IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1374

September Term, 2020

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MANSOOR KHAN, ET AL.

v.

IQVIA INC.

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Fader, C.J.,
Zic,
Salmon, James P.
    (Senior Judge, Specially Assigned),

JJ.

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Opinion by Fader, C.J.

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Filed: March 4, 2022

In this appeal, Mansoor Khan and his current employer, Veeva Systems, Inc., the appellants, challenge a preliminary injunction the Circuit Court for Montgomery County granted in favor of IQVIA, Inc., the appellee and Mr. Khan's former employer. IQVIA brought this action to enforce a confidentiality agreement Mr. Khan had signed at the outset of his employment that purports to prohibit him from, among other things, disclosing to anyone outside of IQVIA any "information not generally known outside [IQVIA]." The circuit court's injunction prohibits Mr. Khan from: (1) disclosing to Veeva information concerning two IQVIA products "and the processes behind them"; and (2) "assist[ing] Veeva with the integration" of those two IQVIA "products into any of Veeva's offerings."

Mr. Khan and Veeva contend that the circuit court abused its discretion by granting the preliminary injunction. Among other reasons, Mr. Khan and Veeva argue that the preliminary injunction should not have been granted because: (1) IQVIA is not likely to succeed on the merits of its claim because the confidentiality agreement is unenforceable as a matter of law due to its overbreadth and vagueness; and (2) IQVIA did not demonstrate a likelihood of any irreparable harm. Without reaching those issues, we must vacate the injunction and remand for further proceedings because the circuit court's decision granting the injunction was premised, at least in part, on the existence of a risk that IQVIA neither asserted nor attempted to prove. On remand, if any controversy remains,[1] the court may revisit IQVIA's request for preliminary injunctive relief.

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[1] According to a Joint Pretrial Statement, the parties have settled their dispute except as it concerns this appeal.

BACKGROUND

IQVIA and Veeva are competitors that collect and analyze healthcare data to provide healthcare related technology and consulting services to, among others, pharmaceutical companies. Mr. Khan worked at IQVIA as a senior consultant in its Omnichannel Marketing Group from September 2017 to October 2019. At the outset of his employment with IQVIA, Mr. Khan signed a Confidentiality & Policy Agreement (the "Agreement"), which includes the following confidentiality provision:

> I agree to accept employment with [IQVIA][2], subject to the following terms and conditions:
>
> **1. Confidentiality and Security**
> I will not disclose confidential information of [IQVIA] . . . to anyone outside of [IQVIA] except as specifically described below; neither will I use such information for my own personal benefit. Confidential information may only be disclosed to someone outside of [IQVIA] if it is (a) to further a legitimate business purpose of [IQVIA], and (b) disclosed after the intended recipient has signed an [IQVIA] approved agreement containing the appropriate confidentiality provisions. In addition, I agree to make every reasonable effort to (a) ensure the confidentiality and integrity of confidential information of [IQVIA] and (b) protect it against reasonably anticipated threats or hazards to its security or integrity.
>
> "Confidential information," as referred to here, means information not generally known outside [IQVIA]. Examples of confidential information include, but are not limited to, non-public:
>
> - technical knowledge of methodologies, computer programs, and work processes of [IQVIA];
> - business information regarding costs, profits, sales, licensing arrangements, markets, and customer lists of [IQVIA];

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[2] At the time Mr. Khan entered into the Agreement, IQVIA was named QuintilesIMS. For clarity, we have changed references to QuintilesIMS and "the QuintilesIMS Companies" in the Agreement to IQVIA.

- knowledge of future activities within [IQVIA], such as products or services in research and development or marketing plans;

- data obtained from sources outside [IQVIA] or created by [IQVIA]; and

- information provided to [IQVIA] by a third party which [IQVIA] has agreed to keep confidential.

(the "Confidentiality Provision").

In addition to the Confidentiality Provision, the Agreement includes a covenant not to compete, pursuant to which Mr. Khan agreed, as relevant here, not to

> engage in any business or perform any service directly or indirectly in competition, anywhere in the United States or Canada, with the products and services of [IQVIA], or have any direct or indirect interest, whether as a[n] . . . employee . . . or in any other capacity whatsoever, in any enterprise in competition, anywhere in the United States or Canada, with the products and services of [IQVIA]. . . for a period of twelve months

after termination of employment, unless IQVIA has provided prior written consent.

