[Cite as *Total Quality Logistics, L.L.C. v. Leonard*, 2023-Ohio-2271.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

TOTAL QUALITY LOGISTICS, LLC,	:	
		CASE NO. CA2022-09-048
Appellant,	:	
		O P I N I O N
	:	7/3/2023
- vs -		
	:	
ERIN C. LEONARD, et al.,	:	
Appellee.	:	

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2020 CVH 00960

Graydon Head & Ritchey LLP, and Daniel J. Knecht and Scott K. Jones, for appellant.

Stites & Harbison, PLLC, and Robin D. Miller, for appellee.

M. POWELL, J.

{¶ 1} Appellant, Total Quality Logistics, LLC ("TQL"), appeals a decision of the Clermont County Court of Common Pleas declining to enforce a noncompete agreement against appellee, Erin Leonard, while she was on paid administrative leave for a competitor of TQL.

{¶ 2} TQL is a freight broker and third-party logistics company headquartered in

Clermont County, Ohio. TQL has offices throughout the United States, including Ohio and Massachusetts. As a third-party logistics company, TQL does not own its own trucks or trailers, but facilitates shipments through those means for other carriers. TQL typically hires new employees that have no prior logistics experience, thereby allowing TQL to extensively train its new employees on the specific sales methods developed and employed by TQL.

{¶ 3} Leonard was hired by TQL in February 2018 as a Logistics Account Executive Trainee. Prior to joining TQL, Leonard had no experience in third-party logistics. On her first day as a TQL employee, Leonard signed TQL's "Employee Non-Compete, Confidentiality, and Non-Solicitation Agreement" (the "NCA"). The NCA prohibited Leonard from being employed by a TQL competitor and soliciting TQL customers for a period of one year after termination of her employment with TQL. The NCA also prohibited Leonard from disclosing or using any of TQL's trade secrets and confidential information. Leonard agreed that if she breached any restriction in the NCA, TQL would be entitled to an injunction restraining such activity. Leonard further agreed that the running of the one-year restrictive covenant would be tolled for any time in which she was in violation of the NCA.

{¶ 4} TQL provided Leonard with 22 weeks of training. Her training included using TQL's software platforms, such as Load Manager which houses information related to loads, customers, carriers, margins, rates, lanes, and particular information about customers' freight. As her employment with TQL progressed, Leonard was promoted to Saturday Group Leader. In February 2020, TQL transferred Leonard to its Boston, Massachusetts office at her request. During her employment with TQL, Leonard developed friendships with employees of three TQL customers, Rita Tucker, Sean Coborn, and Daryl Simpson. Leonard's contact with Tucker, Coborn, and Simpson extended beyond the workday and regularly took place on Leonard's own time. Leonard and these individuals exchanged their personal cell phone numbers.

{¶ 5} While employed by TQL, Leonard was contacted by a recruiter for a position with Ally Global Logistics, LLC ("Ally"), a competitor of TQL. Ally is a family business headquartered in Massachusetts whose primary business was lumber and exports. In March 2020, Ally set up Domestic Division, a domestic truck brokerage division within the company focused on third-party logistics. In this sense, Ally was a direct competitor of TQL. Leonard interviewed with Ally. During her interview, Leonard advised that she was subject to a noncompete agreement with TQL. Stephen Zambo, Ally's president, advised Leonard not to be concerned about her NCA because he understood that noncompete agreements were not enforceable in Massachusetts. Leonard accepted a freight broker position with Ally, resigned from her position with TQL on September 16, 2020, and began working for Ally on September 28, 2020. Leonard signed a two-year noncompete agreement with Ally and was trained over two days, learning Ally's computer systems and sales practices.

{¶ 6} Kristiana Lorgeree, the head of Ally's Domestic Division and Leonard's supervisor, encouraged Leonard to contact TQL customers to secure their business with Ally. Leonard actively solicited some TQL customers; other TQL customers initiated contact with her. Leonard also continued to communicate with Tucker, Coborn, and Simpson. Between October 2, 2020, and November 11, 2020, Leonard generated $24,978.93 in profit for Ally from eight TQL customers.

