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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

NOVAMED, INC.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 2015 CH 10131
)	
UNIVERSAL QUALITY)	Honorable
SOLUTIONS, INC., MAHMOOD KHAN,)	Thomas R. Allen,
DAVID GARCIA, and CLAYTON)	Judge, presiding.
MCSHERIDAN,)	
)	
Defendants-Appellees.)	

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice McBride and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in denying plaintiff's motion for a preliminary injunction where it failed to establish that it had a legitimate business interest in its clientele and alleged confidential information.

¶ 2 Plaintiff Novamed, Inc., filed a complaint against defendants Mahmood Khan and David Garcia¹ for allegedly breaching their employment agreements and against Universal Quality

¹ David Garcia is not a party to this appeal. He was dismissed by agreement of the parties on April, 15, 2016.

Solutions, Inc. (UQSI) for tortious interference with those agreements. Plaintiff was granted a temporary restraining order requiring defendants to comply with the noncompetition provisions in their employment agreements. Thereafter, Novamed motioned the court to enter a preliminary injunction requesting the same. Prior to the evidentiary hearing for the preliminary injunction, Novamed filed an amended complaint adding Clayton McSheridan. Clayton was timely served an Illinois Supreme Court Rule 237 Notice to Appear for the hearings. Ill. S. Ct. R. 237 (July 1, 2005). Immediately before the hearing, Clayton objected to being a party to the preliminary injunction because he was not a named party to the temporary restraining order prohibiting Mahmood and David from violating their employment agreements with Novamed. The court did not rule on the objection, however, and proceeded with the hearing at which Clayton participated. Ultimately, the court denied the request for a preliminary injunction concluding that the noncompetition covenants in the employment agreements were unreasonable. Plaintiff appeals this interlocutory order pursuant to Supreme Court Rule 307(a)(1). Ill. S. Ct. R. 307(a)(1) (eff. Jan. 1, 2016). On appeal, Novamed contends that the trial court erred when it concluded that: Novamed failed to demonstrate a protectable interest, Novamed's restrictive covenants are unreasonable in scope, and Novamed's restrictive covenants are unreasonable in duration. We affirm the judgment of the trial court.

¶ 3

BACKGROUND

¶ 4

The following facts were adduced from the record and established at the evidentiary hearing for the motion requesting a preliminary injunction. Novamed is a pipette servicing company that cleans, repairs, and calibrates pipettes for hospitals and clinical laboratories, pharmaceutical and biotechnology companies, and universities and research laboratories.

Novamed alleged in its complaint that Mahmood, David, and Clayton impermissibly violated the post-employment noncompetition covenants in their employment agreements when they resigned from Novamed and began to work for UQSI. The complaint further alleged that Mahmood impermissibly solicited other Novamed employees to work for UQSI. Mahmood had been Novamed's director of sales and marketing from January 2007 until he resigned on April 24, 2015. David began working for Novamed in February 2011 as an assistant pipette technician and was promoted to a sales specialist in February 2012. He resigned on April 27, 2015. Clayton had been employed by Novamed as a pipette technician from June 2013 until he resigned on March 17, 2015, and began to work for UQSI. Mahmood, David, and Clayton had each signed employment agreements with Novamed that contained the following covenants not to compete:

"(a) Non-Competition. During Employee's employment with Novamed and for a period of two and half (2 ½) years following termination of that employment, Employee agrees not to, directly or indirectly, whether individually or as a partner, shareholder, officer, director, employee, independent representative, broker, agent, consultant or in any other capacity for any other individual, partnership, firm, corporation, company or other entity, work in a competitive capacity in the business of Pipette Calibration and Repairs or similar business as for a competitor or client of Novamed within; (i) the Chicago, Illinois area; and the neighboring areas of Urbana-Champaign, Illinois and Munster, Indiana; (ii) W. Lafayette, Indiana and Indianapolis, Indiana; (iii) Milwaukee and Madison, Wisconsin; (iv) Iowa city, Iowa, and (v) within a 60 mile radius of the cities set forth herein in Sections 7(a)(i)-(iv) of this Agreement and of any area in which Novamed is doing business at the time of Employee's employment with Novamed.

