STATE OF MAINE
CUMBERLAND, ss.

BUSINESS AND CONSUMER COURT
DOCKET NO. BCD-CV-17-42

F.C. BEACON GROUP, INC., Plaintiff/Counterclaim Defendant, v. CRAIG BLEANGER, RICHARD CRUMB, RACHEL ESCHLE, and BCE PARTNERS, LLC, Defendants/Counterclaim Plaintiff, and MEAGHAN FLOOD and ANCHOR RESEARCH, LLC, Defendants.	ORDER ON DEFENDANTS CRUMB AND BCE PARTNERS' MOTION FOR PRELIMINARY INJUNCTION

Before the Court is Defendants' BCE Partners and Richard Crumb's Motion for Preliminary Injunction. Plaintiff F.C. Beacon Group is represented by Attorneys Graydon Stevens, Timothy H. Norton, Raymond P. Austrotas, and Peter M. Vetere. Defendants Craig Belanger, Richard Crumb, Rachel Eschele and BCE Partners are represented by Attorneys Robert W. Kline and Jeffrey Snyder. Defendants Meaghan Flood and Anchor Research, LLC are represented by Attorney Adrianne E. Fouts. The Court held hearing on the motion on January 30, 2018. Closing arguments were fully submitted to the Court on April 20, 2018.

I. Background

This case revolves around a contract dispute between Plaintiff F.C. Beacon ("Beacon") and its former employees Defendants Belanger, Crumb, Eschele, and Flood. Defendants

Belanger, Crumb, Eschele, and Flood each agreed to a Confidentiality, Inventions and Non-Solicitation Agreement (the "Agreement") with Beacon during their employment by Beacon. The Agreement contained the following Confidential Information clause:

> Confidential Information. Without the prior written consent of Beacon, you shall not, at any time, whether during or after the termination of your employment by Beacon, use any Confidential Information (as defined below) for the benefit of anyone other than Beacon, or disclose any Confidential Information to any person or party. You may, however, use or disclose Confidential Information as required by your obligations to beacon or as necessary or desirable (ad for the benefit of Beacon) in connection with Beacon's business (but all such permitted uses and disclosures shall be made under circumstances and conditions reasonably appropriate to preserve the Confidential Information as Beacon's confidential and proprietary information). "Confidential Information" means all information not generally known or available to the public or the trade which you have acquired or may acquire during your relationship with Beacon, and which relates to the present or potential customers, businesses, products and services of Beacon (including, without limitation, all Developments, as defined below), as well as any other information that Beacon may designate as confidential, but shall not include any such information obtained in good faith by you from sources other than Beacon, unless such sources have obtained such information subject to or in violation of an agreement to keep the information confidential.

The Agreement § 1. The Agreement's Non-Solicitation clause is as follows:

> Non-Solicitation. You and Beacon each acknowledge that your solicitation of customers and employees otherwise than with and for Beacon could cause Beacon irreparable damage. Accordingly, you agree that, during the period of your employment by Beacon and for a period of three (3) years from the date of termination of your employment with Beacon for any reason, you will not, without the prior written consent of Beacon: (i) solicit, service, accept orders from or otherwise have business contact with any person, organization or entity (or any subsidiary or affiliate of any person, organization or entity) who, at any time during your employment with Beacon, has been a customer or client or prospective customer or client of Beacon, if such contact could possibly directly or indirectly divert business from or adversely affect the business of Beacon; or (ii) in any way interfere with the contractual relations between Beacon and any of its officers, employees, consultants, subcontractors, customers, and clients including (for example) by hiring any officer employee or consultant of Beacon or soliciting or encouraging any officer, employee or consultant of Beacon to leave its employ for employment by or with any competitor of Beacon. If at any time any of the foregoing provisions of this Section 3 shall be deemed invalid or unenforceable or are prohibited by the laws of the state or place where they are to be performed or enforced, by reason of being vague or unreasonable as to

> duration or geographic scope or scope of activities restricted, or for any other reason, such provisions shall be considered divisible and shall become and be immediately amended to include only such restrictions and to such extent as shall be deemed to be reasonable and enforceable by the court or other body having jurisdiction over this Agreement; and you and Beacon agree that the provisions of this Section 3, as so amended, shall be valid and binding as though any invalid or unenforceable provisions had not been included in this Agreement.

The Agreement § 3.

After leaving employment with Beacon on January 20, 2017, Defendants Belanger and Crumb established BCE Partners ("BCE"). Like Beacon, BCE provides management consulting services in four principal areas: strategy, mergers and acquisitions, marketing and sales support, and operations. Plaintiff brought this action to recover damages for breach of the confidential information and non-solicitation clauses of the Agreement. Defendants now move the court for a preliminary injunction, arguing that the threat of enforcement of the Agreement is causing irreparable injury and asking the Court to find that the Agreement is unenforceable.

