IN THE DISTRICT COURT OF APPEAL FOR THE STATE OF FLORIDA
SECOND DISTRICT
Division L

CHRISTOPHER BARIANA, D.O.,

Appellant/Plaintiff,

Appellate Case No. 2D24-1355
Lower Case No. 23-CA-012870

v.

FLORIDA HEALTH SCIENCES CENTER, INC.,
d/b/a Tampa General Hospital
and
TAMPA GENERAL MEDICAL GROUP, INC.,
a Florida Corporation.

Appellees/Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE THIRTHEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

Respectfully submitted by,

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Statement of the Case and Facts

On June 1, 2023, the Appellant and Plaintiff below, Christopher Bariana, D.O. ("Bariana"), filed this lawsuit against Defendants Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital, and Tampa General Medical Group, Inc. (collectively "Defendants"). (A 1-65). Bariana asserted claims for breach of contract, declaratory judgment, and for unlawful retaliation in violation of Florida's Whistleblower Act ("FWA"). (A 1-17).

On June 9, 2023, Bariana filed Plaintiff's Motion for Declaratory Judgment, supported by Bariana's sworn declaration. (A 66—137). The motion sought a declaration that the restrictive covenants contained in his Employment Agreement unenforceable on several grounds including, *inter alia*: Defendants' lack of legitimate business interests to support the restrictive covenants; Defendants' prior material breaches of the Agreement; and that the restrictive covenants are overbroad and against public policy including Florida Statute §542.336. (A 66—137).

Bariana's Employment Agreement provided that he would be "hired to be our Director of Thoracic Oncology, Early Detection & Community Engagement" effective January 3, 2022, for an initial

term of three years. (A 19, 317). It provided Bariana would have complete control over the treatment of patients and the ability to exercise his independent medical judgment without supervision:

> **4.05 Patient Care. Nothing in this Agreement shall be interpreted to dictate the manner of Physician's practice of medicine, delivery of direct patient care or independent judgment in the practice of medicine. Physician shall have complete control over the diagnosis and treatment of the patients and neither Employer nor any employee of Employer shall exercise any direct supervision or control over the individual treatment of any patient.** Physician agrees that Physician's treatment and diagnosis of patients will be consistent with any rules and regulations promulgated by Employer dealing with the general treatment of patients, and when treating patients in the Hospital, in compliance with the Hospital's Medical Staff Bylaws and Rules and Regulations (collectively, the "Medical Staff Bylaws"), applicable state and federal laws and regulations, and the prevailing professional standards of care in the community.

(A 20-21, 318-19). The Agreement provided that Bariana would be paid bonuses pursuant to a detailed INCENTIVE BONUS PLAN. (A 46-49). It also included the two restrictive covenants at issue:

> 10.01 Noncompetition. Physician agrees that during the Term, and for a period of two (2) years following termination or Expiration of this Agreement, Physician shall not, directly or indirectly, enter into, engage in, invest, own, operate, manage or be employed by, or in any other way be affiliated with any person or entity that provides Thoracic Surgery medicine services within Hillsborough, Pinellas, Manatee, Pasco, Polk, Citrus,

Charlotte, DeSoto, Hardee, Hernando, Highlands, Sarasota and Lee Counties (the "Restricted Area") or otherwise provide Thoracic Surgery medicine services anywhere in the Restricted Area other than at the Hospital and other locations designated by the Hospital. Physician acknowledges that the noncompetition covenants contained herein are meant to protect legitimate business interests of Employer and but for Physician agreeing to same, Employer would not have entered into this Agreement.

10.02 Nonsolicitation. Physician agrees that during the Term, and for a period of two (2) years following termination or Expiration of this Agreement, Physician shall not:

(a) Engage or participate in any effort or act to induce or solicit, directly or indirectly, any patients, employees, insurance companies, managed care plans, Employer's customers or other customers of the business conducted by Employer, or the Hospital, to withdraw, curtail or terminate their business relationship with Employer or for services competitive with those of Employer or the Hospital, or assist, induce, help or join any other person or company in doing any of the above activities. Notwithstanding the foregoing, Physician may place general advertisements or engage in general solicitations that are not specifically targeted to Employer's patients or customers.

(b) Solicit the services of any physician, consultant, or provider which renders services to, or for the benefit of, Employer's or the Hospital's customers, for Physician's use or benefit or for any other person's or company's use or benefit, or induce or help to induce any Physician, consultant or provider that renders services to, or for the benefit of, Employer or the Hospital without Employer's prior written consent. Nothing herein would prohibit a formerly employed physician from making referrals to any

> other physician employed by Employer during or after the Term.

(A 12-13, 329-40).

Defendants moved to dismiss the complaint on August 22, 2023. (A 138-152). The same day, Defendants moved to strike Plaintiff's Motion for Declaratory Judgment arguing that it was a premature summary judgment motion. (A 153-64). Bariana filed an Amended Complaint on September 8, 2023. (A 165-231).

The hearing on Plaintiff's Motion for Declaratory Judgment and Defendants' motion to strike was scheduled to take place four days later, on September 12, 2023. (A 232-263). Bariana's counsel explained that Bariana was seeking a declaration of his legal obligations because he did not want to violate any obligations, and he had a job offer he wanted to take that he had until September 21, 2023, to accept. (A 72, 241). However, the court took up Defendants' motion to strike first and granted it without hearing the motion for declaratory relief. (A 5-6, 10-14). The court struck Bariana's motion on grounds that Defendants did not argue: that declaratory relief "is not appropriate at this juncture, considering that one, there's an Amended Complaint which has not had a response docketed by

defendants." (A 244-45, 283).

