



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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LETTER OPINION

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Re: *Intercoastal Mortgage LLC vs. Jacqueline Wampler et al.*
Case No. CL-2025-12268

Dear Counsel:

This case arises on the Plaintiff Intercoastal Mortgage LLC's ("ICM") Complaint for Injunctive and Other Relief, filed on August 15, 2025. The Defendants Jacqueline Wampler, William Wampler, James A. "Allen" Wampler, Robin Koerner, Madison Novak, Primis Financial Corporation, Primis Bank, and Primis Mortgage Company ("Defendants") filed a Plea in Bar against Plaintiff's Complaint on November 20, 2025. The matter was heard by this Court on December 23, 2025. For the reasons set forth herein, the Court will grant the Defendants' Plea in Bar.

A plea in bar presents a distinct issue of fact which, if proven, creates a bar to the plaintiff's right of recovery; normally the moving party has the burden of proof.¹ However, when "the enforceability of a restrictive covenant" is challenged through a plea in bar, "the burden [is] on the employer to prove the lawfulness of the restraint under the restrictive covenant."² The function of a plea in bar is to narrow the litigation by resolving an issue that will determine whether a plaintiff may proceed to trial on a particular cause of action.³

Defendants have alleged that the Non-Solicitation Provisions of their Employment Agreement with ICM are unenforceable as a matter of law. A provision that restricts competition is enforceable if it (1) is narrowly drawn to protect the employer's legitimate business interest, (2) is not unduly burdensome on the employee's ability to earn a living, and (3) is not against public policy.⁴ The employer bears the burden of proving each of these factors.⁵ When evaluating whether the employer has met that burden, the court considers the function, geographic scope, and duration elements of the restriction.⁶ The facts before the Court include the Complaint, the Defendants' Plea in Bar, the Defendants' Memorandum in Support of Plea in Bar, Plaintiff's Opposition to Defendants' Plea in Bar, Defendants' Reply Memorandum in Support of Plea in Bar, the evidence received by the Court at the December 23, 2025 hearing, Plaintiff's Closing Brief, and Defendants' Post-Hearing Memorandum in Support of Plea in Bar.

ICM is a mortgage company that loans to individuals to purchase, build, or renovate real estate. Its primary business is to originate, underwrite, and fund mortgages, which can be sold on the secondary market after they are closed. ICM has roughly 300 employees and operates in 19 states. The Individual Defendants are a husband, wife, and son team of military veterans who are mortgage professionals and two support staff members. These Individual Defendants assert that they each independently chose to end their at-will employment at ICM to join Primis Mortgage, and that some customers followed them to Primis. Defendants argue ICM filed this lawsuit to stifle fair competition and deprive customers from working with the mortgage lender of their choosing. ICM's argument is based on non-solicitation provisions (Sections 3.3 and 4.2) in ICM's Outside Loan Officer Employment Agreement ("the Non-Solicitation Provisions") with Defendants Jackie Wampler, Allen Wampler, William Wampler, and Madison Novak. The Provisions are as follows:

Section 3.3: Employee hereby covenants not to attempt to move any pipeline loan to any other person or entity following the end of employment, and Employee understands and agrees that such attempts shall constitute a breach of this Agreement, including but not limited to, Section 4.1 below.

¹ See *Hilton v. Martin*, 275 Va. 176 (2008).

² *Id.* at *4.

³ See *Hawthorne v. VanMarter*, 270 Va. 566, 578 (2010).

⁴ *Home Paramount Pest Control Cos. v. Shaffer*, 282 Va. 412, 414 (2011).

⁵ *Id.*

⁶ *Id.*

Section 4.2(a): Employee shall under no circumstances solicit any consumer for whom a loan previously was processed and closed by Company during the longer of (i) the twelve (12) month period following the date of such loan closing, and (ii) such period as may be specified in the Applicable Requirements of the pertinent lender or investor with respect to the loan, if such solicitation or loan closing would result in a Re-Solicitation Loss to Company.

