

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
20 CVS 4609

PDF ELECTRIC & SUPPLY  
COMPANY, LLC and AGS  
ASSOCIATES, LLC d/b/a MRO  
ELECTRIC AND SUPPLY  
COMPANY INC.,

Plaintiffs,

v.

WILLIAM JACOBSEN;  
CHRISTIAN JACOBSEN;  
VISION CONTROLS LLC; and  
INDUSTRIAL AUTOMATON  
CO.,

Defendants.

**ORDER ON PLAINTIFFS' MOTION  
FOR EXPEDITED DISCOVERY AND  
EXPEDITED RULING**

THIS MATTER comes before the Court on Plaintiffs PDF Electric & Supply Company, LLC ("PDF") and AGS Associates, LLC d/b/a MRO Electric and Supply Company Inc.'s ("MRO") Motion for Expedited Discovery and Expedited Ruling. ("Motion," ECF No. 10.) Plaintiffs seek an order allowing them to conduct certain limited, expedited discovery from Defendants prior to Plaintiffs filing of a motion for a preliminary injunction. Attached to the Motion are eight sets of proposed written discovery requests directed to each of the Defendants. (Proposed Written Discovery Requests, ECF Nos. 10.1–10.8.)

The Motion appears to request (1) that the Court issue an expedited order requiring that Defendants file a response to the Motion within five days; and (2) once a response to the Motion is received from Defendants, that the Court issue a second

expedited order granting Plaintiffs' request for expedited discovery and requiring Defendants to respond to the proposed written discovery requests within seven days following the Court's order on this Motion. (ECF No. 10, at p. 3.) Defendants' counsel opposes the Motion.

On April 14, 2020, the Court held a telephonic conference ("Telephone Conference") with counsel for Plaintiffs and Defendants by consent to discuss the Motion. In the Telephone Conference, the Court advised counsel that it would issue an order on the Motion without waiting for a response from Defendants for the reasons discussed below.

THE COURT, having considered the Motion and attachments, Plaintiffs' brief filed in support of the Motion, the discussion with counsel during the Telephone Conference, the pleadings on file with the Court, and the Orders entered by Chief Justice Cheri Beasley from March 13 through April 13, 2020, CONCLUDES, in the exercise of its discretion, that the Motion should be DENIED, without prejudice.

*A. Background*

1. On March 26, 2020, Plaintiffs filed a Verified Complaint for injunctive relief and damages arising out of Defendants' alleged misuse of MRO's trade secrets and confidential information and violation of William Jacobsen's employment contract with MRO. (ECF No. 4.) In the Verified Complaint, Plaintiffs allege claims against all Defendants for: misappropriation of MRO's trade secrets in violation of N.C.G.S. § 66-154(a) (Count I); unfair and deceptive trade practices in violation of N.C.G.S. § 75-1.1 (Count II); civil conspiracy (Count III); temporary restraining order

and preliminary and permanent injunctions (Count IV); unjust enrichment (Count VII); and common law unfair competition (Count IX). Plaintiffs allege claims against William Jacobsen for breach of contract (Count V); breach of confidence (Count VI); and failure to register assumed name (Count VIII).

2. PDF and MRO are “independent wholesale distributors of factory automation parts and conduct their business exclusively on the Internet.” (ECF No. 4, at ¶ 11.)<sup>1</sup> MRO hired William Jacobsen (“Jacobsen”) on June 28, 2016 as an Online Marketing Associate. (*Id.* at ¶ 38.) As a condition of his employment, Jacobsen signed a “Non-Disclosure/Non-Compete Agreement” (“Non-Disclosure Agreement”). (*Id.* at ¶ 39, Ex. 1.) Jacobsen’s work responsibilities involved bidding on certain key terms that described MRO’s top selling products in order to secure a top position in online search engine results. (*Id.* at ¶ 38.) As part of his role, he was given access to MRO’s trade secrets and confidential information. (*Id.* at ¶ 40.)

3. Plaintiffs allege that while he was still employed with MRO, Jacobsen created an online business that competes directly with PDF and MRO using Plaintiffs’ trade secrets. (*Id.* at ¶¶ 49–53.)

