

Nationwide Ct. Servs., Inc. v Sabatino
2007 NY Slip Op 30652(U)
April 9, 2007
Supreme Court, Suffolk County
Docket Number: 0033411/2006
Judge: Elizabeth H. Emerson
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SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION
TRIAL TERM, PART 44 SUFFOLK COUNTY

PRESENT: Hon. Elizabeth Hazlitt Emerson

MOTION DATE: 12-8-07
SUBMITTED: 1-24-07
MOTION NO.: 001-MD

NATIONWIDE COURT SERVICES, INC.,

Plaintiff,

-against-

JONATHAN TATUN, ESQ.
Attorney for Plaintiff
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Holbrook, New York 11741

CAMILLE SABATINO, JASON T. THOMAS, SELMA
CASH, LORNA DYGES and QUANTUM ABSTRACT,

Defendants.

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Upon the following papers numbered 1 to 14 read on this motion for preliminary injunction ; Order to Show Cause and supporting papers 1-6; Notice of Cross Motion and supporting papers ___; Answering Affidavits and supporting papers 7-14; Replying Affidavits and supporting papers ___; it is,

ORDERED that this motion by the plaintiff for a preliminary injunction is denied.

The plaintiff, Nationwide Court Services, Inc., is a legal services company specializing in title abstracting services, process serving, and public record searches and retrievals. The individual defendants were employees of Nationwide until August and September of 2006, when they left its employ and went to work for the defendant Quantum Abstract, LLC, a competing business. When they were employed at Nationwide, all four individual defendants executed confidentiality and non-solicitation agreements in which they agreed to keep Nationwide's confidential information secret and not to solicit any of Nationwide's employees or customers for a period of one year after leaving Nationwide's employ. The agreements broadly defined confidential information as follows:

[A]ll Proprietary Products, source codes, computer or data processing programs, methods of operation or proposed methods of operation, customer accounts, client lists, vendor lists, referral sources[,] price lists, discount lists, transactions, marketing plans, salary information, financial information, proposed transactions or security procedures of NATIONWIDE COURT SERVICES, INC. or any of its consultants

or prospective consultants and any confidential information which relates to title insurance[,] process services, court service, investigations or legal support services or other products or services NATIONWIDE COURT SERVICES, INC. sells, or intends to sell or manufacture.

The plaintiff moves for a preliminary injunction enjoining the defendants from competing with the plaintiff's business, from using the plaintiff's confidential information and trade secrets, and from contacting or soliciting the plaintiff's customers.

It is well settled that a preliminary injunction will not be granted unless the moving party first establishes (1) that it has a likelihood of ultimate success on the merits, (2) that irreparable injury will occur absent a preliminary injunction, and (3) that a balancing of the equities favors the movant (*see, IVI Environmental, Inc. v McGovern*, 269 AD2d 497; *see also, Aetna Ins. Co. v Capasso*, 75 NY2d 860; *J.A. Preston Corp. v Fabrication Enterprises, Inc.*, 68 NY2d 397, 406; *W.T. Grant Co. v Srogi*, 52 NY2d 496, 517; *Borenstein v Rochel Properties, Inc.*, 176 AD2d 171).

Since there are powerful considerations of public policy that militate against sanctioning the loss of a person's livelihood, restrictive covenants that tend to prevent an employee from pursuing a similar vocation after termination of employment are disfavored by the law. Such covenants will be enforced only if reasonably limited temporally and geographically, and then only to the extent necessary to protect the employer from unfair competition stemming from the employee's use or disclosure of trade secrets or confidential customer information. Thus, when the employer's past or prospective customers' names are readily ascertainable from sources outside its business, trade secret protection will not attach, and their solicitation by the employee will not be enjoined. On the other hand, if the employee's services are truly special, unique, or extraordinary and not merely of high value to his employer, injunctive relief may be available though trade secrets are not involved (*see, Columbia Ribbon & Carbon Mfg. Co. v A-1-A Corp.*, 42 NY2d 496, 499; *see also, Reed, Roberts Assoc. v Struman*, 40 NY2d 303, 307-308).

Preliminarily, the court notes that many of the allegations in the plaintiff's affidavit in support of the motion are based upon information and belief and hearsay. Moreover, they are devoid of specific factual details. There is no evidence in the record that the services the individual defendants performed for the plaintiff were truly special, unique, or extraordinary. There is no evidence in the record that the plaintiff's procedures, software, databases, and customer information, among other things, are not generally known and available to the public. As the defendants point out, the methods and procedures used to search title and prepare abstracts are widely known and available to the general public. The plaintiff fails to explain how its methods and procedures are unique or proprietary. There is no evidence in the record that the defendants are actually in possession of or using the plaintiff's confidential information or that they actually solicited the plaintiff's customers and employees. The plaintiff avers that its employees have been advised by its former customers that they have been contacted by the individual defendants for the purpose of soliciting business for the defendant Quantum. The plaintiff also avers that the defendant Camille Sabatino contacted its employees about working for Quantum. However, the plaintiff has failed to produce any affidavits from such employees. The evidence merely establishes

that the defendants are operating a competing business. The plaintiff's conclusory allegations are insufficient to establish that they are doing so in violation of the confidentiality and non-solicitation agreements they signed. Under these circumstances, the court finds that the plaintiff has failed to meet its burden of establishing its entitlement to injunctive relief. Accordingly, the motion is denied.

DATED: April 9, 2007

HON. ELIZABETH HAZLITT EMERSON
J. S.C.