{¶ 7} Marc Bostwick, TQL's risk manager, learned that Leonard was employed by Ally through LinkedIn. On September 30, 2020, Bostwick emailed Zambo to confirm that Leonard was employed by Ally, to inquire concerning the position she held, and to advise that Leonard was subject to a noncompete agreement. Zambo requested a copy of Leonard's NCA with TQL. Bostwick forwarded the noncompete provisions of Leonard's NCA; he did not include the NCA's clause governing the choice of law (i.e., Ohio law) and forum selection (i.e., Ohio).

{¶ 8} On November 12, 2020, TQL filed a complaint in the trial court asserting claims for breach of contract and misappropriation of trade secrets against Leonard and claims for misappropriation of trade secrets and tortious interference with contract against Ally. TQL sought damages, injunctive relief, and a declaration that the running of the one-year restrictive covenants in the NCA was tolled due to Leonard's employment by Ally in violation of the NCA. TQL also sought a temporary restraining order ("TRO") and preliminary injunction against Leonard and Ally.

{¶ 9} An agreed TRO was journalized on November 25, 2020. It provided that Leonard would be on paid administrative leave until expiration of the TRO during which time she would not conduct any business regarding freight, shipping, brokerage, or logistics services, either on her own behalf or Ally's behalf. The parties subsequently extended the agreed TRO to December 30, 2020, and on March 29, 2021, an agreed preliminary injunction was journalized. Both the extended TRO and the preliminary injunction included the same terms as the agreed TRO. The preliminary injunction further provided, "By entering into this Agreed Injunction no party waives, and each hereby expressly reserves, any and all arguments, defenses, and objections concerning the subject matter hereof."

{¶ 10} The parties filed cross-motions for summary judgment. On January 6, 2022, the trial court granted in part and denied in part TQL's motion for summary judgment regarding its breach-of-contract claim. The trial court found that Leonard breached the NCA during the two-month period she was employed by Ally prior to the journalization of the November 25, 2020 agreed TRO. The trial court found, however, that there were genuine issues of material fact regarding whether the NCA was breached after November 25, 2020. The trial court denied TQL's motion for summary judgment regarding its claims for misappropriation of trade secrets and tortious interference with contract, and denied Ally's motion for summary judgment.

{¶ 11} Ally moved to dissolve the agreed preliminary injunction after one year had passed from the issuance of the November 25, 2020 agreed TRO. On January 27, 2022, the trial court dissolved the preliminary injunction, finding that there had been a significant change in circumstances since the issuance of the November 25, 2020 agreed TRO, to wit, Leonard had provided no services to Ally for one year as provided by the NCA.

{¶ 12} The case proceeded to a bench trial on February 14, 2022. Leonard, Zambo, and Bostwick testified. The evidence at trial revealed that despite the TROs and preliminary injunction, from November 25, 2020, to May 25, 2021, Leonard had at least 30 contacts with Tucker, Coborn, and Simpson. Leonard characterized these contacts as strictly personal in nature. Leonard testified that she did not access Ally's online databases during her administrative leave, and such was verified by Zambo based upon Ally's records. There was no evidence contrary to Leonard's and Zambo's assertions in this regard.

{¶ 13} The trial evidence included TQL's historical sales data regarding the TQL customers Leonard had contact with during the two-month period she was employed by Ally prior to being placed on paid administrative leave on November 25, 2020. The data revealed that some of these customers ceased doing business with TQL, and there was a reduction in business with the other customers. However, TQL did not offer evidence as to why customers ceased doing business with TQL. Zambo's unrefuted testimony was that once Leonard was placed on administrative leave, Ally did not do any business with TQL customers.

{¶ 14} On June 22, 2022, the trial court found that Leonard did not breach the NCA in the year following the November 25, 2020 issuance of the TRO. Specifically, the trial court found that (1) Leonard did not compete with TQL or provide any services to Ally contrary to TQL's business interests after November 25, 2020, (2) Leonard's communications with three of her former TQL customers did not violate the NCA, and (3)

Leonard did not breach the NCA by simply being on paid administrative leave where she did not perform any work for Ally and while she awaited expiration of the NCA's one-year restriction on employment with a TQL competitor. The trial court found that Ally tortiously interfered with Leonard's NCA by hiring her away from TQL. As damages for Leonard's breach of the NCA prior to November 25, 2020, and Ally's tortious interference with Leonard's NCA, the trial court awarded TQL $24,978.93. The amount represents the profit Ally realized from Leonard's contacts with TQL customers between September 28, 2020, the date Leonard began employment with Ally, and November 25, 2020, the date the TRO was issued and Leonard went on paid administrative leave. The trial court denied TQL's request to issue a permanent injunction against Leonard and Ally. The trial court further limited TQL's claim for attorney fees to those incurred prior to the November 25, 2020 issuance of the agreed TRO, awarding TQL $7,885 in attorney fees.