Defendants again moved to dismiss on September 29, 2023, (A 264-82), which Bariana opposed. (A 284-93). The court granted the dismissal in part. (A 294-95). Thus, Bariana filed his Second Amended Complaint on February 15, 2024. (A 296-363). Among other things, the Second Amended Complaint alleges that Bariana's supervisor, Dr. Eric Sommers:

> b. Diverted new patients to other surgeons, limiting Dr. Bariana's practice growth;
>
> c. **Interfered with Dr. Bariana's medical judgment by demanding that Dr. Bariana perform operations despite Dr. Bariana's medical opinions to the contrary, in violation of, inter alia, Fla. Stat. §766.111, Fla. Stat. §766.103, and Section 4.05 of the Agreement**;
>
> d. In violation of Federal and state laws, including but not limited to 21 U.S.C.S. § 841(a), Fla. Stat. §893.02, and 21 CFR 1306.04, demanded that Dr. Bariana write prescriptions of controlled substances for patients who were not Dr. Bariana's patients and who Dr. Bariana had never examined and treated;
>
> e. Bullied Bariana into treating patients "his (Dr. Sommers') way;"
>
> f. **Directed Bariana to operate on everyone and ignore less invasive treatment for individuals even those who were poor candidates for surgery, in violation of, inter alia, Fla. Stat. §766.103(3)(a)(2) and Section 4.05 of the Agreement**;
>
> g. Suffered Sommer's irate reactions for him "questioning his (Dr. Sommers') judgment."
>
> h. Instructed Bariana to see Dr. Sommers' patients, speak to their families and prescribe narcotics;
>
> i. Subjected to Sommer's schedule of patient flow

> which benefited his own personal needs despite causing delays and notwithstanding negative effects on patient care;
>
> j. Subjected Bariana to Sommer's inquisition and insulting comments regarding his medical judgment and clinical decisions, and made changes to patient care plans that undermined his authority and medical judgment;

(A 301-02). Bariana alleged that he complained to Dr. Abraham Schwarzberg, after which Dr. Sommers physically "checked" Bariana by pushing his body against Bariana's shoulder in a threatening, aggressive, physical manner. (A 302-03). Bariana complained about this battery and other problems to Human Resources, after which Dr. Sommers retaliated further by starting a smear campaign against him. (A 303-04). Nothing improved, thus, Bariana was compelled to resign. (A 304-06).

Count I alleged that Defendants violated the FWA by retaliating against him and constructively discharging him for engaging in protected activity. (A 306-10). Count II sought declaratory relief regarding the restrictive covenants. (A 310-13). Count III alleged that Defendants breached the Agreement by, among other things, not permitting Bariana to independently exercise his medical judgment and by not paying the full compensation owed to him. (A 313-14).

On February 23, 2024, Defendant Florida Health Sciences

Center, Inc. d/b/a Tampa General Hospital ("TGH") filed *Tampa General Hospital's Emergency Motion For Temporary Injunctive Relief* pursuant to Florida Statutes Section 542.335 and Florida Rule of Civil Procedure 1.610, "seeking an emergency preliminary order enjoining Bariana from continuing breach [sic] of his 2022 Employment Agreement, containing restrictive covenants." (A 364-437). Bariana opposed the motion, arguing that TGH was not entitled to injunctive relief due to its prior material breaches of the Agreement and unlawful actions, among other things. (A 438-59).

On March 26, 2024, Defendants again moved to dismiss. (A 460-480). That motion remains pending and is scheduled for a hearing in July. (A 492).

The hearing on TGH's motion for temporary injunction was held on April 19, 2024. (A 481-642). At the beginning of the hearing, the court informed the parties that they would be limited to two-and-a-half hours for the hearing divided equally between them. (A 491-92). TGH called two witnesses. First, TGH called Bariana, and had him testify about his Employment Agreement with Defendants, the difficulties he experienced while he was working for TGH and his attempts to resolve the issues he had with his supervisor – the Chief

of Thoracic Surgery, Dr. Eric Sommers, and his subsequent discussions and then employment with Bayfront. (A 500-77).

Bariana explained that he was forced to resign from TGH after a year-and-a-half due to retaliation and because TGH had breached the Agreement and had not acted in good faith. (A 501, 504, 506, 513, 525-26, 544, 549-64). His difficulties included a wide range of breaches and retaliatory actions by his supervisor, Dr. Sommers, which included: requiring Bariana to operate on patients that were inoperable against his independent medical judgment, including a patient with multiple comorbidities who died as a result, (A 549-51, 559-661, 566, 572); forcing him to write prescriptions for patients he had never seen, (A 558); changing his OR schedule resulting in patients and their families becoming irate and threatening Bariana, (A 560); removing the title of "Director of Thoracic Oncology and Early Detection Community Engagement" specified in the Agreement, (A 551-52); berating Bariana, yelling at him in front of others, and threatening him, (A 559-60); and body checking Bariana in the hallway. (A 563-64).

TGH also called Tyler Carpenter, its Vice President of People and Talent, who testified that TGH has statewide marketing initiatives

throughout the state to feed patients to TGH, that Bayfront is a competitor, and that TGH has patients who come from Pinellas. (A 577-581). He admitted on cross that he is not in charge of the marketing or advertising and that TGH's commercials and marketing are not specific to thoracic surgery or Pinellas County. (A 582-83).

Plaintiff called Trina Espinola, M.D., who is Bayfront's Chief Medical Officer, is a practicing otolaryngologist and head and neck surgeon, and has practiced in Pinellas County for decades. (A 586-88). Dr. Espinola explained in detail how Bariana's practice is highly skilled and unique and that there are no other thoracic surgeons in Pinellas, either working at Bayfront or elsewhere, who fulfill the need in the community that Bariana does. (A 589-91). She explained the unique nature of the Pinellas County community which includes a considerable population of underserved patients from the health department and free clinic who have no access to care other than Bayfront and suffer terrible consequences if care is not received or is delayed. (A 591-97). This evidence was not disputed.

Bariana said it was common knowledge amongst thoracic surgeons that there was a need for his particular type of advanced esophageal surgery in Pinellas County. (A 518). In fact, before

Bariana started with Bayfront, Bayfront had a surgeon travel from Orlando two days a month to try to cover some of the surgeries Bayfront's patients needed because there was no one in Pinellas County who could perform the minimally invasive, complex robotic surgeries Bariana performs. (A 525, 573-75).

Further, the majority of Bayfront's patients are local, whereas TGH has patients from all over the state. (A 544). And Bariana testified that, when he worked for TGH, he rarely went to TGH's St. Petersburg location and only a few patients from St. Petersburg went to TGH for surgery. (A 500-01, 553-55).

Bariana did not start working for Bayfront until **nine months** after he left TGH, and after the trial court declined to rule on his motion for declaratory relief. (A 570).

There was *no testimony* that Bariana took any confidential information regarding patients, customers, employees, referral sources, or insurance carriers from TGH, that he used any such information in his employment with Bayfront, or that any patients, customers, employees, referral sources, or insurance carriers ended their relationship with TGH and went to Bayfront. (A 481-642). In fact, there was no testimony that TGH lost a single patient, customer,

employee, referral source or insurance carrier, let alone due to anything Bariana did. In fact, the only testimony concerned referring physicians and that was limited to the fact that Bariana has received a few referrals of patients who were already Bayfront Hospital patients from physicians who work at Bayfront Hospital whom he originally met while working at TGH. (A 544).