While employed by IQVIA, Mr. Khan utilized an IQVIA platform named AdIQ to analyze healthcare provider data to determine whether a particular digital marketing campaign both reached and had an impact on its intended audience. The data Mr. Khan utilized in AdIQ was pulled from IQVIA's "gold standard" database, Xponent Datasets ("Xponent"). Mr. Khan is not a data scientist and does not possess technical knowledge of how the Xponent data is processed, where it sits, or the code supporting it. While employed by IQVIA, he did, however, learn how to use the Xponent data to provide value to clients, including by combining Xponent data with other sources, such as media information or prescription information, to advise clients on how to target or segment their advertising efforts. In his work at IQVIA, Mr. Khan had detailed exposure to the methodology behind

the Xponent data, close relationships with the team that built the datasets, and even trained others on how to use the Xponent data to provide value for clients. Mr. Khan concedes that at least some of the steps he took in using Xponent data to counsel clients were confidential within IQVIA.

In October 2019, three days after resigning from IQVIA and without IQVIA's consent, Mr. Khan began working at Veeva in sales. His responsibilities at Veeva include helping pharmaceutical sales organizations improve the effectiveness of their sales force by evaluating their sales processes and assessing the skills of their sales representatives. Mr. Khan also advises Veeva on how to improve and refine its offerings to clients.

In addition to using Xponent to provide its own consulting services to clients, IQVIA grants third parties access to Xponent data through third-party agreements. IQVIA has entered into over 900 third-party agreements with Veeva, at least some of which provide Veeva with access to Xponent data. Mr. Khan asserts that he has not used any Xponent data in connection with his job at Veeva. He acknowledges, however, that he has occasionally had discussions with other members of his team about how they could refine Veeva's offerings to clients by incorporating Xponent data. At least one client has approached Mr. Khan's team and asked it specifically to incorporate Xponent into Veeva's offerings to it. Mr. Khan did not participate in that conversation and the team did not follow through on the client's request.

Procedural History

IQVIA filed a three-count complaint against Mr. Khan and Veeva in May 2020. In Count I, IQVIA sought a declaratory judgment that the Agreement is valid and enforceable. In Count II, IQVIA sought damages and injunctive relief from Mr. Khan for alleged breaches of both the non-competition and confidentiality provisions of the Agreement. In Count III, IQVIA sought damages and injunctive relief from Veeva for tortious interference with IQVIA's contractual relationship with Mr. Khan by inducing him to breach his obligations under the Agreement.

In July 2020, IQVIA filed a motion for a preliminary injunction through which it sought to prohibit Mr. Khan and Veeva "from using or causing to be used at Veeva . . . or disclosing in any manner to Veeva, IQVIA's confidential or proprietary information, in violation of [the Agreement]." In October 2020, the circuit court held an evidentiary hearing on the motion, which included testimony from two witnesses: Mr. Khan and his former supervisor at IQVIA. In a subsequent written opinion, the court made findings of fact consistent with those already summarized. The court also found that:

- While working at IQVIA, Mr. Khan acquired an "in-depth knowledge of IQVIA's confidential methodologies for leveraging its Xponent database, including how to calculate metrics from various data points," and he also gained insight into production methodologies and eligibility criteria applied to Xponent data that were not shared with IQVIA customers.

- At Veeva, Mr. Khan was tasked with improving Veeva's product offerings. In connection with that responsibility, Mr. Khan discussed how Veeva may use IQVIA's Xponent data to enhance Veeva's offerings with Veeva personnel. He admits that using Xponent data can enhance Veeva's offerings.

- Mr. Khan has confidential knowledge from IQVIA necessary to leverage Xponent data to enhance Veeva's offerings.

- Mr. Khan has never had access to an IQVIA dataset at Veeva. He has not done any work at Veeva where knowledge of the Xponent dataset was relevant, nor has he done any work related to AdIQ. He has not spoken to anyone at Veeva about AdIQ.

- One of Veeva's largest commercial consulting clients inquired with Veeva about the possibility of integrating IQVIA's Xponent dataset into Veeva's offerings. Mr. Khan has previously worked closely at Veeva with this client, although the inquiry was not made to him.

