

P.J., Inc. v Williams

2006 NY Slip Op 30226(U)

July 12, 2006

Supreme Court, New York County

Docket Number: 0602277/2005

Judge: Rosalyn H. Richter

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AMENDED ORDER

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

PRESENT: ROSALYN RICHTER
Justice

PART 24

P.J. Inc.

INDEX NO. 602277/2005

- v -

MOTION DATE _____

C. Randolph Williams, Jeffrey Richardson,
Starkman & Associates, and Eric Starkman

MOTION SEQ. NO. 1

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

The June 13, 2006 decision is amended in accordance with the attached memorandum decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED

JUL 26 2006

COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Dated: 7/12/2006

R. Richter

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POSTION. ROSALYN RICHTER

AMENDED ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 24

-----X
P.J., INC.,

Plaintiff,

-against-

AMENDED
DECISION & ORDER
Index No. 602277/2005
Motion Seq. 1

C. RANDOLPH WILLIAMS, JEFFREY
RICHARDSON, STARKMAN & ASSOCIATES
AND ERIC STARKMAN, Individually and as an
Officer of STARKMAN & ASSOCIATES,

Defendants.

-----X
RICHTER, J.:

In the decision dated June 13, 2006, the Court overlooked that it had previously converted defendant Jeffrey Richardson's motion to dismiss to one for summary judgment on notice to all parties in an order dated February 8, 2006. Upon consent of all parties, the Court is amending the June 13 decision solely as to the issues contained herein.

Plaintiff alleges that defendant Richardson used confidential information gained while an employec of plaintiff's to recruit clients for defendant Starkman & Associates and thereby breached his duty of loyalty and engaged in unfair compctition. Specifically, plaintiff alleges that defendant Richardson used plaintiff's commercial good will and confidential customer lists to recruit nTag and Toy Industry Association, plaintiff's former clients. In his affidavit, defendant Richardson states that he did not possess or utilize any confidential information gained from plaintiff. He also states that he has never solicited nor ever attempted to solicit business from any of plaintiff's current or former clients. Defendant Richardson admits that Starkman & Associates submitted a proposal to Toy Industry Association, but that Toy Industry ultimately did

not select Starkman & Associates or plaintiff as its public relations agency. Defendant Richardson states that since his employment at Starkman & Associates, he has had no contact with nTag.

In support of his motion, defendant Richardson submits an affidavit from Julie Livingston, Director of Marketing and Communications for Toy Industry Association. Ms. Livingston states that she knew defendant Richardson while he worked at PJ Inc and became aware that Richardson was employed at Starkman in mid-2005. She states that on July 28, 2005, she approached Jeffrey Richardson to encourage Starkman & Associates to submit a proposal to Toy Industry for the position of public relations agency. She further states that at no time did Richardson approach her or any employee at Toy Industry Association in an attempt to solicit business.

Defendant Richardson's motion for summary judgment is granted and plaintiff's claims of breach of duty of loyalty and unfair competition are dismissed as to him. In its motion papers, plaintiff merely alleges that the only way that Starkman & Associates could have been involved in the bidding for Toy Industry Association's business was if defendant Richardson had exploited plaintiff's contacts. Defendant, however, through his submissions, established that he did not solicit business from Toy Industry and that he did not have any contact with nTag since his employment with plaintiff ended. In this motion, plaintiff has failed to submit any evidence to raise an issue of fact as to defendant Richardson's conduct and has also failed to mention any other client that defendant Richardson solicited business from.

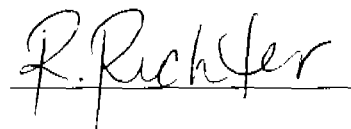
In plaintiff's supplemental opposition papers, Pamela Johnston, president of plaintiff PJ Inc, alleges in her affidavit that the "contacts were developed at great cost to plaintiff" and that

the clients needs were not “readily or easily identifiable, but were procured and retained by a formula for services” which the defendants knew through their employment at plaintiff corporation. However, there is nothing in the complaint about a formula or any trade secrets. In any event, “[a] customer list is not entitled to judicial protection if the information on it is readily ascertainable.” *Advanced Magnification Instruments of Oneonta, N.Y. v. Minuteman Optical Corp.*, 135 A.D.2d 889, 890 (3rd Dept. 1987). Here, plaintiff has not provided any evidence by persons engaged in the business of public relations or otherwise to the effect that the customer information that was allegedly taken contained valuable confidential information. *See Id.*

There is nothing in the record that shows that plaintiff took any measures to require defendant Richardson to guard the secrecy of the customer list during defendant’s employment with plaintiff or to prevent defendant from using the customer list once Richardson left plaintiff’s employment. *See Starlight Limousine Service, Inc. v. Cucinella*, 275 A.D.2d 704 (2nd Dept. 2000).

Therefore, defendant Richardson’s motion for summary judgment is granted.

July 12, 2006



Justice Rosalyn Richter