Summary of the Argument

The circuit court erred in entering a temporary injunction against Bariana forbidding him from working for Baycare in Pinellas County. TGH did not "plead and prove" any of the elements required for temporary injunctive relief. Further, TGH did not prove a clear legal right to a temporary injunction. Specifically, TGH did not prove that its restrictive covenants are enforceable or that Bariana breached any enforceable covenant, let alone that TGH can overcome Bariana's defenses to any such enforcement. Nor is the temporary injunction in the public interest. Finally, TGH did not prove any injury, much less an irreparable injury.

Jurisdiction

This Court has jurisdiction of the Thirteenth Judicial Circuit's entry of the Order granting in part TGH's request for a temporary injunction. Fla. R. App. P. 9.130(a)(3)(B).

Standard of Review

The standard of appellate review of a trial court's order on a temporary injunction is hybrid. Spine v. Moulton, 346 So. 3d 154, 158 (Fla. 2d DCA 2022) (citing Surgery Ctr. Holdings, Inc. v. Guirguis, 318 So. 3d 1274, 1277 (Fla. 2d DCA 2021)). Factual findings in an order for temporary injunction are reviewed for an abuse of discretion and legal conclusions are reviewed *de novo.* Id.; see also Salazar v. Hometeam Pest Def., Inc., 230 So. 3d 619, 620-21 (Fla. 2d DCA 2017); White v. Mederi Caretenders Visiting Servs. of Se. Fla., LLC, 226 So. 3d 774, 779 (Fla. 2017) (applying a *de novo* review to the issue of whether home health care service referral sources were a protected legitimate business interest under section 542.335, Florida Statutes (2016)); see generally, Savage-Hawk v. Premier Outdoor Products, Inc., 474 So. 2d 1242 (Fla. 2d DCA 1985) (*de novo review* applies where issues are based upon written record).

Argument

I. Overview of the Applicable Law.

In any action concerning enforcement of a restrictive covenant, the person seeking enforcement of a restrictive covenant "**shall plead and prove**" the existence of one or more legitimate business interests justifying the restrictive covenant and "also shall plead and prove" that the contractually specified restraint is reasonably necessary to protect the legitimate business interest justifying the restriction. § 542.335(1)(b)-(c), Fla. Stat. (2023). Similarly, Rule 1.610(c) requires the movant to "**plead and prove** (1) a likelihood of irreparable harm; (2) unavailability of an adequate legal remedy; (3) a substantial likelihood of succeeding on the merits; and (4) considerations of the public interest support the entry of the injunction." Phelan v. TriFactor Sols., LLC, 312 So. 3d 1036, 1038 (Fla. 2d DCA 2021) (emphasis added); Charlotte County v. Grant Med. Transp., Inc., 68 So. 3d 920 (Fla. 2d DCA 2011) (citing Snibbe v. Napoleonic Soc'y of Am., Inc., 682 So. 2d 568, 570 (Fla. 2d DCA 1996)).

Although Florida Statute Section 542.335 permits restrictive covenants if they are supported by a legitimate business interest and proven to be reasonable in time, scope, and line of business, "**[t]he**

issuance of a temporary injunction remains an extraordinary remedy, granted sparingly." Charlotte County, 68 So. 3d 920 (citation omitted); accord Phelan, 312 So. 3d at 1038. Entry of a "temporary injunction requires strict compliance with Florida Rule of Civil Procedure 1.610." Phelan, 312 So. 3d at 1038 (quoting § 542.335(1)(h), Fla. Stat. (2009); Coscia v. Old Fla. Plantation, Ltd., 828 So. 2d 488, 490 (Fla. 2d DCA 2002)). "Trial court orders granting temporary injunctions must contain '[c]lear, definite, and unequivocally sufficient factual findings [to] support each of the four [elements].'" Salazar, 230 So. 3d at 620-21 (quoting Liberty Fin. Mortg. Corp. v. Clampitt, 667 So. 2d 880, 881 (Fla. 2d DCA 1996)); see also Fla. R. Civ. P. 1.160(c) ("Every injunction shall specify the reasons for entry."); accord Phelan, 312 So. 3d at 1039. If any of these findings are missing, the order must be reversed. Id. Further, **"if the legal rights of the parties are in dispute, a temporary injunction should not be issued."** Colucci v. Kar Kare Auto. Group, Inc., 918 So. 2d 431, 440 (Fla. 4th DCA 2006) (citation omitted).

II. TGH Did Not Plead Any of the Necessary Factors.

TGH did not file a complaint, an answer to Bariana's complaint, or a counterclaim. Thus, TGH has not yet pled anything. Fla. R. Civ. P. 1.100; Green v. Sun Harbor Homeowners' Ass'n, Inc., 730 So. 2d 1261, 1262-63 (Fla. 1998) ("This Court's use of the phrase "must be pled" is to be construed in accord with the Florida Rules of Civil Procedure. Complaints, answers, and counterclaims are pleadings pursuant to Florida Rule of Civil Procedure 1.100(a)"); accord Precision Tune Auto Care, Inc. v. Radcliffe, 815 So. 2d 708, 712 (Fla. 4th DCA 2002). Motions, including motions seeking temporary injunctions, are not pleadings. Id.; Shake v. Yes We Are Mad Grp., Inc., 315 So. 3d 1223, 1226 (Fla. 4th DCA 2021) (A "motion for temporary injunction is not a complaint."). Thus, TGH has not pled *any* of the elements necessary to obtain a temporary injunction.

As the Fourth District held: "[i]t is fundamental that a party must first file a complaint or allege a cause of action in a pleading for a temporary injunction before injunctive relief can be granted." Shake, 315 So. 3d at 1226 (quoting Cadillac Plastic Grp., Inc. v. Barnett Bank of Martin Cnty., N.A., 590 So. 2d 1063, 1063 (Fla. 4th DCA 1991)). "[T]he purpose of a temporary injunction is to

preserve the status quo until full relief can be granted..." Shake, 315 So. 3d at 1226 (quoting Int'l Vill. Ass'n v. Schaaffee, 786 So. 2d 656, 658 (Fla. 4th DCA 2001)). "Allowing a preliminary injunction to issue in the absence of a pending request for ultimate relief [is] contrary to the purpose behind temporary injunctions..." Id. This is exactly what the trial court did in this case.

The trial court entered the temporary injunction without first requiring TGH to file an answer or counterclaim.[1] As such, the trial court's order granting the temporary injunction is erroneous as a matter of law. Id. This, in itself, requires reversal.

