

**Kirtas Tech., Inc. v Wijayapala**

2007 NY Slip Op 31603(U)

May 15, 2007

Supreme Court, Ontario County

Docket Number: 0098878/2007

Judge: William F. Kocher

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK

COUNTY OF ONTARIO SUPREME COURT

KIRTAS TECHNOLOGIES, INC.,

Plaintiff,

v.

DECISION

PRADEEP WIJAYAPALA

Index No. 98878

Defendant,

---

Plaintiff moves, by Order to Show Cause, for a preliminary injunction enjoining the defendant from violating the confidentiality agreement, defaming or disparaging plaintiff and its products, and operating two websites.

Plaintiff provides digitization products, including book scanners to customers throughout the world. Defendant was an employee of plaintiff, and in the course of his employment executed a confidentiality agreement which provides that defendant agrees not to disclose “any non-public information that relates to the actual or anticipated business or research and development of the Company, technical data, trade secrets or know-how...”. On March 3, 2006, defendant resigned his employment.

Plaintiff alleges that defendant has contacted plaintiff’s customers and disparaged plaintiff and its products. Specifically, plaintiff alleges that defendant created two websites and made false claims regarding problems with plaintiff’s products.

Plaintiff alleges that defendant disclosed confidential information on two websites. Specifically, plaintiff contends that defendant divulged information regarding a “sensor on the vacuum head” and a “sensor cable.”

“A preliminary injunction may be granted under CPLR article 63 when the party seeking such relief demonstrates: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party’ favor [citation omitted]”(Doe v Axelrod, 73 NY2d 748, 750).

(1) a likelihood of ultimate success on the merits

Plaintiff’s first cause of action is for breach of the confidentiality clause of the employment agreement. Plaintiff states a second cause of action for misappropriation. The third cause of action is for “disparagement/injurious falsehood” and the fourth causes of action is for corporate defamation.

With respect to the breach of the confidentiality agreement, the only statement that is alleged to have been made by defendant in breach of the confidentiality agreement appears at the website [www.ap2400.com](http://www.ap2400.com) where defendant states, “There is a single sensor on the vacuum head, which theoretically can detect if/when the head has picked up more than one page. However, the only thing the machine will do if this sensor is triggered is stop. It then waits for the operator to fix the situation.” In response, defendant had provided the Court with a copy of an interview, given by Lofti Belkhir, Chief Executive Officer and Founder of Kirtas Technologies, Inc., and published in the April 2004 issue of IEEE Control Systems Magazine. Mr. Belkhir states,

The SureTurn robotic arm incorporates a vacuum pickup head and accommodates book sizes ranging from 5" x 8" to 10" x 13". The arm also can reliably turn pages ranging from onion skin paper to photographic stock without any operator intervention or adjustment. The system uses a sensor that detects the page edge during operation, and automatically the pickup head at a fixed distance from the page edge, to prevent contact of the head with potentially brittle edges of rare or fragile books. This same sensor is also used to detect page drops, multi-feeds, and loose pages, helping to ensure gentle, reliable, and error-free page turning.

Clearly , the information provided by Mr. Belkhir in his interview is far more detailed and specific than the statements made by defendant at [www.apt2400.com](http://www.apt2400.com). Nothing in the documents presented to the Court at this state in the proceedings indicates that statements made by the defendant constitute "non-public information." Plaintiff has failed to show a likelihood of ultimate success on the merits with respect to his claim for breach of the confidentiality agreement.

Plaintiff also alleges corporate defamation. The elements of a defamation claim are "a false statement, published without privilege or authorization to a third party, constituting fault as judged by, at a minimum, a negligence standard, and it must either cause special harm or constitute defamation per se" (*Dillon v City of New York*, 261 AD2d 34, 38), quoting Restatement (Second) of Torts ¶ 558. CPLR 3016(a) provides, "In an action for libel or slander, the particular words complained of shall be set forth in the complaint, but their application to the plaintiff may be stated generally."

Plaintiff has failed to state with any specificity the defamatory statements made by defendant. Without such specificity, it cannot be said that defendant has shown a likelihood of success on the merits.

In order to state a cause of action for “disparagement/injurious falsehood,” plaintiff must allege special damages (*SRW Associates v Bellport Beach Property Owners*, 129 AD2d 328, 331). “In pleading special damages, actual losses must be identified and causally related to the alleged tortious act [citations omitted]” (*L.W.C. Agency, Inc. v St. Paul Fire and Marine Ins. Co.*, 125 AD2d 371, 373).

In *Gersh v. Kaspar & Esh* (11 AD2d 1005), in a case involving injurious falsehood, the Court held that “The general allegation that numerous prospective employers refused to employ plaintiff by reason of the intentional misstatements of defendants is inadequate as a pleading of special damages.”

Here, Plaintiff alleges, in its complaint that “Kirtas has suffered damages and the irreparable loss of business and income in an amount incapable of being ascertained at the present time.” Plaintiff failed to identify the special damages or their causal relationship to the allegedly false statements in either the complaint or the papers submitted pursuant to the instant motion.

Inasmuch as plaintiff has failed to show a likelihood of success on the merits, plaintiff’s motion for a preliminary injunction is denied

This constitutes the Decision of the Court. Submit Order accordingly.

Dated:

MAY 15<sup>TH</sup>, 2007



William F. Kocher  
Acting Supreme Court Justice