectly, in any capacity." Respondents contend, and the district court determined, that this language renders the noncompete provisions facially overbroad and unenforceable. We do not agree that this part of the noncompete provisions is always unenforceable under Minnesota law.

Notably, the language in Amano's noncompete provision is similar to that addressed by our supreme court in *Bennett*, which is our guiding precedent for analyzing noncompete provisions in Minnesota. The provision in *Bennett* broadly prohibited the radio announcer-employee from "directly or indirectly" accepting "employment from, or appear[ing] on, or becom[ing] financially interested in, any radio or television station . . . within a radius of 35 miles." 134 N.W.2d at 894. In reversing summary judgment, the supreme court held that the record did not establish that this restrictive covenant was enforceable as a matter of law, and that its validity depended on whether the circumstances justified the restriction, a fact issue for the jury. *Id.* at 899-900.[3] Like the noncompete clause in *Bennett*, Amano's noncompete clause restricts employees from working directly or indirectly with a competitor or customer in the business and does not define restrictions based on the type of job position. *Id.* at 894. And like the supreme court in *Bennett*, we must focus not just on the language of the agreement, but also the attendant circumstances, to determine whether Amano has sufficiently pleaded enforceable noncompete provisions.

Respondents urge this court to instead look to federal court decisions as authority for concluding that the prohibition on employment "in any capacity" is overbroad and unenforceable as a matter of law. Federal opinions may be persuasive but are not binding upon our court. *State ex rel. Hatch v. Emps. Ins. of Wausau*, 644 N.W.2d 820, 828 (Minn. App. 2002). The cases respondents cite do not persuade us for two reasons.

[3] This court has also held enforceable noncompete provisions with language similar to that used by Amano. *See Salon 2000, Inc. v. Dauwalter*, No. A06-1227, 2007 WL 1599223, at *1 (Minn. App. June 5, 2007); *Lapidus v. Lurie LLP*, No. A17-1656, 2018 WL 3014698, at *1 (Minn. App. June 18, 2018), *rev. denied* (Minn. Sept. 18, 2018).

First, the majority of the cited cases address noncompete provisions in the context of preliminary-injunction proceedings. *See Virtual Radiologic Corp. v. Rabern*, 2020 WL 1061465, at *3 (D. Minn. Mar. 5, 2020); *Midwest Sign & Screen Printing Supply Co. v. Dalpe*, 386 F. Supp. 3d 1037, 1041 (D. Minn. 2019); *Arizant Holdings Inc. v. Gust*, 668 F. Supp. 2d 1194, 1197, 1200 (D. Minn. 2009); *Lexis-Nexis v. Beer*, 41 F. Supp. 2d 950, 957 (D. Minn. 1999). This procedural distinction makes a difference. In deciding whether to grant a preliminary injunction, federal courts analyze the "likelihood of the movant's success on the merits." *Midwest Sign*, 386 F. Supp. 3d at 1046 (quotation omitted); *see also Marvin Lumber & Cedar Co. v. Severson*, 2015 WL 5719502, at *8 (D. Minn. 2015) (granting a partial preliminary injunction despite finding that the language of the noncompete clause was "insufficiently defined and likely broader than necessary"); *Gavaras v. Greenspring Media, LLC*, 994 F. Supp. 2d 1006, 1009-11 (D. Minn. 2014) (responding to a motion for a temporary restraining order, the district court issued a declaratory judgment that the noncompete agreement was unenforceable because, in part, the noncompete agreement did not define competing activities from which employees were restricted). In deciding a motion to dismiss under rule 12.02(e), Minnesota courts determine whether it is "possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Walsh*, 851 N.W.2d at 602 (emphasis omitted) (quotation omitted). The question before us is not whether Amano is likely to prevail on its breach-of-contract and tortious-interference claims. Rather, the question we must decide is whether the complaint states a claim that the noncompete provisions entitle Amano to relief based on the particular circumstances.

Second, the only case cited that involves dismissal under rule 12(b)(6) of the Federal Rules of Civil Procedure does not persuade us to depart from *Bennett*. In *Nanomech, Inc. v. Suresh*, the court, applying Arkansas law, affirmed the dismissal of a former employer's breach-of-contract action on the ground that the noncompete provision was overbroad. 777 F.2d 1020, 1024 (8th Cir. 2015). The noncompete provision did not have a geographic limitation and prohibited the former employee from working for any of his former employer's competitors "in any capacity." *Id*. The *Nanomech* court noted that the lack of a geographic limitation made the noncompete provision unenforceable under Arkansas law. *Id*. at 1025. In contrast, Amano's noncompete provisions have geographic limitations that respondents do not challenge. More importantly, to the extent *Nanomech* reflects a court's willingness to determine the reasonableness of noncompete provisions at the rule 12 stage, that approach is inconsistent with *Bennett*.

Having rejected respondents' argument that this action must be dismissed because Amano's noncompete provision is facially overbroad, we turn to examining Amano's allegations regarding the circumstances of the individual respondents' employment. The complaint alleges the nature of each individual respondent's employment, including their exposure to Amano's business strategies and other confidential information, as follows.