III. TGH Did Not Prove Any of the Necessary Factors.

As mentioned above, the trial court permitted less than two-and-a-half hours for the evidentiary hearing on Defendant's motion for temporary injunctive relief. This resulted in extremely limited witness testimony on which this Court's review standard would require deference to any specific factual findings. It also resulted in both parties having no time to argue their positions. And, as detailed

1 Notably, the court did this despite that the court had *sua sponte* stricken Bariana's motion for declaratory relief because the Defendants had not yet answered the complaint.

below, TGH failed to introduce evidence to support many of the elements required for injunctive relief. See generally Holland M. Ware Charitable Found. v. Tamez Pine Straw Ltd. Liab. Co., 343 So. 3d 1285, 1289 (Fla. 4th DCA 2022) ("When Tamez's contested verified motion was noticed for an evidentiary hearing, its verified allegations and counsel's arguments were inadequate to establish the necessary proof for entitlement to injunctive relief.") (citing Olson v. Olson, 260 So. 3d 367, 369 (Fla. 4th DCA 2018) (explaining that "[a] verified motion, by itself, is inadequate to establish the necessary proof when there is a noticed and contested evidentiary hearing" and "the statements of an attorney are not evidence"). Thus, as discussed below, the temporary injunction must be reversed.

A. TGH Did Not Prove That a Legitimate Business Interest Supports Its Restrictive Covenants.

Florida statute provides that, [i]n any action concerning enforcement of a restrictive covenant:"

> (b) **The person seeking enforcement of a restrictive covenant shall plead and prove the existence of one or more legitimate business interests justifying the restrictive covenant.** The term "legitimate business interest" includes, but is not limited to:
>
> 1. Trade secrets, as defined in s. 688.002(4).

2. Valuable confidential business or professional information that otherwise does not qualify as trade secrets.

3. Substantial relationships with specific prospective or existing customers, patients, or clients.

4. Customer, patient, or client goodwill associated with:

a. An ongoing business or professional practice, by way of trade name, trademark, service mark, or "trade dress";

b. A specific geographic location; or

c. A specific marketing or trade area.

5. Extraordinary or specialized training.

Any restrictive covenant not supported by a legitimate business interest is unlawful and is void and unenforceable.

§542.335(1)(b), Fla. Stat. (2023) (emphasis added). Florida law also provides that a restrictive covenant with a physician who practices a medical specialty in a county wherein one entity employs all physicians who practice such specialty is not supported by a legitimate business interest. § 542.336, Fla. Stat. (2023).

The trial court's Order states:

The Employment Agreement protects Tampa General's considerable investment in its confidential and proprietary information including the information it maintains concerning its patients, such as patient contact information, and patient needs. Tampa General has specific patients and geographic locations that are protectable by the restrictive covenants and has made substantial investment to develop and maintain its patient base, patient goodwill, and physician referral sources.

(A 1039 ¶5). It goes on to say:

> Tampa General pled and proved that the contractually specified restraints in the non-compete are reasonably necessary to protect its legitimate business interests justifying the restrictions. Tampa General has legitimate business interests justifying the restrictive covenants laid out in the Employment Agreement. These include:
>
> a. Protection of valuable confidential business and professional information;
>
> b. Substantial relationships with specific prospective or existing patients and customers;
>
> c. The protection of patient, customer and client goodwill; and
>
> d. Protecting the value that Tampa General paid to build and market its thoracic surgery practice.

(A 1039-40 ¶6). These broad findings are not supported by the evidence. TGH did not prove the existence of any legitimate business interest that would support the restrictive covenants.

First, TGH did not prove that it possesses any trade secrets. §542.335(1)(b)1-2, Fla. Stat. (2023). Specifically, there is no evidence that TGH possesses information that derives independent value by not being generally known or ascertainable by others, or that any such information was the subject of efforts to maintain its secrecy. See, e.g., §688.002(4), Fla. Stat. (2023) (defining trade secrets); Lovell Farms v. Levy, 641 So. 2d 103 (Fla. 3d DCA 1994) (setting forth criteria for determining whether a trade secret exists) (citing Lee v.

Cercoa, Inc., 433 So. 2d 1 (Fla. 4th DCA 1983), review denied 444 So. 2d 417 (Fla. 1984)). Certainly, TGH did not prove that it shared any trade secrets with Bariana, let alone that he retained or used any trade secrets at Bayfront.

Second, TGH did not prove that it possesses the type of confidential business information that can support a restrictive covenant. §542.335(1)(b)1-2, Fla. Stat. (2023). Protectable information includes only that which is both unique in the industry and confidential. Colucci, 918 So. 2d at 439-440; accord AutoNation, Inc. v. O'Brien, 347 F. Supp. 2d 1299, 1304 (S.D. Fla. 2004) ("information that is commonly known in the industry and not unique to the allegedly injured party is not confidential and is not entitled to protection"). TGH did not introduce any evidence establishing that it has any confidential business information that is unique to the hospital industry. Nor did TGH establish that it shared any such unique, confidential information with Bariana, or that he took any such information with him, or that he used any such information while working for Bayfront.

In fact, the only evidence potentially related to this factor was that Bariana's partner at TGH gave him one document from TGH's

marketing team which contained information compiled from public records. (A 520, 557-58). There was no evidence that it was unique to TGH, that it was confidential, or that TGH took any measures to ensure any such confidentiality. Thus, TGH failed to establish that this one document established a legitimate business interest protectable by a restrictive covenant. Passalacqua v. Naviant, Inc., 844 So. 2d 796 (Fla. 4th DCA 2003) (employer failed to prove legitimate business interest where it did not articulate how any activity, method, or technique it used was unique or proprietary nor provide any reason to believe its manual was "anything but a compilation of widely known and commonly used sales and marketing techniques").

