

Mathew v Slocum-Dickson Med. Group, P.L.L.C.
2013 NY Slip Op 34238(U)
August 13, 2013
Supreme Court, Oneida County
Docket Number: CA2013-001477
Judge: Patrick F. MacRae
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**STATE OF NEW YORK
SUPREME COURT COUNTY OF ONEIDA**

**THOMAS MATHEW, M.D. and
MARK E. BLAKER, M.D.,**

Plaintiffs,

-v-

**DECISION
AND
ORDER**

**Index #: CA2013-001477
RJI #: 32-13-0697**

SLOCUM-DICKSON MEDICAL GROUP, P.L.L.C.,

Defendant.

Plaintiffs Thomas Mathew, M.D. and Mark E. Blaker, M.D. ("Plaintiffs"), by and through their attorneys, *Finer & Giruzzi-Mosca*, having made an application for a Temporary Restraining Order and Preliminary Injunction against Defendant Slocum-Dickson Medical Group, P.L.L.C. ("Defendant") by Order to Show Cause of this Court pursuant to Article 63 of the CPLR; and

Defendant, by its attorney, *Hiscock & Barclay, LLP*, having opposed the Plaintiffs' application and cross-moved for a Preliminary Injunction, Temporary Restraining Order, modification of the existing Order to Show Cause, and related relief; and

AFTER READING AND CONSIDERING Plaintiffs' Order to Show Cause, the affirmation of *Stuart E. Finer, Esq.*, dated July 18, 2013, together with the exhibits annexed thereto, the joint affidavit of Thomas Mathew, M.D. and Mark E. Blaker, M.D., sworn to on July 18, 2013, together with the exhibits annexed thereto, and the affidavit of Thomas Mathew, M.D., sworn to on July 18, 2013, all in support of Plaintiffs' Motion;

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D. J. [unclear]
[unclear]

and the affidavit of Stephen D. Eadline, M.D., sworn to on July 26, 2013, with exhibits annexed thereto, the affidavit of Christopher J. Harrigan, Esq., sworn to on July 29, 2013, with exhibits annexed thereto, all in opposition to Plaintiffs' Motion and in support of Defendant's Cross-Motion; and

AFTER HEARING oral argument of the attorneys for the Plaintiffs', Finer & Giruzzi-Mosca, Stuart E. Finer, in support of Plaintiffs' Motion; and Hiscock & Barclay, LLP, Christopher J. Harrigan, Esq., in support of Defendant's Cross-Motion and in opposition to Plaintiffs' Motion; and after taking testimony at the hearing and prior to completion of said hearing and the Plaintiffs having Stipulated to amend their complaint not to contest the restrictive covenant, but to contest the issue of the amount of liquidated damages; and

AFTER the Court, having issued an Order on July 22, 2013 that, *inter alia*, "Temporarily Restrained and enjoined [Defendant] from presenting to this Court, or any Court, a request for injunction to prohibit the Plaintiffs from the practice of medicine within a twenty-five (25) mile radius of the Defendant within three years; and...ordered that Defendant provide patients with contact information for Plaintiffs"; and

AFTER the Court, having modified its July 22, 2013 Order on July 30, 2013, and after having been requested by counsel for Defendant for clarification of said modified Order, the Court further advised prior to the taking of testimony on August 1, 2013, that insofar as questions of fact existed whether the restrictive covenants of the contracts of employment between Plaintiffs and Defendant would prohibit Plaintiffs from operating a cardiology practice within a 25 mile radius of Defendant for a three year period are

enforceable, and insofar as questions of fact existed whether the liquidated damages of the employment contract are enforceable, the Court clarified its Order of July 30, 2013 by ordering that the temporary restraining order issued by the Court on July 26, 2013 was vacated and the matter is set down for a fact-finding hearing on August 1, 2013 on all issues for which either party has sought temporary relief, and that a decision on Plaintiff's motion and Defendant's cross-motion would abide the outcome of said hearing; and

T H E R E A F T E R the Court commenced said fact-finding hearing on August 1, 2013, and testimony having been provided by Plaintiff Blaker, and the matter having been continued to August 23, 2013 for further testimony on behalf of the Plaintiff and Defendant; and

W H E R E A S during the colloquy between the Court and counsel for the parties as to whether and to what extent a further order of the Court should continue during the period until said fact-finding hearing could be completed, Plaintiffs counsel stated, "We're going to practice. It's only a matter of money", thereby amending the Complaint to limit Plaintiff's first cause of action, which challenged the restrictive covenants of the contracts of employment, to the amount of liquidated damages; and

W H E R E A S all parties conceded that the employment contracts did not prevent Plaintiffs from entering into practice within a 25 mile radius of the City of Utica or within three years of terminating their association with Defendant if Plaintiffs pay liquidated damages as specified therein; and

W H E R E A S the limitation of Plaintiff's Complaint and agreement to be subject

to liquidated damages at an amount to be determined does not resolve the factual issues that remain regarding Plaintiff's motion to compel Defendant to pay compensation or to provide information to patients how to contact Plaintiffs, or Defendant's cross-motion as to whether Plaintiffs should be enjoined from soliciting patients they treated while employed by Defendant, as to all of which questions of fact remain unresolved; and

WHEREAS the Court has received and considered an August 9, 2013 letter from counsel for the Plaintiff, enclosing a proposed Order, an August 12, 2013 letter from counsel for Defendant, objecting to said proposed Order, an August 12, 2013 letter from counsel for Plaintiffs in support of the proposed Order, and an August 13, 2013 letter from counsel for Defendant, objecting to the proposed Order, with some modifications, now therefor it is hereby

ORDERED that until such time as Plaintiff Mathew shall post a bond in the amount of 50% of his salary during the 12 months immediately preceding commencement of this action he shall be restrained from entering into the practice of medicine within a 25 mile radius of the City of Utica or within three years of terminating his association with Defendant, and it is hereby

ORDERED that at such time as Plaintiff Mathew shall post a bond as hereinbefore stated, he shall not be restrained from practicing medicine within a 25 mile radius of the City of Utica or within three years of terminating his association with Defendant, and it is hereby

ORDERED that until such time as Plaintiff Blaker shall post a bond in the

amount of 50% of his salary during the 12 months immediately preceding commencement of this action he shall be restrained from entering into the practice of medicine within a 25 mile radius of the City of Utica or within three years of terminating his association with Defendant, and it is hereby

O R D E R E D that at such time as Plaintiff Blaker shall post a bond as hereinbefore stated, he shall not be restrained from practicing medicine within a 25 mile radius of the City of Utica or within three years of terminating his association with Defendant, and it is hereby

O R D E R E D that pending resolution of Defendant's cross-motion, Plaintiff Mathew shall be temporarily restrained from soliciting Defendant's patients.

DATED: August 13, 2013
Rome, New York


HON. PATRICK F. MACRAE, J.S.C.