Section 4.2(b): ...for a period of one (1) year following cessation of Employee's employment with Company (the "Limited Period") Employee shall not, directly or indirectly, separately or in association with others, interfere, disrupt, or damage Company's business by soliciting, recruiting, attempting to recruit, or causing or assisting in the recruitment or attempted recruitment of, any then-current employee of Company, or any individual who has served in any such capacity at any time within the six (6) month period immediately prior thereto, for employment with another person or entity.

The Court finds that the Non-Solicitation Provisions are overbroad and unenforceable as a matter of law, such that it creates a bar to Plaintiff's right of recovery. The facts establish each Section is not narrowly drawn to protect the employee's ability to earn a living and that they are against public policy.

I. Standard for Non-Solicitation Provisions

As previously stated, a provision that restricts competition is enforceable if it (1) is narrowly drawn to protect the employer's legitimate business interest, (2) is not unduly burdensome on the employee's ability to earn a living, and (3) is not against public policy.

In order to be narrowly tailored, from the standpoint of the employer, the restraint must be no greater than necessary to protect the employer in some legitimate business interest.⁷ In examining the reasonableness of the restrictive covenant with regard to the interests of the employer, employee, and the public at large, the Court pays particular attention to the duration, function, and geographic reach of the covenant.⁸

In determining whether a provision is unduly burdensome, from the standpoint of the employee, the restraint must be reasonable in the sense that it is not unduly harsh and oppressive in curtailing his legitimate efforts to earn a livelihood.⁹

⁷ *Omniplex World Servs. Corp. v. US Investigations Servs.*, 270 Va. 246, 252 (2005).

⁸ *Id.*

⁹ *Id.*

In Virginia, restraints must be reasonable from the standpoint of a sound public policy.¹⁰ Because such restrictive covenants are disfavored restraints on trade, the employer bears the burden of proof and any ambiguities in the contract will be construed in favor of the employee.¹¹ Virginia courts have held that “[r]estricting . . . customers’ choices” does not “serve the public interest.”¹²

II. Section 3.3 is unenforceable.

a. Section 3.3 is not narrowly drawn to protect ICM’s legitimate business interest.

Section 3.3 requires the employee not to move any pipeline loan to another entity at the end of their employment. If drawn narrowly, this may be for a legitimate business interest, because ICM arguably has an interest in protecting its client base and confidential information in that the clients in the pipeline have already applied for a loan, submitted confidential information, and are in the process of obtaining a loan from ICM. However, Section 3.3 is not narrowly drawn.

There are two key phrases of Section 3.3 that are ambiguous and unclear: “attempt to move” and “pipeline loan”. The Plaintiff presented contradicting testimony as to the definition of the phrase “attempt to move.” In the hearing, the ICM CEO testified that he views “an attempt to move” as indirect solicitation, in other words, “trying to act like you’re not involved [when] you are,” such as “when you go to your builder, and say, ‘Hey, I can’t call the customer; you call them and have them call me.’” Tr. at 285:6-287:18. However, the ICM CEO later took the much broader view that even “if all the former employee does is act in a passive manner, okay, just merely respond to a customer’s request, and meet a customer’s needs,” that is an “attempt to move.” Tr. at 287:19-289:16. According to ICM, in that scenario, Paragraph 3.3 requires Ms. Wampler to instead tell that customer “Hey, I can’t work with you,” and refer the customer back to ICM, even if the customer expresses that is not their preference. *Id.* ICM defines an “attempt to move” as an “openness to interact or conduct business with” a customer. Tr. at 301:18-302:2.