(b) Non-Solicitation. Employee shall not, for a period of three (2 ½) [sic] years after termination of Employees employment, directly or indirectly: (i) Employ or seek to employ or engage in any capacity any person who has worked for or in conjunction with Novamed during the (12) month period preceding the termination of Employee's employment, specifically including any consultant, employee, provider, or vendor used by Novamed; (ii) Solicit or induce any person who has worked for or in conjunction with Novamed during the twelve (12) month period preceding the termination of Employee's employment, specifically including any consultant employee, provider, or vendor used by Novamed; (ii) Solicit or induce any person currently employed by or otherwise associated with Novamed to terminate such employment or relationship; Accept business from any Client[s] of Novamed (Client[s] List as detailed in Attachment A) who was in a business account of Client[s] of Novamed during the term of Employee's employment, including but not limited to any business account or Client[s] serviced or contacted by Employee, or for whom Employee had direct or indirect responsibility on behalf of Novamed, within the 12-month period preceding the termination of Employee's employment or about whom Employee obtained Confidential Information; or (iv) Otherwise attempt to interfere with Novamed's business or its relationship with its customers, employees, consultants, or vendors and or any Client[s] which Novamed is doing business at the time of employee's employment with Novamed."

¶ 5 At the evidentiary hearing, Catherine Fowler, an associate at Lincoln Park Zoo, testified that in 2015 she received a call from David informing her that the pipettes at the zoo were due to be calibrated. Fowler was a new employee and did not have a personal relationship with Novamed or David. Her boss had told her that someone would contact her in June about

calibrating the pipettes. Thus, when David called and knew that the zoo had approximately 23 pipettes that were due for calibration, she thought he worked for the company that had calibrated them the prior year. David also asked whether certificates would be needed and informed her that they were not needed the year before. David told Fowler that he could schedule the pipette calibration and she scheduled a tentative date for the service. Fowler explained that the number of pipettes the zoo has is not publically available. She also testified that David may have stated that he worked of UQSI, but she was not aware of which company had serviced the pipettes in the past.

¶ 6 Patricia Colloton testified that she is the business operations specialist for Marquette University. Before holding that position, she was assistant to the chair of the biological sciences department at Marquette. Within that department there are six teaching labs and 16 research labs. These labs have both single and multi-channel pipettes. When she was assistant to the chair, she was responsible for scheduling pipette servicing. She worked with Novamed for five years, was satisfied with its services, and had never patronized another pipette servicing company. In 2015 she was contacted by David on behalf of UQSI. He stopped by the department and left his card. He also called and left phone messages, which came up as "Khan" on her computer messaging system. She recognized the name "Mike Khan" from Novamed, so she returned the phone call. When she called, David informed her that he worked for UQSI and wanted to schedule Marquette's pipettes for servicing. Colloton told him that she had already submitted the number of pipettes that they needed calibrated to Novamed. Colloton also received an email from David stating that several other universities had already switched to UQSI for "better service at a better price." In his attempt to secure Marquette's business, David left a phone message for Colloton in June 2015 informing her

that former employees of Novamed now worked for UQSI. In the voicemail, David stated, "We have the lead calibration tech from Novamed, the person who serviced your pipettes last year. So you won't have to worry about the quality of service at all." Ultimately, Colloton used Novamed to service Marquette's pipettes.

