

Capri Nail Corp. v Iris Nail Corp.

2004 NY Slip Op 30203(U)

January 2, 2004

Supreme Court, New York County

Docket Number: 0116705/2003

Judge: Walter Tolub

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: WALTER B. TOLUB
Justice

PART 15

CAPPAHAIL CORP

- v -

1A15 NAIL CORP

INDEX NO.

116-705-03

MOTION DATE

10/31/2003

MOTION SEQ. NO.

02

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

SCANNED

JAN 09 2004

**ACTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION**

Dated: 1/2/04

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION
WALTER B. TOLUB
Justice

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

-----X
CAPRI NAIL CORP. AND KYONG MI PARK,

Plaintiffs,

Index No. 116705/2003
Mtn Seq. 001, 002

-against-

IRIS NAIL CORP., JONG KIL HAN AND
WHITEFAIR EAST CORP.,

Defendants.

-----X
WALTER B. TOLUB, J.:

Motion sequence 001 and 002 are consolidated for disposition and disposed of in the following memorandum opinion.

Plaintiff, Kyong Mi Park (Ms. Park) and defendant, Jong Kil Han (Ms. Han) are the respective owners of two competing nail salons located on the Upper East Side. Plaintiff Capri Nail Corp. (Capri Nail) operates Iris Nail salon, located at 1217 Madison Avenue (88th Street). Defendant Iris Nail Corp. (Iris Nail) operates Carnegie Nails salon (formerly known as Iris Nail salon), located at 1306^{1/2} Madison Avenue (93rd Street). Both salons are registered New York corporations.

Prior to September 7, 1999, Ms. Park was the sole owner of Iris Nail, and Ms. Han worked for Ms. Park as a manager at the salon. On September 7, 1999, Ms. Park and Ms. Han entered into a Shareholder's Agreement whereby Ms. Park sold 50% of her interest in the corporation to Ms. Han. The agreement signed by the parties included a noncompete provision which stated:

9.1 Each Shareholder agrees that as long as he/she is a Shareholder of the Corporation and for a period of five (5) years thereafter, he/she and his/her spouse will not directly or indirectly own, manage, operate, control, be employed by, participate in, or be connected in any manner, with the ownership, management, operation or control any Five (5) blocks from the principal offices of the Corporation. opening such new business and contribute equally to the capital expenditures related to such new business (1999 Shareholders Agreement, Article 9.1; Plaintiff's Order to Show Cause Exhibit 1).

The restrictive covenant further provided that Ms. Han would neither directly, nor indirectly use the name, "Iris Nail" "in any form in any location in the borough of Manhattan in New York City so long as Park has any interest in any company using such terms" (1999 Shareholders Agreement, Article 9.2; Plaintiff's Order to Show Cause Exhibit 1).

Subsequent to the agreement, and apparently despite the clause restricting use of the name Iris Nail, Ms. Park and defendant Capri Nail Corp. opened a second nail salon located on Madison Avenue at 88th Street and named the salon Iris Nail. In response, Ms. Han renamed her salon Carnegie Nail.

On September 20, 2002, Ms. Park and Ms. Han entered into a second Agreement to Purchase Shares of Stock whereby Ms. Park sold her remaining one-half interest in Iris Nail salon (now Carnegie Nails) to Ms. Han. Again, to prevent competition between the parties' nail salons, the agreement contained a noncompete clause

which stated that:

4. The parties agree he/she and his/her spouse and/or family member will not directly or indirectly own, manage, operate, control, be employed by participate in, or be connected in any manner with the ownership, management, operation or control any businesses which will compete with other within five (5) blocks North and South and one block East and West of the existing location at 1306 ½ Madison Avenue, New York, NY and 1217 Madison Avenue, New York, NY. as long as the parties maintain ownership, interest at the two business location (Plaintiff's Order to Show Cause Exhibit 2).

Upon execution of the agreement, Ms. Park and her husband relinquished ownership of Iris Nail at 1306% Madison Avenue (Carnegie Nails) to Ms. Han, the sole owner and operator of the salon. Ms. Park and her husband continued to own and operate Iris Nail at 1217 Madison Avenue.