Further, in Section 3.3, the employee covenants not to attempt to move any “pipeline loan” to any other person or entity. There was inconsistent testimony by the Plaintiff at the hearing, as well as a dispute between the parties, as to what qualifies as a “pipeline loan.” The term is undefined in the Agreement. Defendant Jacqueline Wampler testified there is a distinction between “active pipeline” and “prospects,” including in ICM’s Encompass software. Tr. at 70:15-71:1, 76:10-77:9. Pipeline loans are “the ones that are actually under contract, that was executed by both the buyer and the seller of the property.” Tr. at 78:4-9. This is “a known

¹⁰ *Id.*

¹¹ *Id.* at 247; *Parikh v. Family Care Ctr., Inc.*, 273 Va. 284, 286; *see also* Va. Code Ann. § 40.1-28.7:8 (prohibits non-compete agreements for low-wage employees, reflecting Virginia’s policy disfavoring non-compete agreements).

¹² *Wachovia Securities, LLC v. Gates*, 2008 WL 1803612, at *3 (E.D. Va. Apr. 21, 2008).

term in the industry”; “If someone has a contract, they’re active.” Tr. at 118:13-14. She asserts that in contrast, prospects are “the ones that were preapproved that haven’t even gone under contract” and who may be “still out house shopping around.” Tr. at 71:2-18, 78:10-13, 80:9-81:12. The same borrower cannot be both a prospect and have an active pipeline loan. See Tr. at 78:14-16. The Plaintiff, on the other hand, argued that “any pipeline loan” is a much broader term. It contends that the term encompasses not just all active pipeline loans but also all prospects. See Tr. at 271:1-2 (“[W]e consider a prospect part of the pipeline.”). Yet the Plaintiff failed to offer sufficient explanation as to how a prospect would constitute a pipeline loan, and conceded “there’s actually no loan at all,” but rather “the potential for there to be a loan.” Id. at 195:15-195:15. The terms “attempt to move” and pipeline loan” are critical to Section 3.3. Each is undefined, ambiguous and subject to different interpretations.

Virginia law makes it clear that this is fatal to the enforceability of a restrictive covenant. Virginia courts have held that if an ambiguity in a contract renders an alleged agreement too indefinite for the trial court to determine the parties’ intent even after the consideration of extrinsic evidence, the contract cannot be enforced due to the absence of any discernable meeting of the minds.¹³ This Court heard conflicting testimony from both parties regarding both of the debated phrases in Section 3.3. Since it is unclear whether “attempt to move” means that a prospective customer from ICM may contact an Individual Defendant for a mortgage, and whether “pipeline loan” may or may not include prospective clients, Section 3.3 is overbroad and not narrowly tailored.

When, as here, the language of the restrictive covenant “is ambiguous and susceptible to two or more differing interpretations, at least one of which is functionally overbroad, the clause is unenforceable.”¹⁴

Further, Section 3.3 is overbroad because there is no temporal or geographic limitation. The duration of the restriction is an important factor, and if there is no end date, it is not narrowly tailored. ICM does not contest that Section 3.3 has no temporal limitation. Both the ICM CEO and Ms. Wampler testified that loans can take over a year to close, and that not all loans are automatically archived after 90 days, such as when there is both a construction and a permanent loan or when there are supply chain issues. See Tr. at 84:19-85:5, 213:13-214:16, 275:18-276:7, 325:3-326:7. In sum, due to the ambiguous language and lack of temporal or geographic limitation, Section 3.3 is overbroad and not narrowly tailored.

b. Section 3.3 is unduly burdensome on the employee's ability to earn a living.

The ambiguity of this Section necessarily results in uncertainty as to whether prospective customers at ICM may or may not be able to follow or contact an Individual Defendant at their new place of employment. By possibly not allowing customers to choose to follow Individual

¹³ *Smith v. Smith*, 43 Va. App. 279, 282 (2004); see *Allen v. Aetna Casualty & Surety*, 222 Va. 361, 364 (1981).

¹⁴ *Specialty Mktg., Inc. v. Lawrence*, 2010 WL 7375616, at *2 (Hanover Cir. Ct. Mar. 11, 2010).