II. Choice of Law

The Court first looks to questions of choice of law. The Court rejects Defendants' argument that California law applies. Where a question of conflict of laws arises, a Maine Court gives "controlling effect to the law of the state which has the greatest contact or concern with, or interest in, the specific issue creating the choice-of-law problem before the court." *Beaulieu v. Beaulieu*, 265 A.2d 610, 617 (Me. 1970). Additionally, where there is a choice of law provision of a contract, the Court honors that choice of law, unless:

> (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or
> (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties.

Restatement 2d of Conflict of Laws, § 187 (2nd 1988); *See Schroeder v. Rynel, Ltd.*, 1998 ME 259, ¶ 8, 720 A.2d 1164.

In this case, Crumb and BCE argue that Crumb is a California resident and BCE is a California company, and therefore California has a greater interest in the dispute than does Maine. However, Beacon is a Maine company and in connection with his employment with Beacon, Crumb signed the Agreement which contains a choice of law provision requiring the laws of Maine to apply to any dispute that arises out of the Agreement. The Court finds that the exceptions laid out in the Restatement do not apply here. It cannot find that Maine has "no substantial relationship to the parties or the transaction," nor can it find that California has a "materially greater interest" than Maine in the determination of the issues presented here. Because the dispute arises out of an agreement Crumb made with a Maine company, he agreed to be subject to the laws of Maine when he signed the agreement, and no exception to this general rule can be found, the Court finds that Crumb and BCE are bound by the laws of Maine.

III. Standard of Review for Preliminary Injunctive Relief

In order for the Court to grant a motion for preliminary injunction, the moving party must show the each of the following four criteria:

> (1) that plaintiff will suffer irreparable injury if the injunction is not granted, (2) that such injury outweighs any harm which granting the injunctive relief would inflict on the defendant, (3) that plaintiff has exhibited a likelihood of success on the merits (at most, a probability; at least, a substantial possibility), and (4) that the public interest will not be adversely affected by granting the injunction.

Ingraham v. University of Maine at Orono, 441 A.2d 691, 693 (Me. 1982); *Bangor Historic Track, Inc. v. Department of Agriculture*, 2003 ME 140, ¶ 9, 837 A.2d 129, 132.

IV. Discussion

As noted above, Defendants Crumb and BCE argue that because Crumb is a California resident and BCE is an LLC incorporated in California, and because non-solicitation agreements are unenforceable in California, the non-solicitation clause that Crumb signed with Plaintiff is unenforceable. Crumb and BCE further argue that the confidential information which the agreement prohibits them from using outside of Beacon is too broadly defined to be enforceable even if California law is inapplicable. Crumb and BCE further argue that they are caused more harm by the continued viability of the non-solicitation language than Plaintiff would be by a declaration that it is unenforceable, and that such a declaration would not be contrary to public interest. For that reason, Crumb and BCE seek preliminary injunctive relief from enforcement of the non-compete clause of the letter agreement. Plaintiff disputes Defendant Crumb and Defendant BCE's characterization of the law and its application.

The Court has found that California law does not apply to this matter. With respect to the other argument made by Defendants about their chances of prevailing, the Court need not determine in this Motion whether or not Defendants Crumb and BCE are more likely than not to succeed on the merits on a claim that the Agreement is unenforceable, as Defendants have not shown irreparable injury.[1] Irreparable injury is found where there is no adequate remedy at law. *See Bangor Historic Track, Inc.*, 2003 ME 140, ¶ 10, 837 A.2d 129. The argument seems to be that conducting business which creates a risk that a non-compete clause will be found to be enforceable amounts to irreparable injury. Defendants assert that the Agreement is unenforceable, but argue that should the Court find in a later proceeding (or in a different

[1] A motion for preliminary injunction is only appropriate where a party is arguing that it is likely to succeed on the merits of a claim. It is not clear from Defendants Crumb and BCE's motion on which claim they believe they will succeed. Defendants appear to argue that they will succeed in showing that the Agreement was unenforceable, however the counterclaim that is closest to presenting such a claim is for breach of contract.

motion) that the Agreement is enforceable, Defendants Crumb and BCE would be liable for breach of contract and thus irreparably harmed. The Court finds that the uncertainty and risk of a possible breach of contract that Defendants Crumb and BCE describe are not irreparable injury, but rather describe the very case or controversy that provides the Court with subject-matter jurisdiction.

Furthermore, Defendants Crumb and BCE have been able to articulate separate claims for which, if successful, they could obtain monetary damages. For this additional reason, the harm is not irreparable. The Court therefore denies the motion without considering the other requirements for obtaining an injunction.

V. Conclusion

The Court denies Defendants Crumb and BCE's Motion for Preliminary Injunction.

The Clerk is directed to incorporate this Order into the docket by reference in accordance with M.R. Civ. P. 79(a).

DATE: May 8, 2018

/s
Michaela Murphy
Justice, Superior Court