

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

JEFFREY B. COOPER, ROCCO N. TATASCIORE, BRAVO PRODUCTIONS, INC., and EXPLOSION LIGHTING & DRAPING COMPANY Plaintiffs	: FEBRUARY TERM, 2002 : No. 1260 : : (Commerce Program) : Control No. 031109
v.	
MICHAEL A. CERELLI Defendant	

ORDER

AND NOW, this 8th day of July 2002, upon consideration of plaintiffs' Petition for a Preliminary Injunction and the defendant's opposition, the respective memoranda, all matters of record, and after a full hearing and in accord with the contemporaneous Findings of Fact and Conclusions of Law, it is **ORDERED** that:

1. Cerelli shall **not**, under any circumstances have any contact with present or future employees of Explosion Lighting;
2. Cerelli shall **return** to Explosion Lighting the vehicle (van) he is using but which is owned by plaintiff company;
3. Cerelli shall **not** provide lighting consulting services for any person or entity which is, or within one year prior to July 1, 2002, was a client or customer of Explosion Lighting;
4. The restriction set forth in paragraph 3 shall remain in force for a period of one year from March 1, 2002 and shall apply geographically to that area with a radius of twenty-five (25) miles from City Hall, Philadelphia.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

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Plaintiffs	: No. 1260
v.	:
MICHAEL A. CERELLI	: (Commerce Program)
Defendant	: Control No. 031109

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN SUPPORT OF ORDER GRANTING PRELIMINARY INJUNCTION
SOUGHT BY PLAINTIFF JEFFREY B. COOPER et al.**

Presently before this court is plaintiffs' Petition for Preliminary Injunction To Enforce Restrictive Covenant ("Petition"). Plaintiffs seek to enjoin Michael A. Cerelli ("Cerelli") from violating the restrictive covenant in his employment agreement. After considering the Petition and the papers in opposition and the respective memoranda, and after a full hearing and oral argument, it is **ORDERED** that Cooper's Petition is **Granted**, in part. The following findings of fact and conclusions of law are submitted in support of this court's contemporaneous Order.

FINDINGS OF FACT

1. The court incorporates by reference and adopts the findings of fact set forth in Judge McInerney's Opinion of March 18, 2002 titled: FINDINGS OF FACT, DISCUSSION, AND CONCLUSIONS OF LAW IN SUPPORT OF ORDER GRANTING PRELIMINARY INJUNCTION SOUGHT BY PLAINTIFF COOPER ET AL. AND DENYING PRELIMINARY INJUNCTION

SOUGHT BY PLAINTIFF CERELLI. (Court Ex. 1).

2. The Employment Agreement (“Agreement”) between Cerelli and Bravo Productions (the “Company,” also referred to as “Explosion Lighting”) entered into on January 1, 1999 defines “good cause,” in part, as “[t]he commission by Executive [Cerelli] of an act or course of conduct constituting fraud, dishonesty, or willful misconduct by Executive in the performance of his duties.” (Court Ex. 2; Agreement, Section 1 (c)).

3. The Company may terminate Cerelli without notice if for acts or a course of conduct constituting fraud, dishonesty, or willful misconduct. (Id.; Id., Section 3).

4. Cerelli committed acts which represent, at a minimum, willful misconduct. (Court Ex. 1, ¶¶ 35-37).

5. The Agreement includes a restrictive covenant, which states in pertinent part:

12. (a) For a period beginning with the date hereof and continuing until the expiration of twenty-four (24) months from the date of termination of this Agreement for any reason, whether by Executive or by the Company, Executive covenants and agrees that he will not, within a one hundred (100) mile radius of City Hall, Philadelphia, Pennsylvania:

(i) Directly or indirectly solicit, entice or induce any customer (as defined below) to become a client or customer of any other person, firm or corporation with respect to products and/or services then sold by the Company or to cease doing business with the Company, and Executive shall not approach any such person, firm or corporation for such purpose or authorize or knowingly approve the taking of such actions by any other person; or