Third, TGH did not prove that it had the kind of "[s]ubstantial relationships with specific prospective or existing … patients," employees, customers, referral sources or insurance companies that can support its restrictive covenant. §542.335(1)(b)3, Fla. Stat. (2023). There was *no evidence* introduced to show that TGH had substantial relationships with any specific prospective or existing patients, customers, employees, referral sources, or insurance carriers. For example, there is *no evidence* that TGH had contracts

or exclusive relationships with any patients, customers, employees, referral sources, or insurance carriers, or any other evidence that it had a reasonable expectation of a continuing, exclusive relationship with any of them. To the contrary, the uncontroverted evidence demonstrated that Bariana is a thoracic surgeon who performs high level, complex cases, including minimally invasive esophageal surgery and, due to the nature of this work, there are no repeat patients. Indeed, common sense dictates that patients requiring thoracic surgery do not return to TGH after any follow-up appointments are completed. There is no ongoing relationship, let alone one that would justify a two-year restrictive covenant. As such, the trial court abused its discretion by finding that TGH had a legitimate business interest based upon any of these factors. See, e.g., White, 226 So. 3d at 786 (whether referral sources can be a protectible business interest is a fact specific inquiry; "The fact that referral sources *can* constitute a legitimate business interest does not automatically satisfy all possible factual issues."); IDMWORKS, LLC. v. Pophaly, 192 F. Supp3d 1335 (S.D. Fl. 2016); Envtl. Servs., Inc. v. Carter, 9 So.3d 1258, 1266 (Fla. 5th DCA 2009); Shields v. Paving Stone Co., Inc., 796 So.2d 1267 (Fla. 4th DCA 2001).

Fourth, TGH did not prove that there is patient goodwill associated with a trade name or marketing area. TGH introduced testimony from their human resources department that its marketing department spends a lot of money on general advertising and marketing throughout the state of Florida. They did not produce any evidence that this advertising campaign is anything unique in the industry, that it is specific to thoracic surgery or Pinellas County, or that it has been successful in creating patient goodwill associated with a trade name or with Pinellas County, or that it justifies a restrictive covenant with Bariana.

In short, TGH did not prove that they had any legitimate business interest to support the restrictive covenants at issue. As such, the trial court abused its discretion in finding that any such interest existed.

B. TGH Did Not Prove That Its Restrictive Covenants Are Reasonable.

Section 542.335 also requires that TGH "plead and prove" that its contractually specified restraints are reasonably necessary to protect the legitimate business interest or interests justifying the restriction. §542.335(1)(c), Fla. Stat. (2023). As quoted above, the

trial court's Order says that "Tampa General pled and proved that the contractually specified restraints in the non-compete are reasonably necessary to protect its legitimate business interests." (A 1039-40 ¶6). However, again, TGH did not plead that the covenants are reasonable, nor did TGH prove it. Notably, the trial court recognized that TGH did not introduce any evidence that the geographic scope of the restraint should extend beyond Pinellas County. However, given the lack of available surgeons to perform the types of surgery that Bariana performs, as discussed below, the finding that the Pinellas County restriction is reasonable is also erroneous as a matter of Florida law. Infra pp. 37-39.

However, the court did not address whether the covenants were overlong and TGH offered no proof on the issue. Florida Statute Section 542.335 provides that a restraint of less than six months is presumed reasonable, and a restraint that is more than two years is presumed unreasonable. §542.335(d)1, Fla. Stat. (2023). There is no presumption that a time restriction of two years is reasonable. Id. Thus, TGH had to prove that its two-year restraint is reasonable, which it did not do. There was *no evidence* introduced to support the two-year restrictive covenants. Given that Bariana had not worked

for **nine months** when he started with Bayfront, and there is no evidence that a time-period longer than nine-months was reasonable, the trial court abused its discretion by entering the temporary injunction on this basis as well. If any restraint were permissible, six months would have been more than reasonable.

C. The Non-Competition Provision is Unenforceable.

The trial court found that Bariana violated the restrictive covenants because he "accepted employment with a direct competitor, Bayfront, which provides thoracic surgery medicine services in Pinellas County, in direct violation of the unambiguous restrictions set forth in his Employment Agreement with Tampa General." (A 1039 ¶5). However, TGH's non-competition provision is not enforceable, which is precisely what Bariana had asked the trial court to address when he filed his motion for declaratory relief, which the court declined to do.

The law is well established that non-competition restrictive covenants which attempt to prohibit all competition by former employees, such as paragraph 10.01 of the Agreement, are not enforceable absent extraordinary circumstances. Dyer v. Pioneer Concepts, Inc., 667 So. 2d 961, 963-64 (Fla. 2d DCA 1996) ("Pioneer

Concepts, however, has no business interest in prohibiting competition per se.") (citing Hapney v. Central Garage, Inc., 579 So. 2d 127 (Fla. 2d DCA 1991)); accord University of Florida Board of Trustees v. Sanal, 837 So. 2d 512 (Fla. 1st DCA 2003) ("University was essentially seeking to eliminate 'generic competition in the medical marketplace,' a result not permitted by section 542.335"); White, 226 So. 3d at 785 ("Thus, section 542.335 is a carve out of the general prohibition, striking a delicate balance between legitimate business interests and a person's inalienable right to work.") (citing art. I, § 2, Fla. Const.; Hapney, 579 So. 2d at 131).

As this Court explained over 30 years ago:

> **The Hapney court stressed an individual's right to earn a living, even in competition with his or her former employer, as long as the individual will not have an unfair advantage in future competition with the former employer without the covenant**. Hapney, 579 So. 2d at 130. **A former employer is not entitled to enjoin the former employee from employment with a competitor unless the former employer has proved that the employment itself causes irreparable injury.** State Chem. Mfg. Co. v. Lopez, 642 So. 2d 1127 (Fla. 3d DCA 1994).

Dyer, 667 So. 2d at 963-64 (emphasis added). As this Court further explained:

> **Any competition by a former employee may well injure**

> **the business of the employer. An employer, however, cannot by contract restrain ordinary competition.** In order for an employer to be entitled to protection, **there must be special facts present** over and above ordinary competition. These special facts must be such that without the covenant not to compete the employee would gain an **unfair advantage** in future competition with the employer.

Hapney, 579 So. 2d at 130 (quoting Hasty v. Rent-A-Driver, Inc., 671 S.W.2d 471, 473 (Tenn. 1984)) (quoted by Passalacqua, 844 So. 2d 792, 795 (Fla. 4th DCA 2003)); accord White, 226 So. 3d at 785.

TGH did not plead or prove special facts demonstrating that allowing Bariana to work in his chosen profession as a thoracic surgeon performing minimally invasive surgery in Pinellas County would give him or Bayfront an *unfair* advantage in competition with TGH. Sanal, 837 So. 2d at 515; Hapney, 579 So. 2d 127; Dyer, 667 So. 2d at 963-64 (reversing injunction that prohibited employee from working for a competitor and holding the trial court must narrowly tailor injunction to protect only solicitation of existing customers); accord Edwards v. Harris, 964 So. 2d 196 (Fla. 1st DCA 2007) (reversing trial court's order enjoining former employee from working with a competing employer where there was no evidence that the employer would be harmed simply by the former employee's employment with a competitor); Austin v. Mid State Fire Equipment

of Central Florida, Inc., 727 So. 2d 1097 (Fla. 5th DCA 1999) (holding an injunction barring the former employee from working for any competing business was overbroad, as there was no evidence that the company would be irreparably harmed by him working for a competitor as long as he did not divulge pricing information or solicit its customers); see also Lotenfoe v. Pahk, 747 So. 2d 422 (Fla. 2d DCA 1999) (holding clients or patients are free to seek out the former employee even if he is prohibited from soliciting them). Nor did the trial court's Order purport to find any such special facts to warrant enforcing the non-competition provision. This is reversible error. E.g., Salazar, 230 So. 3d at 620-21; Phelan, 312 So. 3d at 1039.

