

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-11-0302

SURGICAL SYSTEMS, INC.,

Plaintiff

v.

ORDER ON MOTION FOR
PRELIMINARY INJUNCTION

STEVEN NILES,

Defendant

The plaintiff seeks injunctive relief against the defendant for alleged violations of the parties' December 2008 Employment, Non-competition and Confidentiality Agreement. The agreement provides that "in consideration of such employment, wages, salary and other benefits in compensation for [the defendant's] services," the parties agreed to specified conduct and restrictions.

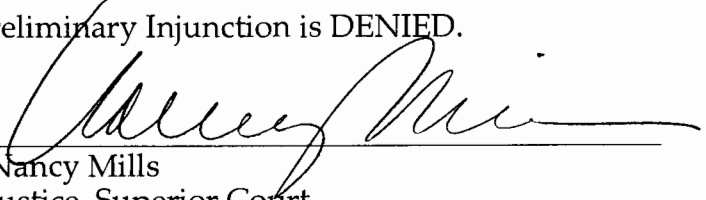
The defendant was hired on January 1, 2009 and "was compensated with a base salary of \$50,000.00 in addition to 4% retention compensation and 8% growth bonus commission for sales over the previous year." (Supp. O'Neill Aff. ¶ 6.) On January 29, 2010, the defendant "was told that his compensation plan would be changing to commission-only, effective with sales beginning February 1, 2010." (Id. ¶ 8.) The plaintiff's president states that changing sales and compensation plans is a common practice in the industry of selling and supplying orthopedic and biologic implants and devices to hospitals and surgical centers in Maine. (Id. ¶ 7; O'Neill Aff. ¶ 2.)

The unilateral change in compensation by the plaintiff was a material breach of the parties' agreement. See Greany v. Dixon, 2007 Me. Super. LEXIS 203 (Aug. 30, 2007). Accordingly, the plaintiff has not shown a likelihood of success on the merits. See Ingraham v. University of Maine, 441 A.2d 691, 693 (Me. 1982).

The entry is

The Plaintiff's Motion for Preliminary Injunction is DENIED.

Dated: September 14, 2011


Nancy Mills
Justice, Superior Court

CV-11-0302

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