

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
NATIONSRENT, INC., a Delaware)	Case No. 01-11628(PJW)
corporation, et al.,)	Jointly Administered
)	
Debtors.)	
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NATIONSRENT, INC., a Delaware)	
corporation, and NATIONSRENT)	
USA, INC., a Delaware)	
corporation,)	
)	
Plaintiffs,)	
)	
v.)	Adv. Proc. No. 02-02235
)	
CLIFTON E. SHEFFIELD,)	
)	
Defendant.)	

MEMORANDUM OPINION

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Dated: June 18, 2003

WALSH, J.

Before the Court in this adversary proceeding is defendant Clifton E. Sheffield's ("Sheffield") motion to dismiss for failure to state a claim (the "Motion")(Doc. # 8). For the reasons set forth below, the Motion will be denied.

BACKGROUND

The debtor, NationsRent, Inc. ("NationsRent") filed its voluntary Chapter 11 petition on December 17, 2001. NationsRent owns and operates a nationwide construction equipment rental business. On September 11, 1998, NationsRent entered into an Asset Purchase Agreement ("APA") to purchase all of the assets, properties, and business of Sheffield Equipment Co., Inc., of which Sheffield was the sole shareholder. Concurrently with the APA, the parties entered into an Employment Agreement ("EA") under which Sheffield was to be employed by NationsRent for three years. Both the APA and EA contained restrictive covenants designed to ensure that Sheffield did not compete against NationsRent (the "non-compete provisions"). The non-compete provisions were intended to preclude Sheffield from competing with NationsRent for the three-year term of his employment and a period of two years thereafter (the "non-

compete period").

Sheffield's term of employment did not last for the three years contemplated by the parties; he was terminated effective March 24, 2000. Sheffield asserts that the two year extension of the non-compete period began to run at the time his employment was terminated. Thus, he argues that the non-compete period ended March 24, 2002. However, NationsRent asserts that, irrespective of the termination, the APA and EA clearly intended to create a non-compete period lasting five years from the date of the agreements, thus not expiring until September 28, 2003. Either way, following his termination, Sheffield secured employment in late 2001 in a position that NationsRent alleges violated the non-compete agreement.

The APA states that Sheffield shall not be permitted to compete against NationsRent "for a period of five (5) years following the Effective Time." APA, Doc. # 8, Ex. A, § 7.7(a). However, the APA does not define the capitalized term "Effective Time." The EA declares that Sheffield shall not compete against NationsRent "for a period of five (5) years following the Closing Date." EA, Doc. # 8, Ex. B, § 3(a). The capitalized term "Closing Date" is not defined in the EA. The term is defined, however, in the APA as the date on which the closing of the purchase and sale of the purchased assets took place.

See APA, Doc. # 8, Ex. A, § 3.1.

DISCUSSION

The Motion seeks dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.¹ Specifically, Sheffield asserts that no claim has been stated upon which relief may be granted as the alleged expiration of the non-compete provision has rendered NationsRent's cause of action for any violation of the provision moot. Thus, Sheffield claims that there is no justiciable "case" or "controversy" and that, as a result, Article III of the United States Constitution precludes the exercise of this Court's jurisdiction.

When a motion to dismiss is premised upon Rule 12(b)(6), "factual allegations of the complaint are to be accepted as true and the complaint should be dismissed only if it appears to a certainty that no relief could be granted under any set of facts which could be proved. Reasonable factual inferences will be drawn to aid the pleader." D.P. Enters., Inc. v. Bucks County Cmty. Coll., 725 F.2d 943, 944 (3d Cir. 1984).

Here, NationsRent has satisfied its burden of showing that this Court has subject matter jurisdiction. The ability of

¹Rule 12(b) of the Federal Rules of Civil Procedure is made applicable to adversary proceedings by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure.

a court to effectuate even a "partial remedy" is "sufficient to prevent [a] case from being moot." Church of Scientology of California v. U.S., 506 U.S. 9, 13 (1992). Based on that standard, NationsRent's Complaint is not moot. If it is correct that Sheffield breached the non-compete provisions of the APA and EA, this Court will be able to effectuate at the very least a partial remedy by awarding NationsRent monetary damages.² Thus, this matter is justiciable and it cannot be said that an exercise of subject matter jurisdiction by this Court would be constitutionally impermissible.

Furthermore, NationsRent asserts that the APA and EA must be interpreted to require that Sheffield refrain from competing against NationsRent for a period of five years from the signing of the agreements. According to NationsRent, there is nothing in either agreement that suggests that the non-compete period should run for two years from the end of Sheffield's employment if he was terminated prior to the expiration of the three year term set forth in the EA. As noted

²By its terms, the EA is governed by Florida law. According to NationsRent, Florida law permits a court to enforce the terms of a non-compete provision even after that provision has expired. See, e.g. Xerographics, Inc. v. Thomas, 537 So.2d 140, 143 (Fla. 2d Dist. Ct. App. 1989). I take no position with respect to the applicability of Xerographics and make no determination as to whether equitable relief can be granted.

above, for purposes of this Motion, I am required to construe all facts in favor of NationsRent. Thus, I must conclude that NationsRent is correct in its assertion that the non-compete provision remains in effect. I must also conclude it is correct in its assertion that the employment secured by Sheffield after his termination from NationsRent is a breach of the non-compete provision. As such, I must conclude that NationsRent has stated a claim upon which relief can be granted.

It should also be noted that a March 14, 2000 letter from NationsRent to Sheffield addressing the termination of Sheffield's employment (the "Severance Letter") states that "[e]xcept as modified herein, the terms of the Employment Agreement shall remain in full force and effect, including without limitation, the restrictive covenants and confidentiality provisions of Sections 3 and 4 of the Employment Agreement." Severance Letter, Doc. # 8, Ex. C, ¶ 5. The Severance Letter thus raises serious questions as to whether the parties intended, as Sheffield asserts, for the non-compete provision to expire two years after Sheffield's termination, rather than five years from the signing of the agreements. As it is possible to construe that the parties intended the non-compete provision to remain in effect for the full five years from the signing of the APA and EA, I am further compelled to

conclude that NationsRent has stated a claim upon which relief can be granted.

CONCLUSION

For the foregoing reasons, the Motion is denied.

**UNITED STATES BANKRUPTCY COURT
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ORDER

For the reasons set forth in the Court's Memorandum Opinion of this date, defendant Clifton E. Sheffield's motion (Doc. # 8) to dismiss for failure to state a claim is DENIED.

Peter J. Walsh
United States Bankruptcy Judge

Dated: June 18, 2003