{¶ 15} TQL now appeals, raising four assignments of error.

{¶ 16} Assignment of Error No. 1:

{¶ 17} THE TRIAL COURT ERRED BY DENYING TQL'S MOTION FOR SUMMARY JUDGMENT ON ITS CLAIM THAT MS. LEONARD CONTINUED TO BREACH THE NON-COMPETE AGREEMENT WHILE ON PAID LEAVE FROM ALLY.

{¶ 18} The trial court denied TQL's motion for summary judgment regarding its claim that Leonard breached the NCA after November 25, 2020, the date the TRO was issued and Leonard went on paid administrative leave, as follows:

> [T]he Court finds that there is a potential conflict between the [NCA] which expressly prohibits employment with a competing business, and the restrictions on non-competition agreements announced by the Supreme Court of Ohio in *Raimonde v. Van Vlerah*. Under *Raimonde*, a noncompete agreement is reasonable, and thus enforceable, only if its restrictions are not greater than that which is required to protect the employer. Here, the Defendants assert that Leonard has continued to receive a paycheck from Ally for doing absolutely nothing.

{¶ 19} Continuing, the trial court held,

> If Leonard, in fact, performed no work whatsoever for Ally nor had business contacts with former TQL customers during her administrative leave, it is difficult to see how preventing Leonard from receiving a paycheck from Ally during that period was necessary to protect TQL. This conflict between the express terms of the [NCA] and the holding in *Raimonde* creates an ambiguity that the Court finds cannot be determined as a matter of law. In other words, the reasonability of the [NCA's] restriction on "employment" under these particular circumstances is an issue better suited for the trier of fact.

{¶ 20} TQL argues that the trial court erred in denying its motion for summary judgment on its claim Leonard breached the NCA while she was on paid administrative leave from Ally. TQL challenges the trial court's ruling as improperly holding that TQL's legitimate business interests to be protected by the NCA are limited to preventing former employees from actively engaging in the freight brokerage business. TQL asserts that the legitimate business interests it seeks to protect also include retention of employees in which it has invested substantial time, money, and other resources. TQL further asserts that the trial court's interpretation of *Raimonde* turns TQL into a "farm system" for its competitors and relieves them of having to identify and train potentially promising employees, and provides its competitors a pathway to "poach" its employees.

{¶ 21} Ally argues that the trial court did not err in denying TQL's motion for summary judgment because the gist of the matter was whether the NCA is reasonable—a question of fact. Ally further argues that the purpose of the NCA was to keep Leonard from competing for 12 months and that TQL undisputedly "received the benefit of its bargain" when Leonard and Ally agreed to the TRO and injunction and Leonard was placed on paid administrative leave.

{¶ 22} An appellate court reviews a trial court's decision on a motion for summary judgment de novo, independently and without deference to the decision of the trial court. *A*

N Bros. Corp. v. Total Quality Logistics, L.L.C., 12th Dist. Clermont No. CA2015-02-021, 2016-Ohio-549, ¶ 18. Civ.R. 56(C) provides that summary judgment shall be granted when the filings in the action, including depositions and affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Bliss v. Johns Manville*, Slip Opinion No. 2022-Ohio-4366, ¶ 12.

{¶ 23} Generally, any error by a trial court in denying a motion for summary judgment is rendered moot or harmless if the motion is denied due to the existence of genuine issues of material fact, and a subsequent trial results in a verdict in favor of the nonmoving party. *Continental Ins. Co. v. Whittington*, 71 Ohio St.3d 150, 156, 1994-Ohio-362; *Clarkwestern Dietrich Bldg. Sys., L.L.C. v. Certified Steel Stud Assn., Inc.*, 12th Dist. Butler No. CA2016-06-113, 2017-Ohio-2713, ¶ 12. However, an error in the denial of a motion for summary judgment that presents a purely legal question is not rendered harmless by a subsequent trial on the merits. *Bliss* at ¶ 14; *Capella III, L.L.C. v. Wilcox*, 190 Ohio App.3d 133, 2010-Ohio-4746, ¶ 14 (10th Dist.). When the alleged error in the denial of summary judgment is based purely on a question of law that must be answered without regard to issues of fact, the denial of summary judgment is reviewable. *Clarkwestern* at ¶ 13.