¶ 7 David Catalano testified that he is the director of sales and marketing for Novamed. He was hired after Mahmood, the previous director, resigned. As director, he is responsible for obtaining new customers, which he accomplishes through references and referrals, cold calling, researching on the internet, and going to laboratories. Because of new competition in the industry, Novamed's primary focus is retaining existing customers. Catalano testified that Novamed has "done a good job at creating a book of business" which it has developed over 24 years. The book of business is recorded in a customer list that contains the contact information, building name, last service date, and number of pipettes for all of its previous customers. This information is available electronically and in hard copy spreadsheets that serve as a "roadmap" for their sales representatives as they go door-to-door. Catalano testified that without the "road map" it would be difficult for sales representatives to contact customers. He explained that the customer list is beneficial because it facilitates long-term relationships because laboratory employees "know who they're meeting with and who is servicing the pipettes." He also stated that knowing the number of pipettes at a lab helps to establish that Novamed has knowledge of that lab and its calibration needs. He explained that it is useful to know the last service date because pipettes are typically serviced annually, thus with this knowledge, the sales representative knows when to contact the laboratory.

¶ 8 Catalano admitted that a different person decides for each lab which company to use to service their pipettes. In addition, labs are often managed by students who change year to

year. He also admitted that regardless of the number of pipettes at a lab, he would market to that lab in the same manner. If he did not know the number of pipettes, he would call the lab and ask to learn about their pipette servicing needs. Catalano stated that members of the sales team are provided with both electronic and hard copies of the customer list and they are instructed to keep the information confidential.

¶ 9 Cassandra Rossbach testified that she is Novamed's territory sales manager. She began working for Novamed in May 2015, after the defendants in this case resigned. She is responsible for marketing to all the universities and biotechnology laboratories as well as building new business. To perform her marketing duties, she relies upon the customer list spreadsheet and information collected electronically in SalesForce, the software Novamed uses to organize the customer list. The spreadsheet contains the contact information, number of pipettes, and name of the building that Novamed has serviced. She testified that the list is beneficial because it is important to know which person is the decision-maker because that person can actually schedule pipettes to be serviced. She further explained that the book of business is "essential" because some labs are hidden or locked. It is easier to get physical access to a lab if you have its contact information. She stated that marketing without the customer list is "a disaster. A waste of time. You are walking around aimlessly asking a lot of questions. You don't always get [an] answer. The person is not there. There's no one to contact them. Some students don't have the ability to give you an email address."

¶ 10 Steve Hardison testified that he was a service technician for Novamed from 2007 until 2011. He was the supervisor of a group of technicians who serviced pipettes on site at universities, hospitals, and other laboratories. He explained that it takes a couple of days to learn how to properly clean a pipette. Repairing a pipette is more complicated. It involves

taking it apart to determine what service needs to be done. The process of learning how to repair a pipette is ongoing and knowledge develops with experience. Hardison further explained that calibrating a pipette is also more difficult than merely cleaning the pipette. It takes approximately two to three weeks to learn the basics of servicing a pipette. An average service consists of cleaning the pipette, replacing the seal, and calibrating.

¶ 11 Ravi Vish testified that he is the director of technical and quality at Novamed. At the time of the hearing, he had been working at Novamed for 13 years. He prepared the book of business from 2011 until 2014. He explained that Novamed has three types of customers: pharmaceutical and biotech laboratories, hospitals and clinical laboratories, and universities and research laboratories. Using Salesforce, he was able to determine that Novamed had approximately 85 percent repeat business from pharmaceutical and biotech labs in 2012 and 90 percent repeat business in that sector in 2013. Similarly Novamed had 84 percent repeat business from hospitals in 2012 and 85 percent repeat business in 2013. Repeat business for universities and research laboratories, however, had less significant repeat business with 66 percent in 2012 and only 61 percent in 2013. He admitted that universities and research laboratories were not as consistent as the other sectors because the "contacts keep changing." He pointed out that for this reason it is also harder to create unique searches in Salesforce to accurately determine the repeat business. Ravi conceded that he is not aware of whether any of Novamed's repeat customers also patronized other pipette servicing companies and that in order to retain business Novamed contacts prior customers continuously.

¶ 12 Ravi testified that sales representatives had access to an electronic and hard copy of the customer list. Technicians would also have indirect access to the list. In fact, technicians input new data into Salesforce when they return from a job. Ravi stated that Mahmood, as

the director of sales and marketing, had access to the list. He explained that all pipette servicing training is done either at Novamed or on the job. There is no formal education or school of which he is aware that provides training in this industry. Therefore, when he is hiring employees he looks for people with mechanical aptitude.

