



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

WALMART INC.)	
)	
Plaintiff,)	
)	
v.)	C.A. No. _____-____
LISA WADLIN,)	
)	
Defendant.)	
)	
)	

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF

Walmart Inc. (“Walmart” or “Plaintiff”), by and through undersigned counsel, as and for its Verified Complaint against Lisa Wadlin (“Wadlin”) alleges as follows:

NATURE OF THE ACTION

1. On May 15, 2018, Wadlin informed her current employer, Walmart, that she had been offered a senior global tax position at Amazon.com, Inc. (“Amazon”), one of the largest e-commerce retailers in the world, and a significant competitor of Walmart. Wadlin is bound by a non-compete provision, and her employment by Amazon would directly violate the terms of her non-compete agreement with Walmart. Walmart brings this action to enforce its non-compete agreement and to protect its sensitive and proprietary business information.

2. Wadlin has been employed by Walmart since 2011. Since 2014, she has served as Walmart’s Senior Vice President, Global Tax and then Senior Vice

President, Chief Tax Officer¹ with global responsibilities, including primary responsibility for establishing the short-and-long-term global tax policies for all of Walmart's business units, and providing such business units and leaders with recommendations as to tax strategies. In this role, Wadlin had tax responsibility for retail, e-commerce, and global sourcing in addition to all domestic tax matters. Wadlin was a high-ranking executive and officer and reported directly to Walmart's most senior management.

3. In her role with Walmart, Wadlin was responsible for Walmart's global tax strategy. She was also responsible for preparing and presenting Walmart's tax positions to Walmart's senior management, and she had access to confidential information about major aspects of Walmart's business, including information concerning Walmart's financial projections, long-and-short term business strategies, acquisition targets, online sales strategies, merchandising and price strategies, costs, and strategies for expansion into other global markets.

4. Wadlin did not advise Walmart of her discussions with Amazon or receipt of a job offer until May 15, 2018. As of May 15, 2018, Wadlin was still employed by Walmart. She had ongoing access to its data, systems, and confidential information, and she was manifesting her willingness to accept a separation package that would provide for transitional services, in exchange for

¹ In 2014, Wadlin became the Senior Vice-President, Global Tax and in 2015 she was promoted to Senior Vice President, Chief Tax Officer.

additional compensation, and would re-affirm her previously signed, and still in effect, non-competition agreement. More recently, however, Walmart learned that as early as May 7, 2018, Wadlin, through counsel, filed court papers representing that “[she] is no longer employed in the Northwest Arkansas area through no fault of her own; [and] [t]hat [she] has obtained employment, that would require her to relocate to Seattle, WA.”

5. Walmart has advised Wadlin that her acceptance of employment with Amazon will be a direct violation of the non-compete provision contained in the contract Wadlin executed in 2014—an agreement Wadlin signed in exchange for a promotion to the senior ranks of Walmart as well as a lucrative compensation package. Nonetheless, Wadlin still intends to pursue employment with Amazon.

6. Wadlin’s pursuit of employment with Amazon eviscerates the contractual terms Walmart bargained for, specifically, the protection of its economic interests by securing restrictions in advance on its senior employee’s ability to work for its direct competitor. Walmart will be irreparably harmed if Wadlin is permitted to breach her contractual agreement with Walmart.

7. The information Wadlin had access to in her role at Walmart would be of significant advantage to a competitor of Walmart, such as Amazon, since her knowledge of strategic information and future business plans would be of immense benefit to Amazon.

8. Accordingly, Walmart seeks preliminary and permanent injunctive relief to restrain Wadlin from commencing employment with Amazon as well as other relief sufficient to remedy the harm suffered by Walmart due to Wadlin's breaches or threatened breaches of her duties and obligations.

PARTIES

9. Walmart is a Delaware corporation with a principal place of business located at 702 SW 8th Street, Bentonville, Arkansas 72716. Walmart is a multinational retailer operating in over 25 countries. Walmart also operates a multinational e-commerce business, and, through its website, www.walmart.com and other sites, Walmart offers customers the ability to buy a wide range of retail products consisting of food, clothing, toys, electronics, and other household essentials. Walmart is one of the top online retailers in the United States. In its most recent fiscal year, Walmart generated over \$10 billion in e-commerce revenue.

10. Wadlin has been employed by Walmart and held the position of Senior Vice President, Chief Tax Officer. Upon information and belief, Wadlin resides at 14 Dawn Hills Drive, Bentonville, Arkansas.