{¶ 24} "A 'question of law' is '[a]n issue to be decided by the judge, concerning the application or interpretation of the law.'" *Wheatley v. Marietta College*, 4th Dist. Washington No. 14CA18, 2016-Ohio-949, ¶ 55, quoting *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 148, 2000-Ohio-493. A question of law does not become a question of fact simply because a court must consider facts or evidence. *Id.*

{¶ 25} The construction of a written contract is a question of law. *Mercer v. 3M Precision Optics, Inc.*, 181 Ohio App.3d 307, 2009-Ohio-930, ¶ 9 (12th Dist.). Likewise, the issue of whether a noncompete contract is enforceable is a question of law for the court to decide. *Facility Servs. & Sys. v. Vaiden*, 8th Dist. Cuyahoga No. 86904, 2006-Ohio-2895,

¶ 36. Therefore, we will consider the merits of TQL's argument that the trial court erred in denying its summary judgment motion on its claim Leonard breached the NCA while she was on paid administrative leave from Ally.

{¶ 26} "[O]nly reasonable noncompetition agreements are enforceable." *Lake Land Emp. Group of Akron, LLC v. Columber*, 101 Ohio St.3d 242, 2004-Ohio-786, ¶ 22. "A covenant restraining an employee from competing with his former employer upon termination of employment is reasonable if it is no greater than is required for the protection of the employer, does not impose undue hardship on the employee, and is not injurious to the public." *Raimonde v. Van Vlerah*, 42 Ohio St.2d 21, 26 (1975). An agreement not to compete "which imposes unreasonable restrictions upon an employee will be enforced to the extent necessary to protect the employer's legitimate interests." *Id.* at 25-26.

{¶ 27} One legitimate purpose of a noncompete agreement is to prevent the disclosure of a former employer's trade secrets or the use of the former employer's proprietary customer information to solicit the former employer's customers. *See Brentlinger Enterprises v. Curran*, 141 Ohio App.3d 640 (10th Dist.2001). We have recognized that another legitimate purpose of a noncompete agreement is the retention of employees in which an employer has invested time and other resources. In a recent case involving TQL's noncompete agreement, we held that TQL's legitimate business interest "includes limiting unfair competition after training Schaap and providing him with access to TQL's confidential information." *Total Quality Logistics, L.L.C. v. Alliance Shippers, Inc.*, 12th Dist. Clermont No. CA2020-06-031, 2021-Ohio-781, ¶ 107. We further held,

> When considering the legitimate business interest of TQL in this instance, we find this factor weighs in favor of finding Alliance's interference was improper. As noted by the trial court, such noncompete agreements are commonplace in the logistics field, and due to the competitive nature of the industry, such agreements are vital in protecting the interests of companies, like TQL, who elect to hire and extensively train new employees

> with no prior experience in the field. Thus, we find TQL had a legitimate interest in restricting Schaap from immediately transitioning to Alliance and providing Alliance with an unfair advantage as TQL's competitor.

Id. at ¶ 108.

{¶ 28} Leonard, who had no prior experience in the logistics industry, was hired by TQL in February 2018, received 22 weeks of extensive training to become a successful freight broker, was promoted during her employment with TQL, continued in the employ of TQL for two years before resigning, and began working for Ally, a TQL competitor, in a substantially similar capacity 12 days after terminating her employment with TQL. While employed at Ally and before she was placed on paid administrative leave, Leonard solicited and contracted business with TQL customers, generating $24,978.93 in profits for Ally from eight TQL customers in less than six weeks.

{¶ 29} It is undisputed that through her extensive training and employment with TQL, Leonard had access to TQL's customer data and confidential information such as expense information, pricing, profitability and margin information, the individualized needs and requirements of TQL customers, and the contact information for customers, and that she knew TQL's software and its marketing and business strategy. In addition to its legitimate business interest in keeping its proprietary customer information and marketing and business strategy confidential, TQL had a legitimate business interest in retaining its employees. Leonard obtained her experience and skills as a freight broker in the logistics industry while being trained extensively by and working for TQL. Leonard had a proven track record of success, was demonstrably skilled at developing customer relationships, and was a promising broker as evidenced by her promotions through TQL's ranks, and once she began working for Ally, by her being contacted by former TQL customers and the profits she generated for Ally in less than six weeks.