¶ 13 Mike Khan testified that he started Novamed in 1991. Novamed has been in the pipette servicing industry for 24 years and has developed long-term relationships with its customers. He described these relationships as Novamed's "main distinctive advantage" over other companies. When Novamed services a laboratory, the customer is recorded in a customer list. He explained that he "run[s] the whole company based on the customer list." It is important because the list contains information that is not publicly available. Mike further testified that most laboratories do not post the names of the person responsible for ordering pipette calibration on their doors. In addition, the customer list contains information on whether the laboratory needs certificates. This information is not publicly known. In addition, Mike testified that unlike UQSI, Novamed is certified to service pipettes for corporate laboratories.

¶ 14 Mike explained that there is no school to train someone on pipette calibration. Rather, his employees learn how to service a pipette from the materials that he created, such as his written pipette servicing standard operation guidelines. Mike admitted that customers consider price in deciding which company to patronize and that he has lost business before to other companies based on price. He further admitted that he does not have contracts with his customers and instructs his employees to repeatedly contact customers to secure their business.

¶ 15 Timothy Sullivan testified that he was a former calibration technician for Novamed. He was trained in pipette calibration by reviewing manuals and practicing technique in

Novamed's laboratory. Timothy testified that in addition to the training manuals created by Novamed, he was provided with manuals that were created by other companies such as Rainin, Ebendorg, and Gilson. After leaving Novamed, Timothy worked for a Rainin, a pipette servicing competitor. Despite signing a noncompetition agreement, Novamed did not attempt to enforce it against him.

¶ 16 Timothy was never a marketing employee, however, he testified that if he were to start marketing for pipette servicing, he would go to the science buildings at universities and knock on their doors or "ask around." When he visited laboratories to calibrate pipettes he saw technicians' and managers' names posted on the doors. If the names were not present, he would ask others for that information. Although he was a technician, when he worked at Novamed Mike trained him to pass out flyers and knock on doors to get new business. The flyers contained Novamed's pricing information.

¶ 17 David Garcia testified that he worked for Novamed from 2011 until April of 2015. He began as a calibration technician, but was promoted to a salesman in 2012. As a salesman, he received a hard copy of the customer list. David testified that after he resigned from Novamed Mahmood introduced him to Abdul Khan, the owner of UQSI and David subsequently began to work for UQSI as a marketer.

¶ 18 David testified that when he worked for UQSI he solicited business from Novamed customers such as Roosevelt University and Northwestern University. He admitted that he contacted various laboratories that according to the employment agreement he was prohibited from contacting. David knew Marquette University was a Novamed customer, nevertheless he left Colloton voicemails soliciting her to hire UQSI. David further admitted that in those voicemails he informed her that a former Novamed technician, referring to Clayton, was now

working for UQSI. David explained that Clayton was the best pipette technician and therefore he believed providing that information to Colloton would give UQSI a competitive edge. David testified that there were customers on the list of those he could not contact that he knew were not current Novamed customers when he resigned. During his employment with Novamed several laboratories on the list switched pipette servicers because they were dissatisfied with the quality of Novamed's service or because of the price, yet remained on the list.

¶ 19 David also testified that he marketed for UQSI by going door-to-door. When looking for customers the most useful information is the laboratory's location, whether it has pipettes, and whether they need calibration. David explained that sometimes he would stop by a laboratory and it would sign up for servicing immediately. Other times it would take weeks or months of contact before a laboratory scheduled servicing. When he was marketing at laboratories for Novamed he saw employees from other companies also going door-to door to the same laboratories. Inside the laboratories, he saw stickers on pipettes from other companies, indicating that they had be serviced by that company in addition to Novamed.