At some point prior to September 12, 2003, it appears that defendant Han learned that premises located at 1306 Madison avenue, directly adjacent to Carnegie Nails, were becoming available. Defendant Han intended to lease the property from defendant Whitefriar East Corp. (Whitefriar) and break through the wall, thereby increasing the square footage at Iris Nail from 400 to 1,050 square feet. Upon learning of this plan, plaintiffs notified defendant Whitefriar of the existence of the noncompete clause, commenced the instant action, and commenced motion sequence 001 seeking to enforce the noncompete clauses of the 1999 and 2000

Securities, Inc., 194 A.D.2d 651, 652 [2nd Dept. 1993]; Aetna v. Capasso, 75 N.Y.2d 860 (1990)). Allegations that are bare or merely conclusory are deemed insufficient (Doe, 73 N.Y.2d 748, 750; Kaufman v. International Business Machines Coru., 97 A.D.2d 925, 926 [3rd Dept. 1983] aff'd, 61 N.Y.2d 930 (1984); Business Networks of New York, Inc. v. Complete Network Solutions, Inc., 265 A.D.2d 194 (1st Dept. 1999)).

The injunctions sought by the respective parties in the instant applications stem from activities that the parties argue is violative of noncompete clauses contained within the 1999 and 2000 agreements for the sale of stock by Iris Nail Corporation in connection with the operation of Iris Nail Salon (now Carnegie Nails), located at 93rd Street and Madison Avenue, and currently owned and operated by defendant.

It is well accepted in this State that a restrictive covenant not to compete arising out of the sale of a business will be enforced provided that it is reasonable both in geographic scope and duration (Saaer Spuck Statewide Supply Co., Inc. v. Meyer, 273 A.D.2d 745, 746 [3rd Dept. 2000]; Cliff v. R.R.S. Inc., 207 A.D.2d 17, 19 [3rd Dept. 1994]; Mohawk Maintenance Co., Inc. v. Kessler, 52 N.Y.2d 276 (1981)). Said covenant not to compete is to be "construed strictly and should not be extended beyond the literal meaning of its terms" (DeCapua v. Dine-A-Mate. Inc., 292 A.D.2d 489, 492 [2nd Dept. 2002]; see also Gramercy Park Animal Center v.

Novick, 41 N.Y.2d 874 (1977)).

In the instant matter, the parties executed two agreements in connection with the sale of stock shares in Iris Nail Corp., the first in 1999, and the second in 2000. Although restrictive language is contained within both agreements, no evidence has been presented to support plaintiffs' contention that expansion of an existing salon location is prohibited by virtue of the restrictive covenants. Accordingly, at this juncture, plaintiff's request for an injunction barring defendants from expanding their salon at Madison and 93rd Street is denied.

However, evidence has been presented supporting the contention that the parties are restricted from opening, operating or participating in any nail salon-type business within the designated noncompete zone. Per the 2000 agreement, which supercedes the 1999 agreement, that zone appears to encompass the area from 83rd Street to 98th Street between Fifth and Park Avenues'. Contrary to plaintiff's argument, this is not an unreasonable restriction, as

1 ¶ 4. The parties agree he/she and his/her spouse and/or family member will not directly or indirectly own, manage, operate, control, be employed by participate in, or be connected in any manner with the ownership, management, operation or control any businesses which will compete with other within five (5) blocks North and South and one block East and West of the existing location at 1306 1/2 Madison Avenue, New York, NY and 1217 Madison Avenue, New York, NY. as long as the parties maintain ownership, interest at the two business location" (2000 Agreement to Purchase Shares of Stock, Paragraph 4; Plaintiff's Order to Show Cause Exhibit 2).

either party is free to open salons at any other location they desire in Manhattan outside of this fifteen-by-three-block zone. Accordingly, defendants' motion for an injunction barring plaintiff from opening and operating a nail salon at 83rd Street and Madison Avenue is granted. Accordingly, it is

ORDERED that motion sequence 001 wherein plaintiffs seek an injunction barring defendants from expanding their existing salon space located at 1306 ~~1/2~~ Madison Avenue is denied; and it is further

ORDERED that motion sequence 002 wherein defendants seek an injunction barring plaintiffs from opening and operating a nail salon located at 1027 Madison Avenue is granted; and it is further

ORDERED that the Clerk of Court enter judgment in favor of the respective parties.

Counsel for the parties are directed to appear for a Preliminary Conference in I.A. Part 15, Room 335, 60 Centre Street, New York, New York on February 13, 2004 at 11:00 a.m.

This memorandum opinion constitutes the decision and order of the Court.

Dated:

1/2/04



HON. WALTER B. TOLUB, J.S.C.