{¶ 30} The upshot of Ally's and Leonard's argument is that the NCA restricts them only from competing with TQL for customers. However, the NCA is not so limited as it also restricts "employment" with a TQL competitor. Moreover, the purpose of the NCA is to prevent not only unfair competition for customers but also for the human resources necessary to conduct business. The NCA promotes this purpose by, among other things, disincentivizing TQL employees from leaving the employ of TQL to work for a competitor. Adopting Ally's and Leonard's narrow construction of the NCA would permit competitors to acquire TQL's key and high-performing employees and placing them on paid administrative leave for a year, thus depriving TQL of the benefit of its investment in the employee and the employee's services while avoiding liability for tortious interference and breach of contract. The trial court erred by ignoring this aspect of the legitimate interests TQL sought to protect with the NCA.

{¶ 31} In light of the foregoing, we find that the trial court erred in denying TQL's motion for summary judgment on its claim Leonard breached the NCA while she was on paid administrative leave from Ally. TQL's first assignment of error is sustained.

{¶ 32} Assignment of Error No. 2:

{¶ 33} THE TRIAL COURT ERRED BY FINDING THAT THE WORD "EMPLOYED" DID NOT ENCOMPASS MS. LEONARD'S POST NOVEMBER 25, 2020 EMPLOYMENT BY ALLY.

{¶ 34} TQL argues the trial court erred in finding that Leonard did not breach the NCA after November 25, 2020, when she was on paid administrative leave.

{¶ 35} Following the trial court's denial of TQL's motion for summary judgment on its claim Leonard breached the NCA when she was on paid administrative leave, the matter proceeded to a bench trial. After the trial, the trial court found that while Leonard breached the NCA prior to November 25, 2020, she did not breach the NCA after November 25, 2020,

when she was placed on paid administrative leave and performed no services for Ally.

{¶ 36} In support of its ruling, the trial court found that TQL's interpretation of "employed" as used in the NCA was unreasonable and in conflict with *Raimonde*: "[T]he word 'employed' does not refer [to] a situation in which an employee receives payment, but confers absolutely no benefit upon the new employer, and performs no actions contrary to TQL's business interests." The trial court found that "Leonard passively sitting by and conferring absolutely no benefit upon Ally" could not be construed as "competing," found that Leonard was "an 'employee' of Ally only in the very limited sense that she receives pay and benefits. However, such pay and benefits have been entirely gratuitous on Ally's part," and concluded that, under these circumstances, preventing Leonard from receiving a paycheck from Ally was a restriction greater than necessary to protect TQL's business interests under *Raimonde*.

{¶ 37} TQL challenges the trial court's determination that Leonard's post-November 25, 2020 paid administrative leave did not constitute "employment" under the NCA. TQL argues that Leonard remained an Ally employee after being placed on administrative leave in violation of the NCA because she was paid a salary and received benefits, retained access to Ally's software programs, and continued having contact with employees of three companies she had serviced while she was employed by TQL.

{¶ 38} TQL also challenges the trial court's evaluation of whether Leonard's continued employment while on paid administrative leave adversely affected TQL's business interests. TQL argues that the trial court focused only upon the freight brokerage aspect of TQL's business interest and whether Ally, through Leonard, had "competed" with TQL during Leonard's administrative leave, and ignored TQL's legitimate business interest in retaining employees it has extensively trained and compensated during training, and preventing its competitors from recruiting those employees away. TQL further argues the

trial court misapplied *Raimonde* by focusing exclusively on whether Leonard's association with Ally conferred a benefit on Ally as opposed to how it affected TQL's interests.