The court proceeded to address the four factors necessary to support a preliminary injunction. In analyzing IQVIA's likelihood of success on the merits, the court declined to resolve Veeva's and Mr. Khan's contention that the Confidentiality Provision was overly broad and vague. Instead, the court examined the enforceability of the provision "narrowly" as applied specifically to Mr. Khan and the information IQVIA sought to enjoin him from disclosing. Under that framework, the court determined that IQVIA was likely to succeed on the merits of its claim that the Agreement was enforceable because, "as applied to Mr. Khan, [it] is 'reasonably necessary for the protection of [IQVIA's] business []and do[es] not impose [an] undue hardship on [Mr. Khan] or disregard the interests of the public.'" (Quoting *Ruhl v. F.A. Bartlett Tree Expert Co.*, 245 Md. 118, 123-24 (1967)).

In explaining its conclusion that the Confidentiality Provision was reasonable with respect to the specific information at issue, the court concluded that Mr. Khan's services were "unique" and posed a threat to IQVIA "if Mr. Khan[] could use the knowledge he gained while at IQVIA to help Veeva's data scientists create an Xponent-like database." Specifically, the court concluded that although Mr. Khan could not himself recreate the

Xponent database from scratch, his "knowledge . . . will help Veeva's data scientists reverse engineer it. Moreover, there are already discussions at Veeva about how to create a similar dataset like the one offered by IQVIA." Based on that, the court concluded that the Agreement was "reasonably tailored to protect IQVIA's confidential business information related to technical methodologies, proprietary computer programs, and work processes."

The court also concluded that the balance of equities weighed in favor of granting the preliminary injunction. The court determined that the potential harm to IQVIA absent an injunction was significant because "[t]he intellectual property behind the Xponent database is intangible, hard to quantify, and a secret. Once Veeva, with Mr. Khan's help, successfully creates a replica of the database and sells it in the marketplace, it will create a ripple effect that severely impacts IQVIA." By contrast, the court concluded, "the proposed injunction places almost no burden on Mr. Khan's legitimate business activities and will result in no meaningful harm to Mr. Khan."

For similar reasons, the court concluded that IQVIA would suffer irreparable injury in the absence of an injunction. The court found that "[m]onetary damages would not adequately address the harm to IQVIA [from misappropriation of its confidential information] because, once Mr. Khan's knowledge of IQVIA's confidential information is incorporated into and used to improve Veeva's competing offerings, Veeva will gain an undeserved competitive advantage that cannot be taken away, and that will be especially difficult to quantify." The court also found that Mr. Khan was likely to breach his

confidentiality obligations and that IQVIA was not required to wait to seek relief until after a breach occurred.

Finally, the court determined that the public interest favored granting a preliminary injunction because "[t]he public has a genuine interest in the enforcement of reasonable restrictive covenants in employment agreements."

The court therefore issued an order that enjoined Mr. Khan "from disclosing to anyone at Veeva Systems Inc., including clients and third-party vendors, non-public, confidential information concerning IQVIA's Xponent data or AdIQ, and the processes behind them" and barred him from "in any way assist[ing] Veeva with the integration of IQVIA's Xponent data or AdIQ products into any of Veeva's offerings."

Mr. Khan and Veeva filed this timely interlocutory appeal. Shortly thereafter, the parties filed a joint pretrial statement in which they informed the circuit court that they had reached "a settlement in principle to resolve all claims and defenses at issue in this case, except as it relates to issues raised in Defendants' interlocutory appeal, which will be resolved through that appeal."

DISCUSSION

Mr. Khan and Veeva contend that the circuit court abused its discretion by granting IQVIA's request for a preliminary injunction because: (1) the Agreement is invalid and unenforceable as a matter of law because its definition of "confidential information" is overly broad and vague; (2) IQVIA did not establish that Mr. Khan either could or would imminently use any confidential IQVIA information; and (3) the injunction is contrary to

the public interest. IQVIA contends that the court correctly assessed all four factors

required and properly entered a limited preliminary injunction. We conclude that we must

vacate the preliminary injunction because the court's analysis of both IQVIA's likelihood

of success on the merits and the potential harm it might suffer was premised on a belief

that Mr. Khan was likely to help Veeva "create an Xponent-like database" through reverse

engineering. As IQVIA conceded at oral argument, however, it neither argued nor

presented evidence to support a conclusion that Mr. Khan could help Veeva replicate or

reverse engineer the Xponent database.