¶ 20 Mahmood Khan testified that he is the director for sales and marketing at UQSI. He previously worked at Novamed from 1994 to 1995 and again from 2006 until April 2015. There he began as a sales specialist and was eventually promoted to the director of sales and marketing. In that position he had access to Novamed's customer list in electronic form and in hard copy. Mahmood believed the customer list was one of the most effective ways to market to customers. However, he did not use Novamed's customer list to facilitate marketing for UQSI. He further testified that there were institutions on the list that were not actually current customers of Novamed. Once Novamed services an institution it is added to

the customer list and remains on the list even if that customer subsequently changes pipette servicing companies.

¶ 21 Mahmood stated that in early 2015 he became dissatisfied with his bonus at Novamed. During that period he talked to Abdul Khan, the CEO of UQSI. Mahmood decided to resign and work for UQSI. At that time, UQSI was not a competitor in the pipette servicing business in the Chicago area. After leaving Novamed, Mahmood introduced three people who had recently left Novamed to Abdul and they subsequently began working for UQSI. Mahmood admitted that as an employee of UQSI he contacted Novamed customers. In addition, prior to leaving Novamed, Mahmood emailed himself several documents with customer contact information so that he would be able to market to them.

¶ 22 Mahmood testified that UQSI is currently only targeting universities because UQSI is not accredited to service pipettes for corporate customers and hospitals. He stated that corporate customers tend to stay with one pipette servicing company because there is more vendor qualification paperwork. In contrast, university laboratories change managers every year or every two years. Some of their labs have half their pipettes serviced from one company the other half from another company.

¶ 23 Mahmood outlined the process for marketing to universities. He explained that you isolate two or three buildings a day and enter and ask each lab if they need pipette calibration. He testified that about 90 percent of the time the contact information for the person in charge is printed on the door. If there are no names on the door, Mahmood would ask for the technician in charge. Often that person is a graduate student. Graduate students only stay at a laboratory for about a year or two. He testified that once he serviced a laboratory's pipettes he did not consider them a guaranteed customer. Rather, "the only way

to keep a customer is persistent pounding the pavement. You have to revisit." Every pipette servicing company markets by going door-to-door, handing out flyers, and talking to people.

¶ 24 Clayton testified that he works for UQSI as a pipette technician. Prior to working for UQSI, he was a technician for Novamed. Clayton admitted that he was working for a Novamed competitor and not in compliance with his employment agreement. He decided to work for UQSI after speaking with Mahmood and meeting with Abdul. Prior to Mahmood and Clayton working for UQSI it did not provide pipette cleaning and calibrating services. Clayton assisted Abdul in starting up this aspect of his business by instructing him on the supplies he needed to buy. The list of needed supplies was generated from Clayton's memory and not from a list created by Novamed.

¶ 25 Clayton testified that he was trained to service pipettes by Novamed. He observed a team of technicians working in the field for four months before he was tested. Afterwards his testing took about six days. It took him approximately two weeks to be proficient at servicing pipettes. Clayton stated that Novamed's method for serving pipettes was not unique and all pipette servicing companies calibrate gravimetrically with a micro-balance and ionized water. Clayton further testified that he sometimes looks to the internet for guidance on how to calibrate and repair pipettes.

¶ 26 Clayton stated that Novamed advertised with flyers and many customers called based upon receiving a flyer. Clayton testified that it was not uncommon for customers to schedule a service and then to cancel with short notice. Sometimes when he was onsite calibrating pipettes he would see other companies calibrating pipettes at the same university or sometimes even in the same laboratory.

¶ 27

ANALYSIS

¶ 28

I. Parties on Appeal

¶ 29

At the outset we address defendants' contention that Clayton is not a party to this appeal because he was not named as a defendant until after Novamed filed its motion for a temporary restraining order against Mahmood, David, and UQSI. Specifically, Clayton contends that because he was not properly added to that motion, he was not a party to the motion for a preliminary injunction and cannot be a party to this appeal. Novamed asserts that Clayton waived this claim. Additionally, Novamed points out that Clayton was timely served an Illinois Supreme Court Rule 237 notice to appear (Ill. S. Ct. R. 237 (eff. July 1, 2005)), had been involved in the discovery process prior to the hearing, was added as a defendant 11 days before the hearing, was represented by the same attorney as the other defendants, and fully participated in the hearing.