JURISDICTION

11. This Court has subject matter jurisdiction over this action under 10 *Del. C.* § 341 because Walmart seeks preliminary and permanent injunctive relief.

12. This Court has personal jurisdiction over Wadlin because Paragraph 14 of Wadlin's contractual agreement with Walmart provides:

The parties agree that any action relating to the interpretation, validity, or enforcement of this Agreement shall be brought in the courts of the State of Delaware, and the parties hereby expressly consent to the jurisdiction of such courts and agree that venue is proper in those courts. The parties do hereby irrevocably: (a) submit themselves to the personal jurisdiction of such courts; (b) agree to service of such courts' process upon them with respect to any such proceeding; (c) waive any objection to venue laid therein; and (d) consent to service of process by registered mail, return receipt requested.

FACTUAL BACKGROUND

A. Wadlin Joins Walmart

13. Wadlin initially joined Walmart in October 2011. She was promoted to Vice President International Tax in February 2012. Almost two years later, she was promoted to Senior Vice President, Global Tax where she reported directly to the Chief Tax Officer. In connection with her elevation to a Senior Vice President, Wadlin executed a Post-Termination Agreement and Covenant Not to Compete (the "Agreement") with Walmart, a copy of which is attached hereto as Exhibit A.²

14. In the Agreement, Wadlin promised that, for a period of two (2) years after the date of termination of her employment with Walmart, she would not "own, manage, operate, finance, join, control, advise, consult, render services to, have a current or future interest in, or participate in the ownership, management,

² Wal-Mart Stores, Inc. changed its corporate name to Walmart Inc. in February of this year.

operation, financing, or control of, or be employed by or connected in any manner with” any “Competing Business” and/or any “Global Retail Business” or “participate in any other activity that risks the use or disclosure of Confidential Information either overtly by [Wadlin] or inevitably through the performance of such activity by [Wadlin].” Ex. A § 4(A).

15. The Agreement defines “Confidential Information” as follows:

[P]rivate, sensitive, confidential, proprietary, and trade secret information including but not limited to, information regarding Walmart’s products or services, strategies, research and development efforts, logistics, transportation, selling and delivery plans, geographic markets, developing or potential geographic markets, developing or potential product markets, mergers, acquisitions, divestures, data, business methods, computer programs and related source and object code, supplier and customer relationships, contacts and information, methods or sources of product manufacture, know-how, product or service cost or pricing, personnel allocation or organizational structure, business, marketing, development and expansion or contraction plans, information concerning legal or financial affairs of Walmart, any other non-public information, and any other information protected by the Nondisclosure and Restricted Use Agreement executed by [Wadlin].

Ex. A § 1(D).

16. The Agreement defines “Competing Business” to include:

any general or specialty retail, grocery, wholesale membership club, or merchandising business, inclusive of its respective parent companies, subsidiaries, and/or affiliates, that: (a) sells goods or merchandise at retail to consumers and/or businesses (whether through physical locations, via the internet or combined) or has plans to sell goods or merchandise at retail to consumers and/or businesses (whether through physical locations, via the internet or combined) within twelve (12) months following [Wadlin’s] last day of

employment with Walmart in the United States; and (b) has gross annual consolidated sales volume or revenues attributable to its retail operations (whether through physical locations, via the internet or combined) equal to or in excess of U.S.D. \$5 billion.³

Ex. A § 4(B)(i)

17. The Agreement defines “Global Retail Business” to include:

any general or specialty retail, grocery, wholesale membership club, or merchandising business, inclusive of its respective parent companies, subsidiaries, and/or affiliates, that: (a) in any country or countries outside of the United States in which Walmart conducts business or intends to conduct business in the twelve (12) months following [Wadlin’s] last day of employment with Walmart, sells goods or merchandise at retail to consumers and/or businesses (whether through physical locations, via the internet or combined); and (b) has gross annual consolidated sales volume or revenues attributable to its retail operations (whether through physical locations, via the internet or combined) equal to or in excess of U.S.D. \$5 billion in any country pursuant to (B)(ii)(a) or in the aggregate equal to or in excess of U.S.D. \$5 billion in any countries taken together pursuant to (B)(ii)(a) when no business in any one country has annual consolidated sales volume or revenues attributable to its retail operations equal to or in excess of U.S.D. \$5 billion.⁴

Ex. A § 4(B)(ii)

18. Wadlin served as Senior Vice President, Global Tax for approximately one year. In February 2015, she was promoted to Senior Vice President, Chief Tax Officer, and reported directly to the Executive Vice President, Treasurer. She has been directly responsible for Walmart’s global tax function

³ In 2017, the \$5 billion threshold was increased to \$7 billion in recognition of financial changes in the marketplace.