4. Jacobsen resigned from MRO on February 15, 2019. (*Id.* at ¶ 54.) Jacobsen and his brother, Christian Jacobsen, started competing businesses Vision Controls LLC and Industrial Automation Company, using MRO’s trade secrets and confidential information in violation of his Non-Disclosure Agreement with MRO.

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<sup>1</sup> The Court accepts the allegations in the Verified Complaint as true solely for purposes of deciding the Motion, and the facts recited in this Order are not binding on this Court for purposes of determining any future motions in this matter.

(*Id.* at ¶¶ 54–64.) Plaintiffs did not learn that Jacobsen was operating the competing businesses until March 10, 2020. (*Id.* at ¶ 72.) Plaintiffs allege specific amounts of monetary damages that they have suffered as a result of Jacobsen’s competition. (*Id.* at ¶¶ 65–67.)

5. During the Telephone Conference, Defendants’ counsel contended that Defendants believe they have meritorious grounds to seek dismissal of the lawsuit and intend to file a motion to dismiss.

*B. Analysis*

6. As the Court discussed with counsel in the Telephone Conference, this Court’s ability to require parties to file documents or perform other “acts” prior to June 1, 2020, without the consent of all parties, has been significantly restricted by the emergency Orders entered by Chief Justice Cheri Beasley from March 13, 2020 through April 13, 2020 (“CJ Emergency Orders”) (<https://www.nccourts.gov/covid-19-coronavirus-updates>). The CJ Emergency Orders permit North Carolina courts, in appropriate circumstances, to consider motions involving emergencies, including requests for a temporary restraining order. (*See* April 2, 2020 CJ Emergency Order, Directive 1, excepting from the prohibition on in-person court proceedings a “proceeding [ ] for the purpose of obtaining emergency relief (e.g., a . . . temporary restraining order . . . .”) However, the CJ Emergency Orders do not by their express terms provide exceptions for consideration of motions for preliminary injunctions, motions for expedited briefing or hearings, or motions to require expedited discovery.

7. The Motion asks the Court to require Defendants to respond to the Motion within five days, and then to issue an expedited order requiring Defendants to respond to the proposed written discovery requests within seven days following the Court's order on this Motion. Plaintiffs seek immediate consideration of the Motion, and request that Defendants be required to file a response to the Motion and participate in discovery before June 1, 2020. Defendants object to being required to file a response or engage in discovery prior to June 1, 2020. Accordingly, without the consent of Defendants, the Court concludes that it is currently without authority to provide the requested relief.

8. In addition, even if the Court possesses authority to require a party to make court filings or otherwise act other than as needed to address temporary restraining orders and the other relief expressly provided in the April 2, 2020 CJ Emergency Order, Directive 1, which the Court need not decide at this time, the Court concludes that Plaintiffs have not established the existence of emergency circumstances based on the information currently before the Court. For example, Plaintiffs seek protection of trade secrets, but allege that Jacobsen has been using the trade secrets, although unbeknownst to Plaintiffs until recently, for over two years. Plaintiffs also allege specific monetary damages arising out of Defendants' use of Plaintiffs' trade secrets, indicating that such damages would not be impossible to calculate. While the Court is not now deciding any motion for preliminary injunction that Plaintiffs may subsequently file, nor indicating that it would not grant expedited discovery after June 1, 2020 based upon additional evidence or information, Plaintiffs

have not adequately demonstrated at this stage that Plaintiffs are suffering such irreparable harm that the Court should consider requiring Defendants to respond to the Motion and participate in expedited discovery prior to June 1, 2020.

*C. Conclusion*

9. The Court currently has very limited ability to require parties to act before June 1, 2020 under the CJ Emergency Orders absent consent and must exercise the authority it does possess sparingly and only when an entitlement to emergency relief has been established by the requesting party. Plaintiffs having failed to meet their burden here, the Court lacks such authority under the circumstances of this case. Therefore, the Motion should be DENIED, without prejudice.

THEREFORE, IT IS ORDERED that the Motion is DENIED, without prejudice.

SO ORDERED, this the 16th day of April, 2020.

/s/ Gregory P. McGuire  
Gregory P. McGuire  
Special Superior Court Judge  
for Complex Business Cases