Dishman worked in numerous positions at Amano, in sales and non-sales capacities. He was first a Sales Executive – National Accounts, left the company then returned as Vice President – Central Region, was promoted to Vice President – Eastern Region, then promoted to Vice President – Branch Operations & Sales, and most recently, he was the Senior Vice President – Direct Sales & Operations. Amano alleged that Dishman was

privy to Amano's "most sensitive" strategic planning, which included "detailed confidential information regarding Amano's strategic initiatives and critical operations, including information regarding personnel, performance, and compensation, customer relations, growth opportunities, and product development." Dishman also had knowledge of "the functionality, technical specifications, pricing, costs, manufacturing and supply-chain partners, processes and methods, installation methodologies and profit margins of the entire Amano McGann product line." Dishman resigned from Amano in March 2020. The next month, he began working for FlashParking as their Vice President of Sales – Retail Enterprise, a position similar to the one he held at Amano.

Babb worked in two nonsales positions at Amano, first as a Technical Services Representative, and then as an Installation Foreman. The latter position required extensive knowledge of Amano's parking systems, and Babb was privy to "detailed confidential information" about Amano's products and product development. Babb was laid off in March 2020 as part of Amano's workforce reduction. He joined FlashParking the next month as a Senior Field Commissioner.

Hennessey worked in both sales and nonsales capacities for Amano beginning in 2000. He was as promoted to Sales Manager for the Chicago and Milwaukee markets in 2009 and was later promoted to General Manager – Chicago/Milwaukee branch. In these positions, Hennessey was in charge of developing and executing sales strategies as well as establishing relationships with customers. Hennessey's employment with Amano ended in September 2020, and he began working with FlashParking soon after.

Klavon worked in a nonsales capacity as a hardware and software technician beginning in 1996. He left in 2015 but returned in October 2016 as a Senior Technical Services Manager. In 2019, he was promoted to Director of Professional Services. Klavon had detailed knowledge as part of his responsibility managing the Professional Services Team that included managing expectations and relationships with clients, branch and dealer personnel, and subcontractors across the United States, and working with the IT department to resolve software and hardware problems. Klavon was laid off in March 2020. He began working in a similar role at FlashParking in August.

Given Minnesota's notice-pleading requirements, we conclude that Amano has sufficiently pleaded facts that could support a determination that its noncompete provisions are enforceable. The complaint alleges that each of the individual respondents was a long-term, high-level employee familiar with Amano's business strategies and other confidential information. Each of the individual respondents assumed positions at FlashParking similar to those they held at Amano. Evidence could be introduced consistent with the pleaded facts to demonstrate that the noncompete provisions are (1) necessary to protect the employer's business or goodwill, (2) not more restrictive than is reasonably necessary considering "the nature and character of the employment" and the duration and geographic scope of the restriction, and (3) "not injurious to the public." *Walker Emp. Serv.*, 219 N.W.2d at 441-42. And evidence could be introduced that FlashParking interfered with the individual respondents' contractual obligations to Amano. Accordingly, the complaint

states claims upon which relief may be granted, and the district court erred by dismissing them.[4]

II. Amano sufficiently pleaded damages.

Respondents argue in the alternative that we should affirm the dismissal of this action because Amano did not sufficiently plead damages. A plaintiff seeking money damages must include a demand for damages in the complaint "and put the defendants on notice of the relief sought." *City of Waite Park v. Minn. Office of Admin. Hearings*, 758 N.W.2d 347, 353 (Minn. App. 2008), *rev. denied* (Minn. Feb. 25, 2009). So long as the factual basis for a plaintiff's claim is alleged, the alleged injury may be generally pleaded. *Halva*, 953 N.W.2d at 503 (noting that, under Minnesota law, "pleading of broad general statements that may be conclusory is permitted"). Moreover, "[e]ven though a claimant's damages may be difficult to prove, it is improper to deny the claimant a chance to prove those damages by dismissing the claim based on the allegations of the complaint." *Id.* at 502. Respondents argue that even if Amano's noncompete provisions are not overly broad on their face, Amano failed to properly plead damages.

Amano's complaint seeks both injunctive relief and "direct and consequential damages as a result" of the individual respondents' breaches and FlashParking's interference with the contract, attorney fees, and any other equitable relief. The supreme

[4] Amano asserts that actions premised on breach-of-noncompete provisions are, categorically, not subject to dismissal under rule 12.02(e). We need not determine whether rule 12.02(e) dismissal is ever appropriate because we conclude Amano's complaint alleges facts that could support a determination that its noncompete provisions are enforceable as to the individual respondents.

court has held that plaintiffs may recover attorney fees and other expenses incurred in enforcing noncompete agreements from both the employee and the third party who interfered with and caused the breach of a contract. *Kallok*, 573 N.W.2d at 362. Amano's complaint sufficiently pleaded damages under the notice pleading standard.

In sum, under Minnesota's liberal pleading standards, Amano's complaint states claims upon which relief may be granted. We therefore reverse the rule 12.02(e) dismissal of Amano's complaint and remand for further proceedings consistent with this opinion. In so doing, we take no position on whether summary judgment may be warranted on a properly developed factual record. *See Halva*, 953 N.W.2d at 502 (explaining that claims for speculative damages will be barred at the summary-judgment stage); *Bennett*, 134 N.W.2d at 899-900 (addressing enforceability of noncompete provision at summary-judgment stage of proceedings).

Reversed and remanded.