⁴ *See supra*, note 3.

and, in that role, she developed overall tax strategy and oversaw tax planning initiatives by evaluating forecasts and market risks. She also developed proactive measures to address tax issues and mitigate exposure, developed solutions to balance the company's tax liability with strategic operational initiatives, provided short-term and long-term tax planning strategy recommendations to leadership, provided insight, counsel, and recommendations to leadership to drive decisions regarding organization structure, business planning opportunities, and tax consequences of business decisions to support the financial success of the operation, ensured compliance with tax laws and practices and related litigation risk analysis, and established international tax governance to leverage consistent practices and drive an optimized international tax function.

19. Additionally, in her role as Senior Vice President, Global Tax (and later as Senior Vice President, Chief Tax Officer), Wadlin had access to Walmart's highly confidential and sensitive business information and strategies. Wadlin's primary job responsibilities and functions gave her insight into some of Walmart's most sensitive information, including:

- Wadlin led the global tax planning and strategy function at Walmart. In that role, Wadlin reviewed and analyzed Walmart's future projections, forecasts, and plans in connection with advising on the tax effects of significant business decisions.

- Wadlin had insight into most, if not all, of the potential transactions in Walmart's M&A pipeline where she was consulted early in the process and then on an ongoing basis. Wadlin's role included analyzing the tax consequences associated with potential transactions, providing input as to the structuring of such transactions, and then, if a transaction moved forward, related due diligence. For example, she was involved in Walmart's efforts to acquire FlipKart—a company that Amazon had submitted a competing bid to acquire.
- Wadlin had direct involvement in global strategy and execution for Walmart's operations in foreign jurisdictions, including internal restructurings, and review of global sourcing policies.
- Wadlin participated in global officer meetings where Walmart's short-and-long term strategies were reviewed and discussed.

20. Simply put, because the tax implications of Walmart's business transactions have an enormous impact on the performance of the business and impact a wide variety of strategic decisions and business plans, Wadlin had access to some of the most sensitive information at Walmart and participated in some of the most significant business decisions at the company. She was also the primary decision maker for many short-and-long term confidential tax decisions and strategic positioning for Walmart.

B. Wadlin Plans to Leave Walmart and Negotiates a Separation Agreement.

21. In late January 2018, Wadlin advised Walmart that she was considering resigning from her position. In response, in February 2018, Walmart endeavored to persuade Wadlin to stay and then later attempted to negotiate a retention agreement with Wadlin with the intention that she would remain with Walmart to assist with several important ongoing projects.

22. By mid-to-late February, Wadlin re-affirmed her intention to leave Walmart. In response, Walmart began negotiating a separation agreement with Wadlin to ensure an orderly transition from Wadlin to her potential successor. Wadlin was represented by counsel in connection with these negotiations. Wadlin expressed a desire to continue working for some period of time to support her team and transition certain projects.

23. In connection with these negotiations, Walmart offered Wadlin certain transition payments and an additional amount that she would not otherwise have been entitled to receive due to her resignation. As a term of the proposed separation agreement, Wadlin would remain at Walmart for a certain period of time to transition her work to others and consult with Walmart on ongoing strategic matters. Despite the concessions and generous compensation offered by Walmart, Wadlin requested a waiver and/or modification of the non-compete. Walmart,

however, refused to agree to this modification, and, by April 24, a finalized separation agreement was prepared and sent to Wadlin's counsel.

24. Thereafter, with Wadlin's advance approval, on May 4, Walmart released an internal announcement regarding Wadlin's upcoming departure, entitled "Finance Leadership Change." It stated, in part, that "Lisa has agreed to provide her support for key tax initiatives until that date [end of June]," and "Lisa's leadership has been instrumental in our efforts to generate tax savings for Walmart through strategic planning."

25. On the morning of May 14, 2018, after follow-up by Walmart, Wadlin's counsel requested that Walmart email the final separation agreement for Wadlin to countersign and return. Wadlin and her counsel represented that Wadlin was in agreement with the terms and would sign the separation agreement.