Again, TGH did not introduce *any evidence* that Bariana possesses any trade secret or other secret proprietary business information belonging to TGH, must less that, if he did have it, it would give him an unfair competitive advantage over TGH. Moreover, to the extent that TGH invested in developing Bariana's patients or referral sources (as opposed to diverting patients from him, as Bariana testified), there was no evidence that a single patient or referral source followed Bariana to Bayfront.

To the contrary, the undisputed evidence established that

Bariana did not practice for **nine months** after leaving TGH's employment, more than long enough for any of his patients' care to have been completed before he started with Bayfront. Moreover, the undisputed evidence showed that Bariana transferred the care of his patients to other surgeons at TGH before he left, which is contrary to any intent on his part to poach TGH's patients. Finally, the only referral sources Bariana has received referrals from work at Bayfront themselves. In sum, TGH did not show that Bariana has an unfair advantage over TGH to establish that Bariana's employment at Bayfront in Pinellas County, standing alone, would cause it irreparable injury. Thus, the non-competition covenant is unenforceable. Id.; Passalacqua, 844 So. 2d at 796 (reversing temporary injunction where the only evidence in support of relief was "rank supposition" of company's CEO); Gould & Lamb, LLC v. D'Alusio, 949 So. 2d 1212 (Fla. 2d DCA 2007) (affirming trial court's ruling that employer did not prove legitimate business interest where company relied upon "generalized statements of concern" that former employee had information that could help him compete against company). Put simply, TGH did not plead or prove the type of special facts that would give Bariana an unfair advantage over TGH that

would outweigh his constitutional right to work.

D. TGH Did Not Plead and Prove that Bariana violated the Non-Solicitation Provision.

The trial court also found that Bariana violated the restrictive covenants because he "solicited Tampa General's referring physicians and employees customers [sic]." (A 1039 ¶5). However, again, there was no evidence presented to show that Bariana solicited *any* referring physicians, employees, "customers," or patients of TGH.

Even assuming, *arguendo*, that TGH had a protectible interest in patients whom Bariana provided services to during his tenure with TGH, or referral sources, or insurance carriers, TGH can only prohibit Bariana from *directly soliciting* those patients, referral sources, and carriers. Lotenfoe v. Pahk, 747 So. 2d 422, 425 (Fla. 2d DCA 1999) (stating that only direct solicitation of patients can be prohibited and, "[t]he fact that a patient voluntarily seeks out a doctor at his new practice does not establish direct solicitation."); King v. Jessup, 698 So. 2d 339 (Fla. 5th DCA 1997) (holding that when past patients voluntarily sought out Dr. Jessup at his new practice it did not establish that he solicited them in violation of restrictive covenant); Dyer, 667 So. 2d at 963-64 (reversing

injunction that prohibited employee from working for a competitor and holding the trial court must narrowly tailor injunction to protect only solicitation of existing customers); see also MacGinnitie v. Hobbs Group, LLC 420 F.3d 1240 (11th Cir. 2005) (reversing denial of employee's motion for preliminary injunction against enforcement of provision that prohibited employee from accepting business from any customer of employer or any employee of employer). TGH cannot prevent Bariana from accepting patients who choose to seek out his medical services, or who otherwise end up presenting for treatment absent direct solicitation by Bariana, or from accepting referrals or insurance which he did not directly solicit. Id. As such, the Non-Solicitation cannot be interpreted or enforced to preclude anything other than Bariana directly soliciting patients, referrals, employees, or insurance companies. Id.

There was *no evidence* that any TGH patient, referral source, or insurance company even went to Bariana or Bayfront. TGH certainly offered no proof that anyone left TGH because Bariana solicited them. Although Bariana said he received some referrals from Bayfront physicians of individuals who were already Bayfront patients, there is *no evidence* that the physicians no longer make referrals to TGH,

much less that they referred to Bariana because he directly solicited them to do so. Thus, the trial court abused its discretion by finding that Bariana breached the non-solicitation provision of the Agreement.

Further, TGH offered *no proof* that Bariana *used* any confidential proprietary information belonging to TGH to solicit *anyone*. Thus, TGH failed to show any breach for this reason as well. Dyer, 667 So. 2d at 965 n. 2 ("the former employer must prove that the employee is *using* the information in his or him new job" to show a breach) (citing Sabina v. Dahlia Corp., 650 So. 2d 96 (Fla. 2d DCA 1995)); Lovell, 641 So. 2d at 105. Therefore, the court's finding that Bariana breached the non-solicitation provision is an abuse of discretion for this reason as well and must be reversed. Id.

E. TGH Did Not Prove that they Can Overcome Bariana's Defenses.

Prior to enforcing an injunction, a Court is required to consider the defenses raised by the non-movant. §542.335(1)(g)(3), Fla. Stat. (2023) ("In determining the enforceability of a restrictive covenant, a court: … **shall consider all other pertinent legal and equitable defenses.**") (emphasis added); Masters Freight, Inc. v. Servco, Inc., 915 So. 2d

666, 666-67 (Fla. 2d DCA 2005). The Court should consider equitable defenses to the enforcement of the non-compete prior to granting a temporary restraining order and in conjunction with determining the likelihood of success on the merits. Id. Nonetheless, the trial court summarily dismissed Bariana's defenses without making any specific findings as to either defense. Instead, the court stated only that it carefully reviewed the evidence and considered the credibility of the live testimony and the deposition of Dr. Schwarzberg. (A 1040 ¶9). Neither the testimony presented at the hearing nor Dr. Schwarzberg's deposition refuted either defense. The evidence supported Bariana's defenses.