¶ 30

Although Clayton objected to being a party to the preliminary injunction, the court did not rule on the objection and his attorney did not insist on a ruling. Instead, the court proceeded with the hearing and Clayton participated. Significantly, Clayton did not raise the objection again and did not argue that he was not a party in his post-hearing brief. Therefore, the argument was not preserved for review and is waived on appeal. " [A] party waives an objection where a ruling is not requested after the trial court fails to make one." *Klesowitch v. Smith*, 2016 IL App (1st) 150414, ¶ 38 (quoting *Shields Pork Plus, Inc. v. Swiss Valley Ag Service*, 329 Ill. Ap. 3d 305,313 (2002)).

¶ 31

II. Legitimate Business Interest

¶ 32

Novamed first contends that the court erred in denying its motion for a preliminary injunction based upon its finding that Novamed did not have a protectable business interest in its clientele. Defendants respond Novamed did not establish that it had a legitimate business

interest because it does not have near-permanent relationships with its customers and the information acquired by defendants was not confidential.

¶ 33 We note that the parties do not agree on the proper standard of review in this case. Novamed maintains that this court should employ a two-part standard of review wherein the court reviews the trial court's decision that the restrictive covenants were unreasonable *de novo* and the trial court's denial of the preliminary injunction for an abuse of discretion. Defendants assert that the abuse of discretion standard governs both aspects of the trial court's judgment. The ultimate issue in this case is whether the circuit court erred in denying the preliminary injunction. For the court to issue a preliminary injunction, the plaintiff must demonstrate that: "(1) it possesses a clear right or interest needing protection, (2) no adequate remedy at law exists, (3) irreparable harm will result if an injunction is not granted, and (4) there is a likelihood of success on the merits of the case." *Gastroenterology Consultants of North Shore, S.C. v. Meiselman*, 2013 IL App (1st) 123692, ¶ 8. The grant or denial of a preliminary injunction is reviewed for an abuse of discretion. *Id.* ¶ 9. Here, however, the circuit court's denial of injunctive relief was substantially predicated on its finding that the restrictive covenant was not reasonable, in part because Novamed had not established a protectable business interest. Whether a restrictive covenant is enforceable, and thus whether a protectable interest exists, is a matter of law which we review *de novo*. *AssuredPartners, Inc. v. Schmitt*, 2015 IL App (1st), ¶ 30. Accordingly, we begin by reviewing *de novo* the circuit court's decision that Novamed did not have a protectable business interest. *Id.*

¶ 34 Generally, a contract in total and general restraint of trade is injurious to the public and therefore is void as against public policy. *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 16. Nevertheless, a restrictive covenant in an agreement will be upheld if it is a

reasonable restraint and is supported by consideration. *Id.* ¶ 17. To evaluate whether a restrictive covenant is enforceable, our supreme court established a three part reasonableness test in *Reliable Fire Equipment Co. v. Arrendondo*, 2011 IL 111871, ¶ 17. To be enforceable, the covenant must: (1) be no greater than is required to protect a legitimate business interest of the employer, (2) not impose undue hardship on the employee, and (3) not be injurious to the public. *Id.* Even where a legitimate business interest exists, it may be limited by the type of activity, geographic area, and time. *Id.* Prior to *Reliable Fire*, Illinois courts considered a variety of factors to determine whether an employer had a legitimate business interest. *Id.* ¶¶ 34-38. Such factors included whether the employee attempted to use confidential information gained from the employer for his own benefit and whether, due to the nature of the industry, the employer's customer relationships were near-permanent. *Id.* ¶37. In *Reliable Fire*, however, the court made clear that although these factors, and other sub-factors, may be considered, no one factor is determinative. *Id.* ¶42. Rather, whether an employer has a legitimate business interest to protect must be evaluated based upon the facts of the case. *Id.* Additionally, the court emphasized that a protectable interest is only one component of "a three-prong rule of reason, grounded in the totality of the circumstances." *Id.*