Defendants to their new place of employment or even simply reach out on their own volition, the Individual Defendants' ability to earn a living would be curtailed.

c. Section 3.3 is against public policy

Defendants have asserted that multiple customers at issue have attested to their desire to continue working with Defendants. Because of the ambiguous "attempt to move" interpretation by ICM, there is no allowance for customer choice. Tr. at 302:3-11 (there is no scenario "in which Jackie Wampler or her husband or her son, or Maddison [sic] Novak for that matter, could close a loan at Primis Mortgage . . . for a borrower that was a prospect at ICM, in which [ICM CEO] would admit that that doesn't amount to them attempting to move the loan"). If the Individual Defendants violate the "attempt to move" provision every time a prospective client at ICM seeks them out at their new employer, then the customer's right to choose with whom to work is severely limited. It would not serve the customers' interests to not be permitted to work with the person of their choice when choosing a mortgage loan. Thus, Section 3.3 is unenforceable due to being overbroad and against public policy.

III. Section 4.2(a) is unenforceable.

a. Section 4.2(a) is not narrowly drawn to protect the employer's legitimate business interest.

ICM has a legitimate interest in preventing the use of ICM's confidential information by the departing employee to the disadvantage of the company. However, this interest is not narrowly tailored. Section 4.2(a) prohibits the employee from soliciting *any* customer and is not limited to just customers that employee served, which is disfavored by Virginia courts.¹⁵ The ICM CEO confirmed in his testimony that this restriction applies to "any company loan" and is not limited to the employee's pipeline. See Tr. At 303:16-21. Furthermore, Section 4.2(a) is written to suggest that the employee could not solicit *any* customer who within the last 12 months closed a loan with ICM. This would require the employee to have knowledge as to whether a certain customer has closed a loan with ICM over the past year. The ICM CEO testified that "[i]t would be unrealistic for [employees] to know or have access to any other [loan officers'] loans within [ICM]." See Tr. at 227:21-228:9. Virginia courts have held that similar provisions are unenforceable and overbroad.¹⁶

b. Section 4.2(a) is unduly burdensome on the employee's ability to earn a living.

In Section 4.2(a), there is no geographic limitation outside of which the employee can work. Furthermore, the temporal limitation is unclear: it appears to provide that it is the longer

¹⁵ See *Power Home Solar, LLC v. Sigora Solar, LLC*, 2021 U.S. Dist. LEXIS 163753, *18 (a non-solicitation covenant was found to be unreasonable and unenforceable as a matter of law because it restricted employees from contacting *any* of Plaintiff's customers, regardless of the employee's prior contact with them).

¹⁶ See *Lasership, Inc. v. Watson*, 79 Va. Cir. 205, 215 (holding a non-solicitation clause unenforceable because it "imposed an unreasonable burden on the employee to know all the customers" the employer invoiced over a one-year period).

period of 12 months after closing, or period specified in the loan agreement. While 12 months has been considered a reasonable limitation by courts, this may require the former employee to have knowledge as to the certain customer's loan agreement with ICM. This means former employees could be required to consult loan documents that are unavailable to them as former employees.

c. Section 4.2(a) is against public policy

As with the previous Section, this provision would restrict a customer's choice in which company to choose to work with, which does not serve the public interest.

IV. Section 4.2(b) is unenforceable.

a. Section 4.2(b) is not narrowly drawn to protect the employer's legitimate business interest.

Plaintiff argues it has a legitimate business interest in protecting its investment into training, recruitment, and employee development. That may be true on a threshold level. However, the language of Section 4.2(b) prohibits the recruitment or solicitation of any current ICM employee, or any individual who has been an ICM employee any time within the six (6) month period immediately prior thereto. Furthermore, Section 4.2(b) prohibits this type of recruitment or solicitation for employment with another person or entity, regardless of what type of employment that may be. The restriction is not limited to "competing services," but rather seeks to "prevent any disruption of the workplace," regardless of "whether the disruption comes from a competitor" and "even if the reason for causing the employees or contractors to pursue opportunities elsewhere was unwholly unrelated to [ICM's] business needs."¹⁷ Since the restriction has no geographic limitation, this presumably would mean that if Defendants sought to "start up a completely new [business]" anywhere, they would be prohibited from doing so "even if [ICM] had never performed work in that specific area or specific space."¹⁸ Furthermore, the ICM CEO's testimony conceded that the "intent" of Paragraph 4.2(b) is to prohibit employees from "taking groups of people or other individuals from our company to work with them in the same industry somewhere else." See Tr. at 257:15-258:4 and Tr. at 255:8-20. Yet that intent is not explicitly written in this Section, and Virginia courts have refused to "blue pencil" non-compete clauses.¹⁹ Thus, Section 4.2(b) is not narrowly tailored.

