[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 15-13710
Non-Argument Calendar

D.C. Docket No. 6:13-cv-01277-ACC-KRS

AEROTEK, INC.,

Plaintiff-Appellant,

versus

JAMES THOMPSON,
HEALTHCARE SUPPORT STAFFING, INC.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(February 24, 2016)

Before WILSON, MARTIN and ROSENBAUM, Circuit Judges.

PER CURIAM:

Aerotek, Inc. appeals from the district court's judgment in favor of James Thompson and Healthcare Support Staffing, Inc. ("HSS") and its denial of Aerotek's post-judgment motions under Federal Rules of Civil Procedure 52 and 59. Aerotek, a staffing agency, brought claims for breach of contract against Thompson based on his employment agreement (Count I),[1] tortious interference against HSS for interfering in Aerotek's business relationship with Thompson (Count II), and rescission, forfeiture, and unjust enrichment claims against Thompson based on his employee incentive investment plan ("IIP") (Counts III and IV). After a bench trial, the district court entered judgment for Thompson and HSS on all counts. It also denied Aerotek's motions to alter or amend the judgment and for a new trial. After careful review, we affirm.

I.

Aerotek first argues that the district court erred in finding that Thompson did not breach the non-compete restrictions in his employment agreement[2] and IIP[3]

[1] The employment agreement is governed by Maryland law. To prevail in a breach of contract action under Maryland law, "a plaintiff must prove that the defendant owed the plaintiff a contractual obligation and that the defendant breached that obligation." Taylor v. NationsBank, N.A., 776 A.2d 645, 651 (Md. 2001).

[2] In relevant part, Thompson's employment contract reads:

> EMPLOYEE agrees that upon the termination of EMPLOYEE's employment, . . . for a period of eighteen (18) months thereafter EMPLOYEE shall not . . . be employed by[] any business that is engaging in . . . any aspect of AEROTEK's Business, for which EMPLOYEE performed services or about which EMPLOYEE obtained Confidential Information during the two (2) year period preceding his/her termination.

when he accepted an offer from HSS, another staffing agency, after leaving Aerotek. We review the district court's findings of fact for clear error. Travelers Prop. Cas. Co. of Am. v. Moore, 763 F.3d 1265, 1268 (11th Cir. 2014). "Under the clear error standard, we may reverse the district court's findings of fact if, after viewing all the evidence, we are left with the definite and firm conviction that a mistake has been committed." Id. (quotation omitted).

Under the employment agreement, Thompson was restricted from engaging in work involving any aspect of Aerotek's business for which he had performed services or about which he had obtained confidential information during his last two years at Aerotek. This restriction period lasted for eighteen months after his employment with Aerotek ended. Thompson began working for HSS approximately eight months after leaving his position as Aerotek's Director of Business Operations ("DBO"). However, the district court found "little, if any, evidence" that Thompson's work at HSS overlapped with the work he performed during his last two years at Aerotek.

Aerotek argues that the district court's finding of no overlap is clearly erroneous because Thompson testified to running Aerotek's operations "from top

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[3] As an IIP participant, Thompson was also restricted from:

> [E]ngag[ing] in the business of recruiting, employing and providing [] services [in] . . . any [] lines of business that the Companies engage in . . . during the Participant's employment with . . . [Aerotek], in which . . . [the Participant] performed work or obtained knowledge and information.

to bottom." Aerotek also points to testimony from Jessica Munford, Thompson's successor at Aerotek, stating that the DBO is responsible for "[a]ll of the divisions that we support." Because the district court held that some aspects of Aerotek's and HSS's businesses were in competition, Aerotek claims "[i]t is simply axiomatic that . . . [Thompson] serviced aspects of [Aerotek's] business the trial court already found to be directly competitive with HSS."

The district court did not clearly err in finding that Thompson did not breach his non-compete restrictions. The district court credited Thompson's testimony that he serviced six divisions during his last two years with Aerotek: commercial, aviation, engineering, environmental, scientific, and professional services. HSS is dedicated exclusively to the healthcare industry. According to Thompson, Aerotek's general counsel specifically advised him that he could move to the healthcare industry without violating his employment agreement. The fact that Aerotek and HSS compete in some areas is insufficient to establish that the district court erred in finding that Thompson had not engaged in specific activities that violated his contract. We decline to overturn this finding of fact.

II.

Aerotek next argues that the district court erred in denying its Rule 59(a) and 52(b) motions. Rule 59(a) provides that in non-jury cases "the court may . . . open the judgment if one has been entered, take additional testimony, amend findings of

fact and conclusions of law or make new ones, and direct the entry of a new judgment." Fed. R. Civ. P. 59(a)(2). Rule 52(b) similarly permits the court to amend its findings or make additional findings on a party's motion filed within 28 days after the entry of judgment. Fed. R. Civ. P. 52(b).

We review the denial of a Rule 59 or Rule 52 motion for abuse of discretion. Trigo v. FDIC, 847 F.2d 1499, 1504 (11th Cir. 1988). "The only grounds for granting a Rule 59 motion are newly-discovered evidence or manifest errors of law or fact." Arthur v. King, 500 F.3d 1335, 1343 (11th Cir. 2007) (per curiam) (quotation omitted) (alteration adopted). "A Rule [59] motion cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." Id. (quotation omitted) (alterations adopted).

The district court did not abuse its discretion in denying Aerotek's motions. Aerotek sought to relitigate the argument that Thompson's statement that he was in charge of Aerotek's operations "from top to bottom" and Munford's statement that the DBO was responsible for "[a]ll of the divisions" meant that Thompson had violated the non-compete agreement. Aerotek also sought to introduce a declaration signed by Munford. However, the declaration merely rehashes Munford's trial testimony and does not provide new evidence meeting the strict

standard for reconsideration under either Rule 52 or 59. In light of the foregoing, we affirm.

AFFIRMED.