¶ 35

a. Customer Relationships

¶ 36

Novamed argues that the court erred when it concluded that Novamed did not have a legitimate business interest because its relationships with its university customers are a "moving target." Rather, Novamed argues, it has near-permanent relationships with its customers. As Novamed points out, Ravi testified that it had an approximately 85 percent repeat business rate with pharmaceutical and biotech labs and a similar rate with hospitals. In

fact, Mahmood conceded that Novamed has a high amount of retained business with its corporate clients. Among universities, however, Novamed only had between 61 to 66 percent rate of repeat business. Further, David and Clayton both testified that during his employment with Novamed he saw other companies going door-to-door soliciting business from the same laboratories that Novamed was servicing. Once inside the laboratories, they saw stickers on pipettes from other companies, indicating that other companies had serviced those pipettes. Thus, there is evidence that some of Novamed's customers were not exclusive, but rather patronized multiple pipette servicing companies.

¶ 37 In addition, there were laboratories on Novamed's customer list that were not current customers. The evidence established that Novamed added a laboratory to the customer list whenever it serviced their pipettes and the laboratory remained on the list regardless of whether it continued to use Novamed's services. Thus, it is possible for a laboratory on the list to have switched servicing companies or use multiple servicing companies. Further, laboratories were added even when they ultimately cancelled servicing. David and Clayton testified that customers were on Novamed's list that they knew were not Novamed customers at the time they worked there.

¶ 38 Furthermore, there was substantial testimony that the primary method to solicit customers is to physically go door-to-door, hand out flyers, and talk to people at the laboratories. It is clear that the pipette servicing industry is highly competitive and, especially in the university sector, there is significant turn-over among those who choose which company to service their pipettes. In fact, Mike testified that price is a consideration in choosing a pipette servicer and he admitted that he lost clients before based on price. Thus, it is not unusual for Novamed to lose clients to a company that quotes a lower price. We note that it is undisputed that

Novamed's pricing structure was advertised on flyers and was publicly available. Significantly, Novamed did not have contracts with any of its customers. Instead, Novamed would continuously solicit existing and new customers to ensure Novamed received their business. Therefore, it is apparent that Novamed did not have near-permanent relationships with its customers.

¶ 39

b. Confidential Information

¶ 40

Novamed next contends that its customer list amounts to confidential information because of the "synergy between Novamed's near-permanent relationships and its clients, and the confidential customer data Defendants used to steal Novamed's clients." Defendants maintain that all of the information recorded in the customer list is generally available. Novamed's customer list was developed over 24 years and it contains the contact information, building name, last service date, number of pipettes, and whether or not the pipettes need certificates for each customer that Novamed has serviced. Witnesses from Novamed and UQSI agreed that the information recorded in the customer list is helpful when soliciting customers. Novamed's witnesses described the list as an essential roadmap that the entire company is based upon. We agree that the information contained in the customer list is useful. For example, Fowler from the Lincoln Park Zoo testified that she thought David worked for the company that had serviced their pipettes in the past, in part because he knew how many pipettes they had and when they were due to be serviced. This information is not publicly available. Yet, all of this information is also readily attainable. Information in a customer list is generally not considered confidential when it can be duplicated or reproduced by consulting with telephone directories or when customers in the list change the companies they patronize frequently and their identities are generally known. *Springfield Rare Coin*, 250

Ill. App. 3d 922, 930-31 (1993). Further, if the information can be obtained by calling the company and asking, it is not protectable confidential information. See *Appelbaum v. Appelbaum*, 355 Ill. App. 3d 926, 934-35 (2005) (holding information is not confidential where it is "readily available to competitors though normal competitive means, such as asking.").