26. While Wadlin was negotiating the separation agreement and continuing to work with Walmart, however, and unbeknownst to Walmart, Wadlin was also planning to commence employment with Amazon. In fact, on May 7, 2018, Wadlin, through counsel, filed a pleading in the Benton County Circuit Court of Arkansas entitled Amended Petition for Modification of Custody. In this pleading, Wadlin represented to the court that "[she] is no longer employed in the Northwest Arkansas area through no fault of her own; [and] [t]hat [she] has

obtained employment, that would require her to relocate to Seattle, WA.” Ex. B.⁵ Notably, as of May 7, Wadlin was still employed by Walmart, had access to Walmart’s data, systems, and confidential information, and was still representing to Walmart that she would execute the separation agreement.

27. On the morning of May 15, in response to the request by Wadlin’s counsel, Walmart sent the final separation agreement for Wadlin to countersign and return. Wadlin’s stated intent to execute the separation agreement, which contemplated continued employment by Walmart for a transitional period and reaffirmed the noncompetition restrictions contained in the Agreement, is diametrically opposed to her prior court filings reflecting her plans to relocate to Seattle for new employment.

C. Walmart is Informed of Wadlin’s Offer From Amazon.

28. Later in the day on May 15, Wadlin informed Walmart that she had been offered a position at Amazon as Vice President of Tax and Tax Policy. She was told by Walmart that she should not consider such offer because it would violate her existing non-compete. Given her access to Walmart’s data, systems, and confidential information, Walmart required that Wadlin cease performing work for Walmart as of that date, but is continuing to compensate her.

⁵ In an exhibit to a related pleading filed in the same matter, she stated on May 8, 2018 “I’m moving to Seattle for my job.” Ex. C.

29. Walmart has also requested Wadlin to confirm that she would not move forward with employment with Amazon. Wadlin has failed to provide such assurances.

D. Wadlin's Employment with Amazon Presents a Direct Competitive Threat to Walmart.

30. Wadlin's employment with Amazon poses a direct risk to Walmart. Amazon is one of Walmart's primary competitors. Amazon's corporate headquarters are in Seattle, Washington, and it conducts operations on a global basis. Amazon also owns a competing grocery chain, Whole Foods, which, with some 500 locations, is a direct competitor to Walmart's domestic grocery business. Amazon's website, www.amazon.com, allows customers to buy a wide-range of retail products online. Amazon customers can purchase electronics, toys, household supplies, and food and have such products delivered directly to a home address. Amazon also specifically markets itself as a major online retailer and has stated in publicly filed documents that "We design our websites to enable hundreds of millions of unique products to be sold by us and by third parties across dozens of product categories." Ex. D at 4. It is widely recognized in trade and business publications that Amazon and Walmart are significant competitors of one another.

31. In fact, Amazon's most recent Form 10-K recognizes that Amazon's competitors would include entities like Walmart:

Our current and potential competitors include: (1) online, offline, and multichannel retailers, publishers, vendors, distributors, manufacturers, and producers of the products we offer and sell to consumers and businesses; (2) publishers, producers, and distributors of physical, digital, and interactive media of all types and all distribution channels; (3) web search engines, comparison shopping websites, social networks, web portals, and other online and app-based means of discovering, using, or acquiring goods and services, either directly or in collaboration with other retailers; (4) companies that provide e-commerce services, including website development, advertising, fulfillment, customer service, and payment processing; (5) companies that provide fulfillment and logistics services for themselves or for third parties, whether online or offline; (6) companies that provide information technology services or products, including on-premises or cloud-based infrastructure and other services; and (7) companies that design, manufacture, market, or sell consumer electronics, telecommunication, and electronic devices.

Ex. D at 6.

32. Given its size and competing business operations, Amazon is both a “Competing Business” and “Global Retail Business” as defined in the Agreement. In fact, Amazon’s most recent Form 10-K filed with the SEC shows that it has well in excess of \$7 billion in net sales. Ex. D at 31.

33. Moreover, in Wadlin’s proposed new role as Vice President of Tax and Tax Policy at Amazon, both Amazon and Wadlin would benefit from the sensitive business information obtained at Walmart. Indeed, while employed by Walmart, Wadlin was privy to and involved in to varying extents Walmart’s financial projections, long-and-short term business strategies, acquisition targets, online sales strategies, merchandising and price strategies, cost data, and strategies

for expansion into other global markets. Learning Walmart's business plans and tax strategies on various issues would benefit Amazon in its competitive activities. Upon information and belief, Wadlin's employment by Amazon could assist Amazon in at least the following ways:

- Wadlin's knowledge of Walmart's business strategies, including long-range e-commerce plans may help Amazon undermine Walmart's market positions.
- Wadlin's knowledge of Walmart's M&A strategy, negotiation positions, and acquisition targets may allow Amazon to undermine Walmart's ability to acquire targets or force Walmart to pay more to acquire such target because Amazon could drive up the acquisition price.