"Preliminary injunctions are designed to maintain the status quo between parties

during the course of litigation." *Eastside Vend Distribs., Inc. v. Pepsi Bottling Grp., Inc.*,

396 Md. 219, 241 (2006). A court must examine four factors before it issues injunctive

relief:

> (1) the likelihood that the plaintiff will succeed on the merits; (2) the
> 'balance of convenience' determined by whether greater injury would be
> done to the defendant by granting the injunction than would result from
> its refusal; (3) whether the plaintiff will suffer irreparable injury unless
> the injunction is granted; and (4) the public interest.

Dep't of Transp. v. Armacost, 299 Md. 392, 404-05 (1984) (citing *State Dep't v. Baltimore*

County, 281 Md. 548, 554-57 (1977)). "The burden of producing evidence to show the

existence of these four factors is on the moving party and 'failure to prove the existence of

even one of the four factors will preclude the grant of preliminary injunction relief.'"

Schade v. Maryland State Bd. of Elections, 401 Md. 1, 36 (2007) (quoting *Ehrlich v. Perez*,

394 Md. 691, 708 (2007)); *see also Fogle v. H & G Rest., Inc.*, 337 Md. 441, 456 (1995)

("[T]he party seeking the injunction must prove the existence of *all four* of the factors . . . in order to be entitled to preliminary relief.").

"Our review of a preliminary injunction is 'limited' because 'we do not now finally determine the merits' of the parties' arguments." *Lejeune v. Coin Acceptors, Inc.*, 381 Md. 288, 300 (2004) (quoting *Armacost*, 299 Md. at 404). Accordingly, "[a]n appellate court ordinarily will not disturb a preliminary injunction on appeal unless the trial court committed an abuse of discretion." *Lejeune*, 381 Md. at 301.

To establish a likelihood of success on the merits, "a party seeking the interlocutory injunction 'must establish that it has a real *probability* of prevailing on the merits, not merely a remote *possibility* of doing so.'" *Eastside Vend Distribs.*, 396 Md. at 241 (quoting *Fogle*, 337 Md. at 456).

Veeva and Mr. Khan contend that the circuit court erred in determining that IQVIA had a likelihood of success on the merits of its declaratory judgment claim because the Agreement's definition of confidential information is overly broad and vague.[3]

The definition of confidential information in the Agreement is:

> "Confidential information," as referred to here, means information not generally known outside [IQVIA]. Examples of confidential information include, but are not limited to, non-public:

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[3] Although it is not stated expressly in the circuit court's memorandum opinion, we understand the court to have determined that IQVIA had a likelihood of success on the merits on Count I of its complaint, for declaratory judgment, rather than on Counts II or III, for, respectively, breach of contract (Mr. Khan) and tortious interference by inducing a breach of contract (Veeva). That is both because the circuit court did not make any findings of fact concerning an actual breach of Mr. Khan's obligations under the Agreement's confidentiality provision—as opposed to likelihood of a future breach—and because IQVIA did not present evidence of such a breach at the hearing.

- technical knowledge of methodologies, computer programs, and work processes of [IQVIA];

- business information regarding costs, profits, sales, licensing arrangements, markets, and customer lists of [IQVIA];

- knowledge of future activities within [IQVIA], such as products or services in research and development or marketing plans;

- data obtained from sources outside [IQVIA] or created by [IQVIA]; and

- information provided to [IQVIA] by a third party which [IQVIA] has agreed to keep confidential.

Veeva and Mr. Khan point out that the Agreement defines "confidential information" as all "information not generally known outside [IQVIA]," which they argue is unenforceable as a matter of law. They further contend that the circuit court erred in determining that the Agreement validly extended to Mr. Khan's knowledge of IQVIA's confidential work processes without first assessing whether the Confidentiality Provision is enforceable in its entirety.

IQVIA responds that it is not necessary for us to determine, at the preliminary injunction stage, whether the definition of "confidential information" on its face is overly broad or vague. Instead, IQVIA argues that even if the entire scope of the provision as set forth in the general definition is overly broad, the provision could nonetheless still be validly applied to the categories of confidential information listed as "[e]xamples" following the general definition. One such example is "technical knowledge of methodologies, computer programs, and work processes of any of the [IQVIA] Companies," which IQVIA says would include the information at issue here. In other words, IQVIA argues that if the overall scope of the provision is too broad, the circuit court

would nonetheless be able to enforce it as to the information covered by the court's preliminary injunction.[4]