1. TGH Did Not Show That It Can Overcome Bariana's Statutory Defense.

The evidence did not establish that TGH can overcome Bariana's defense that § 542.336, Fla. Stat. (2023), precludes enforcement of the non-compete provision. On the contrary, the evidence demonstrated that there is no thoracic surgeon in Pinellas County who performs the type of high level, minimally invasive, robotic surgeries Bariana performs. In fact, TGH does not perform *any* surgeries in Pinellas County. As such, the restrictive covenants

are not supported by a legitimate business interest, as a matter of law. § 542.336, Fla. Stat. (2023). Accordingly, the trial court erred by summarily dismissing this defense. (A 1040 ¶9).

2. TGH Did Not Show That It Can Overcome Bariana's Prior Breach Defense.

The law is well settled that "[a] party is not entitled to enjoin the breach of a contract by another, unless he himself has performed what the contract requires of him so far as possible; **if he himself is in default or has given cause for nonperformance by defendant, he has no standing in equity**." Seaboard Oil Co. v. Donovan, 99 Fla. 1296, 1305 (1930); see, e.g., Channell v. Applied Research, Inc., 472 So.2d 1260, 1262 (Fla. 4th DCA 1985). Thus, for example, if an employer does not pay the compensation owed, then the employee is relieved of any further obligation under any restrictive covenant and the employer cannot obtain an injunction. See e.g., Benemerito & Flores, M.D.'s, P.A. v. Roche, 751 So. 2d 91 (Fla. 4th DCA 1999) (holding lessening bonus due to physician was breach and affirming denial of injunction); Bradley v. Health Coalition, Inc., 687 So. 2d at 333 (Fla. 3d DCA 1997), ("If the employer wrongfully refuses to pay the employee his compensation,

the employee is relieved of any further obligation under the contract and the employer cannot obtain an injunction.").

The evidence did not establish that TGH can overcome Bariana's prior breach defense. Bariana testified that TGH breached the Employment Agreement by, among other things: removing him from the position and title of "Director of Thoracic Oncology, Early Detection & Community Engagement" shortly after he started working for TGH; not permitting him to exercise his independent medical judgment as required by paragraph 4.05 of the Agreement; and by not paying the full bonus due him under the Incentive Bonus Plan.[2] In addition, he testified that Dr. Sommers diverted patients from Bariana, which also prevented him from earning additional income. Id. At a minimum, TGH's actions breached their duty of good faith and fair dealing. See generally Southern Internet Sys. v. Pritula, 856 So. 2d 1125, 1127 (Fla. 4th DCA 2003) ("Florida contract law recognizes the implied covenant of good faith and fair dealing in every contract. This covenant is intended to protect 'the reasonable

[2] Bariana conceded that he has yet to verify this claim because Defendants never provided him the data necessary to determine if he was paid the full bonus during his employment. Plus, the parties had not exchanged discovery on the issue in the limited time they had prior to the injunction hearing.

expectations of the contracting parties in light of their express agreement.'").

Additionally, Bariana testified that he engaged in protected activities while working for Defendant, including objecting to violations of federal and state statutes, and suffered retaliation for his protected activities in violation of the FWA. For example, Bariana testified that the TGH retaliated against him by, *inter alia*, committing a battery on him, and ultimately harassing him to the point that he was forced to resign. This type of unlawful conduct is also a bar to enforcement of the restrictive covenants. See, e.g., Harrison v. Palm Harbor MRI, Inc., 703 So. 2d 1117 (Fla. 2d DCA 1997) (reversing trial court ruling that sexual harassment claim did not void earlier agreements between the parties and remanding to determine the viability of him claim of sexual harassment as a contractual defense); Bradley, 687 So. 2d 329 (reversing and holding that, if the employer ordered the employee to sell unfit products, or to alter invoices so as to defraud customers, and the employee was forced to resign for refusing to do so, then the employer would have unclean hands and would not be entitled to an injunction). Accordingly, the trial court abused its discretion by summarily rejecting Bariana's defense of

prior breach and violations of the FWA.

F. The Restrictive Covenants are Contrary to Public Policy.

TGH's restrictive covenants are also unenforceable because they are contrary to public policy. Again, the undisputed evidence established that Bariana provides unique thoracic and medical services to the community that are scarce and are necessary to serve the Pinellas County community, particularly the low-income patient base in Pinellas. This evidence established that enforcing the restrictive covenants is against public policy. See § 542.336, Fla. Stat. (2023) ("A restrictive covenant entered into with a physician who is licensed under chapter 458 or chapter 459 and who practices a medical specialty in a county wherein one entity employs or contracts with, either directly or through related or affiliated entities, all physicians who practice such specialty in that county is not supported by a legitimate business interest."); Lloyd v. Damsey, M.D., P.A. v. Mankowitz, 339 So. 2d 282 (Fla. 3d DCA 1976) (finding compelling need for physician's services as surgeon in Florida Keys precluded enforcement of restrictive covenant), cert. denied, 345 So. 2d 421 (Fla. 1977); Jewett Orthopedic Clinic, P.A. v. White, 629 So. 2d 922, 925 (Fla. 5th DCA 1993) ("courts are not bound to enforce a

covenant against a physician (or anyone else) when enforcement would be inimical to the public health, safety or welfare, or when the covenant is otherwise unreasonable") (citations omitted).

In fact, the Federal Trade Commission recently declared that non-competition agreements are against public policy and its final rule prohibiting them becomes effective September 4, 2024. 16 C.F.R. §910.2; 89 FR 38342, 38342 ("The final rule provides that it is an unfair method of competition—and therefore a violation of section 5—for employers to, *inter alia,* enter into non-compete clauses with workers on or after the final rule's effective date. The Commission thus adopts a comprehensive ban on new non-competes with all workers."). This rule will "mandate that 'an employer that entered into a non-compete clause with a worker prior to the compliance date must rescind the non-compete clause no later than the compliance date.'" Globus Med., Inc. v. Jamison, No. 2:22cv282, 2023 U.S. Dist. LEXIS 160826, at *57-58 (E.D. Va. Aug. 15, 2023) (ruling injunction against doctors was against the public interest and denying injunction) (citing Non-Compete Clauses, 88 Fed. Reg. 3482, 16 C.F.R. § 910.2(b)(1)). As such, enjoining Bariana pursuant to the non-compete provision is contrary to public policy, as a matter of law.

Id.; § 542.335(2), Fla. Stat. (2023) ("Nothing in this section shall be construed or interpreted to legalize or make enforceable any restraint of trade or commerce otherwise illegal or unenforceable under the laws of the United States or of this state.").