34. Given the non-compete provision that Wadlin agreed to and the substantial risk to Walmart's Confidential Information, when Wadlin informed Walmart that she had received a job offer from Amazon, on May 15, Walmart required that Wadlin cease performing her job duties and leave the office.

35. Wadlin, who voluntarily chose to resign, is not without other options. The separation agreement provided for severance payments for an amount equivalent to two years of base salary. Wadlin is also free to accept senior management employment in noncompeting industries, as well as retail entities that are outside the scope of the Agreement. Because there is no mitigation provision

in the Agreement, Wadlin could accept the separation payments and still earn compensation by working in a position that would not violate the non-compete, or she could just remain out of the workforce for the entire 2 years and still receive significant compensation.

36. Upon information and belief, Waldin expects and intends to pursue employment with Amazon unless restrained by this Court.

37. Accordingly, Walmart requests preliminary and permanent injunctive relief to enjoin Wadlin's breach or threatened breach of the Agreement.

COUNT I
(Breach of Contract)

38. Walmart repeats and realleges each and every allegation contained in the paragraphs above as if fully set forth herein.

39. The Agreement is a valid and binding contract.

40. Walmart has complied with all applicable provisions of the Agreement.

41. Pursuant to the express terms of the Agreement (Exhibit A § 4), Wadlin agreed not to "join, control, advise, consult, render services to, have a current or future interest in, or participate in ownership, management, operation, financing, or control of, or be employed by or connect in any manner with" any entity defined as either a "Competing Business" or "Global Retail Business" for a period of two (2) years following the date of her termination.

42. Amazon, one of the world's leading online global retailers, is both a "Competing Business" and "Global Retail Business" as defined in the Agreement.

43. Wadlin has represented that she intends to pursue employment with Amazon.

44. Wadlin's threatened employment with Amazon, if allowed to proceed, would cause irreparable harm to Walmart.

45. Walmart lacks an adequate remedy at law and is entitled to preliminary and permanent injunctive relief to enjoin Wadlin breaching the Agreement.

46. The Agreement acknowledges that upon a breach or threatened breach of the Agreement, Walmart shall be entitled to injunctive relief to restrain such violation. Specifically, Section 7 of the Agreement provides (in part):

[Wadlin] acknowledges that a breach of the provisions of Section 4 through 6, above, could result in substantial and irreparable damages to Walmart's business, and that the restrictions contained in Sections 4 through 6 are a reasonable attempt by Walmart to protect its rights and to safeguard its Confidential Information. [Wadlin] expressly agrees that upon a breach or a threatened breach of the provisions of Section 4 through 6, Walmart shall be entitled to injunctive relief to restrain such violation, and [Wadlin] hereby expressly consents to the entry of such temporary, preliminary, and/or permanent injunctive relief, as may be necessary to enjoin the violation or threatened violation of Sections 4 through 6.

Ex. A § 7.

47. Additionally, pursuant to Section 7 of the Agreement, Walmart is entitled to attorneys' fees and costs in connection with Wadlin's breach. Specifically, Section 7 provides:

With respect to any breach of this Agreement by [Wadlin], [Wadlin] agrees to indemnify and hold Walmart harmless from and against any and all loss, cost, damage, or expense, including, but not limited to, attorneys' fees, incurred by Walmart, and to return immediately to Walmart all monies previously paid to [Wadlin] by Walmart under this Agreement[.]

Ex. A § 7.

PRAYER FOR RELIEF

WHEREFORE, Walmart respectfully request that the Court enter an order:

- a. Preliminarily and permanently enjoining Wadlin from commencing employment for or on behalf of Amazon in violation of the Agreement until at least May 25, 2020;
- b. Preliminarily and permanently enjoining Wadlin from using and/or disseminating Confidential Information, as defined in the Agreement
- c. Awarding Walmart its reasonable attorneys' fees and costs, including as required by the Agreement; and
- d. Awarding Walmart such other and further relief as the Court may deem just and proper.

/s/ Robert W. Whetzel

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