¶ 41 Here, several witnesses testified that if they did not know whether a laboratory had pipettes they would just call the laboratory or visit in person and ask the staff how many pipettes they have and when they need to be calibrated. There is nothing in the record to suggest that this information would not be disclosed to anyone who asked. In fact, both witnesses from Novamed and UQSI testified that they solicit customers by cold calling or going to the science laboratories at universities and knocking on doors. Additionally, it is well known that universities, research laboratories, hospitals, clinical laboratories, and pharmaceutical companies have pipettes. A person who wanted to market to these companies need merely consult a directory to find their location and contact information. If the contact information is not for the person who decides which pipette servicing company to use, it is likely that a caller would be quickly directed to that person. Accordingly, although the information in Novamed's customer list facilitates marketing, it does not amount to confidential information that needs to be protected.

¶ 42 We note that we find *The Agency, Inc. v. Grove*, 362 Ill. App. 3d 206 (2005) distinguishable from the instant case. In *Grove*, the court found that a staffing agency had a legitimate business interest in client profiles that contained contract expiration dates, business cycles, expiration dates, worker placement history, and personnel preferences. *Id.* at 217. This information is much more detailed and specific than the information contained in

Novamed's customer list and reflects a difference in the industries. Staffing agencies service clients that have diverse needs. The court in that case found that having specific information about the clients gave the employee an unfair advantage. *Id.* at 218. Here, however, there is little variation in laboratories pipette servicing needs. Most laboratories have pipettes and most pipettes are serviced annually. Some laboratories require certificates and others do not. Further, the general practice in the industry is to continuously cold call and market door-to-door. Therefore, a competitor can easily learn a laboratory's needs in each of these distinct categories simply by engaging in its standard marketing procedure.

¶ 43 c. Highly Skilled Trade or Occupation

¶ 44 Novamed additionally contends that it has a protectable interest because cleaning, repairing, and calibrating pipettes is a highly skilled trade. They point out that it is not taught at any community college and employees generally do not have pipette servicing experience prior to working for a pipette servicing company such as Novamed. We disagree. The record does not support a finding that Novamed pipette servicing is a highly skilled trade. Although Mike testified that his employees usually are not trained prior to working for Novamed, it only takes a matter of days to learn how to clean a pipette. Despite the fact that it is more complicated to repair and calibrate pipettes, Clayton and Hardison explained that a new technician can be proficient in approximately two weeks. In addition, all companies use the same method to service pipettes. Novamed's practices are not unique and do not involve trade secrets in need of protecting. We recognize technicians must be trained on the job by their employer; however, when an employee merely learns a trade during employment, knowledge of the trade is not considered confidential information. *Springfield Rare Coin Galleries, Inc.*, 250 Ill. App. 3d at 518. Even if Novamed had an interest in its trained employees, the

employees have an interest in the opportunity to work and provide for their families. *Reliable Fire Equipment Co.*, 2011 IL 111871, ¶ 16. Preventing them from working under these circumstances would be an undue hardship because it would force them to move out of the midwest if they wished to continue to work in the pipette servicing industry. Thus, Novamed does not have a protectable business interest in its trained employees.

¶ 45 Although Novamed's customer list is helpful in marketing to laboratories, considering the totality of the circumstances, we conclude that Novamed does not have a protectable business interest in its clientele or in its alleged confidential information. Accordingly, the court did not abuse its discretion in denying the preliminary injunction.

¶ 46 III. Unreasonable in Scope and Unreasonable in Duration

¶ 47 Given our conclusion that the restrictive covenants were unreasonable because Novamed does not have a legitimate business interest, Novamed cannot satisfy the *Reliable Fire* three-prong test of reasonableness. *Gastroenterology Consultants of North Shore, S.C.*, 2013 IL App (1st) 123692, ¶¶ 16-17. Therefore, the covenant is unenforceable as a matter of law and we need not address Novamed's contentions that the court erred in finding the scope and territory of the covenants unreasonable. In addition, as we find that Novamed has no legitimate business interest to protect, we decline to amend the covenants to be less restrictive.

¶ 48 CONCLUSION

¶ 49 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 50 Affirmed.