Moreover, effectively prohibiting Bariana from accepting patients interferes with the rights of patients to treatment by the surgeon of their choosing, which is likewise contrary to the public's health, safety, and welfare. See, e.g., Lotenfoe, 747 So. 2d 422 (holding clients or patients are free to seek out the former employee even if he is prohibited from soliciting them). In fact, "[s]ince 1980 the American Medical Association (AMA) has taken the position that physicians' non-compete agreements impact negatively on health care and are not in the public interest." See AMA Code of Medical Ethics § E–9.02 (1998) (quoted by Murfreesboro Med. Clinic, P.A. v. Udom, 166 S.W.3d 674, 679 (Tenn. 2005) (holding physicians' covenants not to compete are inimical to public policy and unenforceable).

Nevertheless, the trial court summarily found: "The public interest is served by an injunction protecting enforcing [sic] Bariana's agreement not to compete or solicit. Tampa General has expended

considerable financial resources in the development of its thoracic surgery practice and a preliminary injunction would affirmatively serve the public interest." (A 1040 ¶8). Contrary to the trial court's ruling, the public interest would be disserved by precluding Bariana, a highly skilled and specialized thoracic surgeon, from providing medical services to patients in Pinellas County, Florida, where his skill set is in extremely short supply. Lloyd, 339 So. 2d 282; Jewett, 629 So. 2d at 925; AMA Ethics § E–9.02; Murfreesboro, 166 S.W.3d at 679. Accordingly, the trial court abused its discretion on this alternative ground as well.

G. TGH Did Not Prove a Likelihood of Irreparable Harm or Unavailability of an Adequate Legal Remedy.

Section 542.335(1)(j) confers a rebuttable presumption of irreparable injury where there is a violation of a valid restrictive covenant. Spine v. Moulton, 346 So. 3d 154, 158-59 (Fla. 2d DCA 2022) (citations omitted). Otherwise, to obtain injunctive relief, the movant must prove that they will be irreparably harmed by the non-movant's employment with a competitor or by using the employer's confidential information to solicit the employer's patients, referral sources, or employees. See e.g., Austin, 727 So. 2d 1097 (reversing

trial court injunction which prohibited employee from working for competitor where there was no evidence to support that former employer would be irreparably harmed by mere employment with a competitor); Sabina v. Dahlia Corp., 650 So. 2d 96 (Fla. 2d DCA 1995) (stating that it is not enough that the former employee knew confidential information, the former employer must prove that the employee is using the information in his or her new job).

As discussed above, TGH did not plead or prove that Bariana violated an enforceable restrictive covenant. Thus, there is no presumption of irreparable harm. Nevertheless, the trial court found that "Tampa General faces irreparable injury in the form of lost customers, damage to goodwill and further disclosure and use of its confidential information if the preliminary injunction is not issued." (A 1040 ¶8). Again, this is not supported by the evidence.

TGH did not prove that it has suffered *any harm* due to Bariana's employment with Bayfront, let alone that it suffered irreparable harm as a result. Nor did TGH prove that Bariana has, or has used, any confidential information belonging to TGH in his new job. TGH also failed to prove that Bariana solicited any of its patients, referral sources, employees, or insurance carriers. In fact, TGH did

not prove that they lost a single patient, employee, referral source, or insurance carrier either because of Bariana's employment with Bayfront or due to any solicitation by Bariana. TGH did not even show that Bayfront accepts any of same insurance or managed care service payments as TGH or, more likely, if it does, that Bayfront did not already have relationships with all the same carriers before hiring Bariana. Further, there was no evidence that Bariana had any contact with anyone concerning which insurance plans would be accepted by TGH or his new employer, much less that he solicited any insurance carrier to leave TGH and go to Bayfront. Finally, there is *no evidence* that Bariana working for Bayfront has done anything to cause any damage to any goodwill TGH may have with any patient, trade name, or any geographic area.

H. TGH Did Not Prove a Likelihood of Success on the Merits.

To establish a likelihood of success on the merits, TGH was required to "plead and prove" all of the above factors including that it has a likelihood of success on all the defenses asserted by Bariana. §542.335(1)(g)(3), Fla. Stat. (2023) (providing that courts "shall consider all other pertinent legal and equitable defenses"); Harrison v. Palm Harbor MRI, Inc., 703 So. 2d 1117 (Fla. 2d DCA 1997)

(reversing because trial court refused to consider evidence of sexual harassment in temporary injunction hearing, which could be an affirmative defense to enforcement of the non-compete agreement); Bradley v. Health Coalition, Inc., 687 So. 2d 329 (Fla. 3d DCA 1997) (holding employer had burden of demonstrating likelihood of success on affirmative defenses, such as prior breach and unclean hands, as well as elements of a *prima facie* case); Benemerito & Flores, M.D.'s, P.A. v. Zeidy Roche, M.D., 751 So. 2d 91 (Fla. 4th DCA 1999) (affirming denial of temporary injunction where the party seeking to enforce did not pay entire bonus due to former employee). As the above discussion demonstrates, the parties' legal rights are in serious dispute in this case. In short, TGH failed to establish that it has a clear legal right to a temporary injunction. Accordingly, the trial court abused its discretion by entering the temporary injunction.

CONCLUSION

The temporary injunction should be vacated and reversed for the reasons set forth above. TGH did not have a legitimate business interest to support the non-compete provision or the non-solicitation provision. Nor did Defendant establish that Bariana did anything to violate the restrictive covenants other than to work for a competitor.

Plus, TGH's prior breaches of the Employment Agreement, violations of the FWA, and the public's interest preclude the enforcement of the restrictive covenants. At minimum, the parties legal rights are in serious dispute in this case. Thus, TGH failed to show a clear legal right to a temporary injunction, which warrants reversal. E.g., Colucci, 918 So. 2d at 440 (stating injunction should not be issued where legal rights of the parties are in dispute); Anich Industries v. Raney, 751 So. 2d 767 (Fla. Dist. Ct. App. 2000) (affirming denial of injunction were evidence as to whether company had a legitimate business interest to protect was disputed). The trial courts findings to the contrary are not supported by the evidence. The evidence fell woefully short of that necessary to warrant the extraordinary remedy of temporary injunctive relief. Charlotte County, 68 So. 3d 920; Phelan, 312 So. 3d at 1038.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on June 27, 2024, I electronically filed the foregoing document with the Clerk of Court using E-Portal. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the service list below in the manner specified, either transmission of Notices of Electronic Filing generated by E-Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing to.

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rules of Appellate Procedure 9.100(1) and 9.210 (a)(2), the undersigned hereby certifies the font used in this document is Bookman Old Style 14-point and that it complies with the word count requirements in the Florida Rules of Appellate Procedure.

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