{¶ 39} The NCA expressly provides that for one year after termination of employment with TQL, "Employee will not, directly or indirectly, * * * be employed by" a competitor of TQL. Trial testimony established that Leonard signed a two-year noncompete agreement on her first day as an Ally employee, and that while on administrative leave, she continued to be on Ally's payroll, was paid her regular salary, paid taxes on her income, and continued to receive benefits. Leonard and Zambo both identified Leonard as a current employee of Ally. It is axiomatic that only an employee can be placed on paid administrative leave. The trial court focused on the fact that although she was paid during her administrative leave, Leonard did not conduct business of any kind on behalf of Ally and that her pay and benefits were "entirely gratuitous on Ally's part." That Leonard was paid for doing nothing during her administrative leave because Zambo purportedly felt responsible for Leonard's situation does not make Leonard a non-employee of Ally for purposes of the NCA. The fact that Ally paid Leonard her full salary and benefits during her administrative leave shows that it received a reciprocal benefit. It is no different than an employee going on a paid FMLA, jury duty, or military leave and performing no services for the employer during such leave. From the time Leonard was hired to date, nothing in Leonard's status as an Ally employee changed. By being hired by Ally and by continuing to be employed by Ally, Leonard violated the noncompete provision of the NCA prohibiting its employees from being "employed" by a competitor of TQL.

{¶ 40} In finding that TQL's interpretation of "employed" as used in the NCA was unreasonable and in conflict with *Raimonde*, the trial court summarily recognized TQL's right to prevent former employees from competing with TQL for a period of time. However, the trial court mainly focused on the freight brokerage aspect of TQL's business interest

and whether Ally, through Leonard, "competed" with TQL during Leonard's administrative leave. The trial court concluded that Leonard did not compete with TQL in any way, did not perform any actions contrary to TQL's business interests, and conferred no benefit on Ally.

{¶ 41} Leonard's continued and multiple communications with three of her former TQL customers during her administrative leave belies the trial court's finding that Leonard did not perform any action contrary to TQL's business interests. Trial testimony established that when Leonard was a TQL logistics account executive, she was trained in how to build trust, relationships, and friendships with customers, that she did establish friendly relationships with the three individuals employed by TQL customers, and that she was the assigned or primary broker for the accounts for those customers.

{¶ 42} In ruling that the term "employed" in the NCA was unreasonable and in conflict with *Raimonde*, the trial court focused on whether Leonard's association with Ally conferred a benefit upon Ally. Ally had an interest in acquiring experienced, trained, and skilled employees to jump start its new freight brokerage division. Despite the trial court's finding to the contrary, Ally's retention of Leonard was a benefit to Ally from the outset, and a benefit Ally was able to hold onto by maintaining Leonard as an employee after November 25, 2020. However, the test established in *Raimonde* plainly focuses upon the former employer and its legitimate interests and need for protection, not on the competitor's benefit, and thus requires that noncompete agreements be viewed through the interests of the former employer, not the offending competitor.

{¶ 43} As discussed in the first assignment of error, TQL has a legitimate business interest in retaining its employees after it has invested time, money, and other resources in them, and preventing its competitors from recruiting those employees away. Before being employed at TQL, Leonard had no prior experience, clients, or contacts in the logistics industry. At TQL, Leonard received extensive training learning how to become a successful

freight broker and was promoted due to her recognized leadership qualities. Trial testimony established that Leonard had a proven track record of success, was extremely skilled at developing customer relationships, and was a promising asset in the logistics industry. Ally's hiring of Leonard undermined TQL's legitimate business interest in retaining Leonard as its employee. The trial court erred by ignoring TQL's legitimate business interest in the retention of its experienced and skilled employees after investing time and other resources in them.

{¶ 44} The trial court found that "[h]ad Leonard been terminated [by Ally] or had she resigned after November 25, 2020, and then been rehired by Ally after a year had elapsed, the effect upon TQL would have been exactly the same as it is in the current circumstances." Not so. While the result of Leonard not working for the logistics industry for a year in compliance with the NCA or her sitting out for a year while on paid leave might have been the same in that Leonard performed no services in the logistics industry, Leonard would have been less inclined to leave employment with TQL if there were no other employment prospects in the industry. Allowing a competitor to circumvent a noncompete agreement by simply hiring an employee and placing the employee on paid administrative leave for the duration of the noncompete agreement would defeat the purpose of noncompete agreements, reward former employees and the competitors hiring them, and ignore the employer's legitimate business interests.

{¶ 45} In light of the foregoing, we find that the trial court erred in finding that Leonard was not "employed" for purposes of the NCA while she was on paid administrative leave and that she did not breach the NCA during such leave. TQL's second assignment of error is sustained.