¹⁷ *The Metis Group, Inc. v. Allison*, 104 Va. Cir. 111, 117-118.

¹⁸ *Id.* at 118.

¹⁹ *Strategic Enter. Solutions, Inc. v. Ikuma*, 77 Va. Cir. 179, 185 (2008) ("The "blue pencil rule" permits a court to modify an otherwise unenforceable restriction to make it reasonable where it is clear from the terms of the agreement that it is severable. The Virginia Supreme Court has not directly ruled on "blue-penciling" overly broad clauses in restrictive covenants, however it is clear from the restrictive covenant jurisprudence in Virginia that the Court does not entertain the notion that these disfavored restraints on trade should be reformed by the judiciary, rather they construe them against the employer when any ambiguity arises."); *See, e.g., Pais v. Automation Products, Inc.*, 36 Va. Cir. 230, 239 (1995), *Northern Va. Psychiatric Grp. v. Halpern*, 19 Va. Cir. 279 (1990).

b. Section 4.2(b) is unduly burdensome on the employee's ability to earn a living.

Because this Section has no geographic limitation or limitation based on type of employment, an Individual Defendant would not be permitted to solicit or recruit an ICM employee for anything outside of the mortgage industry. An Individual Defendant would not be permitted, for example, to recruit an ICM employee to open a restaurant with them, or invest in a start-up. This is a harsh curtailing of an employee's ability to earn a living that has no bearing on the mortgage industry.

c. Section 4.2(b) is against public policy.

Like the previous Sections, this provision would restrict by an impermissibly broad brush the choice of which company to choose to work with, which does not serve the public interest.

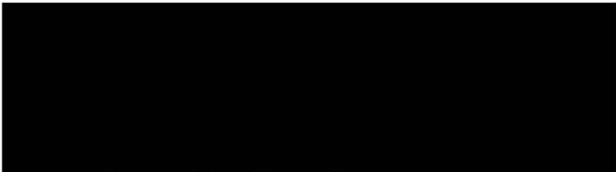
Lastly, the Plaintiff attempts to breathe life into the restrictive covenants at issue by arguing that the restrictive covenants of the Individual Defendants' employment agreement with their new employer are at least as restrictive. This is not relevant and is a non-starter. Virginia law is clear that "[e]ach non-competition agreement must be evaluated on its own merits."²⁰

V. Conclusion

Defendants assert that the Non-Solicitation Provisions of their Employment Agreement are unenforceable as a matter of law. The Plaintiff has failed to assert facts that support the enforceability of the provisions. Accordingly, the Defendants' Plea in Bar is granted and Counts I-III and Count V of Plaintiff's Complaint are dismissed with prejudice to the extent based on the Non-Solicitation Provisions.

For the foregoing reasons, the Court grants Defendants' Plea in Bar.

It is SO ORDERED.



Manuel A. Capsalis
Judge, Fairfax County Circuit Court

²⁰ *Omniplex World Services Corp. v. US Investigations Service, Inc.*, 270 Va. 246, 249 (2005) (citing *Modern Environments, Inc. v. Stinnett*, 263 Va. 491, 494-95 (2002); see also *Noble Supply & Logistics, LLC v. Curry*, 2024 WL 4126074 at *9 (W.D. Va. Sept. 9, 2024).