(ii) Solicit, entice or induce any person who presently is or at anytime during the term hereof shall be an employee or agent of the company to become employed or retained by any other person, firm or corporation or to leave their employment or relationship with the Company, and Executive shall not approach any such employee for such purpose or authorize or knowingly approve the taking of such actions by any other person, or do any other act that may result in the impairment of the relationship between any such employee or agent and the Company, or

(iii) compete with, or encourage or assist others to compete with, or solicit orders or otherwise participate in business transactions in competition with, the business

engaged in by the Company at the time of termination.

...

(Court Ex. 1; Agreement, Section 12).

6. Customer is defined as “any person or entity which at the time of determination shall be, or shall have been within one year prior to such time, a client or customer of the Company.” (Id.)

7. Cerelli was terminated by the board of directors of the Company on February 8, 2002. (Court Ex. 1, ¶¶ 51-52).

8. By Order dated March 1, 2002, Judge McInerney of this Court upheld the right of the board of directors to terminate Cerelli as president of the Company. (Court Ex. 1).

9. Cerelli formed his own company, “Mike TPC LLC,” subsequent to both his termination and the March 1st court Order. (6/26/02; N.T. 21-22).

10. Sometime after his termination, Cerelli contacted and met with employees of his former company, Explosion Lighting, and suggested they leave their employment. (6/26/02; N.T. 58-60).

11. Cerelli’s company offers consulting services, which include preparing specifications for lighting and drapery materials and services to be supplied for parties or special events, as well as providing and installing lighting. (6/26/02; N.T. 23-24, 28-29, 43, 52, 69, 71).

12. Cerelli’s Company, Mike TPC LLC, completed more than thirty jobs during the period March through the middle of June 2002. (Ex. D 7).

13. A significant number of those jobs involved customers who had been among the top five clients of Explosion Lighting immediately prior to Cerelli’s termination. (6/26/02; N.T. 19, 21, 23-24, 40).

14. In those jobs Cerelli offered advice as to lighting and drapery needs and suggested companies from whom the clients should solicit bids for the lighting. (6/26/02; N.T. 28-29, 31-32, 40-41,

42-43).

15. On the first eight or so jobs Cerelli recommended Explosion Lighting and invited Explosion to submit a bid along with two other recommended companies. (6/26/02; N.T. 36).

16. Explosion Lighting declined to submit bids for jobs where Cerelli submitted the specifications. On later jobs Cerelli did not include Explosion Lighting on the list of companies to submit bids. (6/26/02; N.T. 36).

17. Explosion Lighting continues to operate and a number of contracts under the supervision of the new manager who replaced Cerelli have been entered into.

18. Cerelli's new company's clients have used the services of competitors of Explosion Lighting. (6/26/02; N.T. 26-27, 30-31, 40).

19. Cerelli's activities have constituted violations of both Section 12 (a)(i) and Section 12 (a)(ii) of the Restrictive Covenant.

CONCLUSIONS OF LAW

1. Defendant, Cerelli, is in violation of the Restrictive Covenant.
2. The Covenant as constituted is unreasonably broad in terms of geography and time.
3. This court finds that reasonable temporal and geographical limitations would be one (1) year from the date of termination and within a twenty-five (25) mile radius from City Hall, Philadelphia.
4. A balancing of the equities dictates that defendant Cerelli should not be enjoined from seeking lighting contracts with persons who have never been customers of Explosion Lighting.
5. Cerelli shall not, under any circumstances contact present or future employees of Explosion Lighting.

6. As a result of the hearing before Judge McInerney and the Petitions filed in this case, Cerelli is required to return to Explosion Lighting its van vehicle he has been using.

This court will enter a contemporaneous Order in accord with these Findings and Conclusions.

BY THE COURT,

Dated: July 8, 2002

ALBERT W. SHEPPARD, JR., J.