{¶ 46} Assignment of Error No. 3:

{¶ 47} THE TRIAL COURT COMMITTED CLEAR ERROR BY FINDING TQL WAS

NOT ENTITLED TO INJUNCTIVE RELIEF.

{¶ 48} The NCA provides that "[i]f there is a breach or threatened breach of any part of this Agreement, TQL shall be entitled to an injunction restraining Employee from such breach or threatened breach." By signing the NCA, Leonard agreed that the running of the one-year period "shall be tolled during any time period during which Employee violates any provision of this Agreement." After the trial, the trial court declined to grant TQL injunctive relief beyond the November 25, 2020 agreed TRO and the agreed preliminary injunction based upon its finding that Leonard did not breach the NCA after November 25, 2020, when she was on paid administrative leave. TQL argues it is entitled to injunctive relief because the NCA was not tolled during the time Leonard was on paid administrative leave as the leave constituted "employment" by a TQL competitor under the NCA.

{¶ 49} Injunctive relief is an equitable remedy that is available only where there is no adequate remedy at law. *Haig v. Ohio State Bd. of Edn.*, 62 Ohio St.3d 507, 510 (1992). A party seeking a permanent injunction must first prevail on the merits of its claim. *MWL Ents., L.L.C. v. Mid-Miami Invest Co.*, 2d Dist. Montgomery No. 28915, 2021-Ohio-1742, ¶ 37. The Ohio Supreme Court has recognized that a party claiming the breach of a noncompete agreement can obtain both damages and injunctive relief. *See Rogers v. Assn., Inc.*, 57 Ohio St.3d 5 (1991).

{¶ 50} To obtain a permanent injunction, a party must show by clear and convincing evidence that immediate and irreparable injury, loss, or damage will result to the applicant. *Dunning v. Varnau*, 12th Dist. Brown Nos. CA2016-09-017 and CA2016-10-018, 2017-Ohio-7207, ¶ 26. Irreparable harm is an injury for which there is no plain, adequate, and complete remedy at law, and for which money damages would be impossible, difficult, or incomplete. *Id.* In actions to enforce noncompete agreements, "a threat of harm warranting injunctive relief can be shown by facts establishing that an employee with detailed and

comprehensive knowledge of an employer's trade secrets and confidential information has begun employment with a competitor of the former employer in a position that is substantially similar to the position held during the former employment." *P&G v. Stoneham*, 140 Ohio App.3d 260, 274 (1st Dist.2000).

{¶ 51} In light of our holding in the second assignment of error that Leonard breached the NCA after November 25, 2020, when she was on paid administrative leave, we find that the trial court erred in denying TQL injunctive relief beyond November 25, 2020. TQL is entitled to injunctive relief to enforce the NCA. The trial court should have enjoined Leonard from being employed by Ally for a period of one year, less the 12 days between Leonard's date of resignation from TQL and her first day as an Ally employee.

{¶ 52} TQL's third assignment of error is sustained.

{¶ 53} Assignment of Error No. 4:

{¶ 54} THE TRIAL COURT ERRED BY FINDING TQL WAS NOT ENTITLED TO ANY ATTORNEYS' FEES INCURRED AFTER NOVEMBER 25, 2020.

{¶ 55} Leonard's NCA provides that "[i]f Employee is found by a court of competent jurisdiction to have violated the terms of this Agreement, Employee shall be liable for costs, expenses, and reasonable attorneys' fees incurred by TQL." The trial court awarded TQL $7,885 in attorney fees for Leonard's breach of the NCA between September 28, 2020, and November 25, 2020. The trial court, however, found that TQL was not entitled to attorney fees from Leonard after November 25, 2020, because Leonard was no longer in breach of the NCA.

{¶ 56} In light of our holding that Leonard's employment with Ally while on paid administrative leave breached the NCA, we sustain TQL's fourth assignment of error and reverse and vacate the portion of the trial court's decision finding that TQL was not entitled to attorney fees for Leonard's breach of the NCA after November 25, 2020. The matter is

remanded for the trial court to conduct an evidentiary hearing to determine the amount of attorney fees incurred by TQL after November 25, 2020.

{¶ 57} Judgment reversed and remanded.

S. POWELL, P.J., and HENDRICKSON, J., concur.