Although the parties raise an interesting question, we will not have occasion to resolve it here because we can resolve this appeal on a narrower ground. In reaching its conclusions that IQVIA met its burden to demonstrate a likelihood of success on the merits and that the balance of harms weighed in favor of an injunction, the court relied on conclusions that are not supported by the record. Specifically, in assessing whether IQVIA was likely to succeed on the merits of its claim that the Confidentiality Provision was reasonable and, therefore, enforceable, the court found the provision justified because Mr. Khan "could use the knowledge he gained while at IQVIA to help Veeva's data scientists create an Xponent-like database," and that he might "help Veeva's data scientists reverse engineer" the Xponent database. And in assessing the balance of the harms, the court found that if Mr. Khan were to succeed in helping Veeva create such a "replica . . . database," there would be a "ripple effect" in the marketplace that would severely harm IQVIA. Based in part on those findings, the circuit court concluded: (1) that IQVIA was likely to succeed on the merits of its claim because the Confidentiality Provision was

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[4] In IQVIA's initial motion for preliminary injunction, when "IQVIA did not yet have the benefit of discovery into what Khan's new job duties at Veeva were or how he might be asked to use his confidential IQVIA knowledge," IQVIA moved for "an order for a preliminary injunction prohibiting [Mr. Khan] . . . from using or causing to be used at [Veeva], or disclosing in any manner to Veeva, IQVIA's confidential or proprietary information, in violation of Mr. Khan's Confidentiality & Policy Agreement with IQVIA." Later, IQVIA narrowed its request and specified that the relief requested was the protection of "technical knowledge of methodologies, computer programs, and work processes of" IQVIA. The court entered the narrower injunction.

"reasonably tailored to protect IQVIA's confidential business information"; and (2) IQVIA would suffer greater harm from the denial of an injunction than Mr. Khan and Veeva would from the grant of an injunction.

As IQVIA conceded at oral argument, it neither asserted nor offered any proof at the hearing that there was a likelihood that Mr. Khan could or would assist Veeva in replicating the Xponent database. Instead, as set forth in its appellate brief, IQVIA's claims and evidence related to whether Mr. Khan would be able to help Veeva improve its offerings to its clients by using his "in-depth knowledge of IQVIA's confidential methodologies for leveraging its Xponent database," specifically concerning "customer segmentation techniques, processes that use Xponent data to divide a client's customer base into specific groups, based on their observed behaviors, activities, and demographics." In other words, the threat that IQVIA argued justified the Confidentiality Provision and the harm that would result from a breach of that provision lay not in the possibility that Veeva might reverse engineer the Xponent database itself, but that Mr. Khan might teach Veeva how to leverage the Xponent data to which Veeva already had access to provide better value to Veeva's customers. Although we do not minimize the potential significance of the harm IQVIA alleged and attempted to prove, it is materially different in both kind and severity from the threat that would be presented by a risk that Mr. Khan might help Veeva reverse engineer the Xponent database itself.

In light of the circuit court's reliance on the possibility that Mr. Khan might assist Veeva in replicating the Xponent database as a basis for its determinations, it is prudent for

this Court to vacate the injunction and remand for further proceedings for two reasons. First, this Court's role in reviewing a preliminary injunction is to assess a circuit court's determination concerning whether a party's evidence satisfied the factors required for a preliminary injunction, not to draw our own conclusions in the first instance. It is thus appropriate to permit the circuit court to determine in the first instance whether, after eliminating the unsupported findings, IQVIA satisfied all four factors necessary for a preliminary injunction. *Cf. Fuge v. Fuge*, 146 Md. App. 142, 182 (2002) (remanding case for court to make a new determination upon finding that court's decision "relied in part on [a] clearly erroneous factual finding").

Second, as noted, after the circuit court entered its injunction order, the parties informed the court that they had reached "a settlement in principle to resolve all claims and defenses at issue in this case, except as it relates to issues raised in Defendants' interlocutory appeal[.]" Without knowing what specifically the parties left unresolved, it is not clear to this Court whether any dispute will remain after our mandate is issued. This Court, of course, does not issue advisory opinions. *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 68 (2015) (quoting *Green v. Nassif*, 401 Md. 649, 655 (2007)). On remand, it will be appropriate for the circuit court to determine whether a live dispute remains between the parties before acting further on IQVIA's request for a preliminary injunction.

In sum, we must vacate the preliminary injunction because its entry was premised, at least in part, on findings that are not supported by the record.

ORDER OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLEE.