

Natural Organics, Inc. v Brown
2007 NY Slip Op 32265(U)
July 23, 2007
Supreme Court, Suffolk County
Docket Number: 0030852/2002
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: 3-7-07
SUBMITTED: 4-11-07
MOTION NO.: 003-MG; CASE DISP

NATURAL ORGANICS, INC.,

Plaintiff,

-against-

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ROBERT BROWN,

Defendant.

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Upon the following papers numbered 1 to 31 read on this motion for summary judgment; Notice of Motion and supporting papers 1-18; Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers 19-29; Replying Affidavits and supporting papers 30-31; it is,

ORDERED that this motion by the defendant for summary judgment in his favor is granted, and the complaint is dismissed.

The plaintiff, Natural Organics, Inc., manufactures, markets, and sells vitamins, vitamin and herbal supplements, dietary supplements, soy-based beverages, powdered beverage mixtures, and related energy supplement products, which are sold in health food stores in New York and throughout the United States. The defendant, Robert Brown, was hired by the plaintiff as its Director of Operations in 1989. His responsibilities included overseeing the bottling of products, the purchasing of raw materials, warehouse inventory management, product packaging and distribution, the purchasing of equipment, and some plant maintenance. When he was hired by the plaintiff, the defendant was required to execute a non-disclosure and non-competition agreement for employees that provided, in pertinent part, as follows:

That Natural Organics, Inc. has processes, product formulas, customer lists, catalogs, order forms, selling methods, training, manuals and prices, all developed by Natural Organics, Inc., at great expense and time.

That it is recognized that the foregoing techniques and/or

methodology and information and processes are special and unique and that Natural Organics, Inc. would be irreparably damaged by a disclosure in any form of this information by the undersigned to any party outside Natural Organics, Inc. without the prior written consent of at least two officers of Natural Organics, Inc.

Consequently, the undersigned agrees absolutely and unconditionally to consider all such techniques, information, customer lists, employee lists, business or trade secrets, processes and methodologies, which have been specifically developed by Natural Organics Inc. and not provided to it by other sources, as highly confidential property rights exclusive to Natural Organics, Inc. which will not be converted or disclosed in any form, for the duration of the undersigned's employ and after separation from Natural Organics, Inc. to any third party, and employee shall not directly or indirectly solicit or accept any business from any of the accounts or customers of Natural Organics, Inc.

* * *

Employee hereby acknowledges, agrees and consents that employee shall not work for or be employed by a competitor of Natural Organics, Inc. for a period of eighteen (18) months from the date of termination of employment with Natural Organics....

After he was hired by the plaintiff, the defendant's job responsibilities were expanded to include certain aspects of the manufacturing process, and he was given access to the formulas used by the plaintiff in creating its products. Accordingly, in September 1989, he was required to execute a second non-disclosure agreement. That agreement provided, in pertinent part, as follows:

That Natural Organics, and its family of related companies has processes and product formulas, all of which are trade secret[s] and all developed by Natural Organics at great expense and time.

That it is recognized that the foregoing formulations and processes are trade secrets and that Natural Organics would be irreparably damaged by disclosure in any form of this information by the undersigned to any party outside Natural Organics.

Consequently, the undersigned agrees absolutely and unconditionally to consider all such techniques, procedures, methodologies, formulations or trade secrets, which have been specifically developed by Natural Organics as highly confidential property rights exclusive to Natural Organics which will not be converted or disclosed in any

form to any third party, not only for the duration of the undersigned's employ but also after separation from Natural Organics.

The defendant was eventually promoted to Vice President of Operations, and his responsibilities were expanded to include, inter alia, the entire manufacturing operation, managing the plaintiff's retail store, overseeing the plaintiff's computer department, installing a new computer system, and assisting in the construction of a new manufacturing facility. In October 2001, after almost 13 years, the defendant left the plaintiff's employ.

Approximately nine months later, the plaintiff responded to an advertisement on an internet job board for a position as Vice President of Operations at Consac Industries, Inc., the defendant in the related action (hereinafter "Consac"). Consac, like the plaintiff, is engaged in the marketing and sale of health foods, soy-based drinks and drink powders, vitamins, dietary supplements, and related energy supplements that are sold to consumers through health food stores. During the interview process, the defendant provided Consac with copies of the aforementioned non-competition and non-disclosure agreements. The defendant signed a consulting agreement with Consac on June 20, 2002. The agreement, which was for a term of three months, provided that the defendant's duties and responsibilities were to provide management advisement services to Consac. Specifically, the defendant was hired to resolve Consac's warehousing and supply-line issues, i.e., to lessen the amount of time that Consac's products were unavailable, which required improved coordination between the manufacturing, packaging, and purchasing departments and improved inventory, record-keeping, and accounting procedures. The defendant also advised Consac on outsourcing its manufacturing and distribution operations. The defendant's contract was extended for a period of two months until November 2002, when his employment was terminated due to threats by the plaintiff to commence a legal action against Consac for the defendant's alleged violation of the aforementioned non-competition and non-disclosure agreements.

The plaintiff subsequently commenced this action against the defendant and a related action against Consac (Index No. 8685-2003). The complaint in this action contains two causes of action for breach of contract and misappropriation of trade secrets, respectively. By a prior order of this court (Pitts, J.) dated September 15, 2003, the defendant's motion to dismiss the complaint for failure to state a cause of action was denied. Discovery is now complete, and the defendant moves for summary judgment. In support of thereof, the defendant argues, inter alia, that the non-competition covenant is unreasonably broad on its face and, therefore, unenforceable because it does not contain a geographic limitation, it precludes him from accepting any position with a competitor, it does not define "competitor" or "trade secret," and the temporal limitation of 18 months is unreasonably long.

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. 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). This latter principle has been interpreted to reach agreements between members of the learned professions (*see, Reed, Roberts Assoc. v Struman, supra* at 308, *citing Karpinski v Ingrassi*, 28 NY2d 45).

The court finds that the non-competition covenant at issue, which provides that the defendant shall not work for or be employed by a competitor of the plaintiff for a period of 18 months from the date of termination of his employment with the plaintiff, is unreasonably broad on its face both geographically and with respect to the types of positions that the defendant may not accept (*see, Crippen v United Petroleum Feedstocks*, 245 AD2d 152). The plaintiff urges the court to modify the agreement to include the defendant's employment with Consac, whose offices are only 10 miles away from the plaintiff's offices.

The determination of whether an overly broad restrictive covenant should be enforced to the extent necessary to protect an employer's legitimate interest involves a case specific analysis, focusing on the conduct of the employer in imposing the terms of the agreement. Severance or partial enforcement may be justified if an employer demonstrates, in addition to a legitimate business interest, an absence of overreaching, coercive use of dominant bargaining power, or other anti-competitive misconduct. Factors weighing against partial enforcement are the imposition of the covenant in connection with hiring or continued employment, the existence of coercion, or a general plan of the employer to forestall competition, and the employer's knowledge that the covenant was overly broad (*see, BDO Seidman v Hirshberg*, 93 NY2d 382, 394-395). Here, the covenant was imposed in connection with the defendant's hiring. Moreover, the court is unpersuaded that it is being enforced to protect a legitimate business interest. Contrary to the plaintiff's contentions, the record does not demonstrate that the defendant violated the agreement and disclosed any trade secrets or confidential information to Consac during his short period of employment there.

The plaintiff takes the position that all of its internal processes, procedures, techniques, and methods of operating are confidential, proprietary, or trade secrets. However, except for the formulas for the products themselves, the plaintiff has failed to point to any specific methodology or compilation of information that is not readily available and freely communicated within the industry (*see, Zurich Depository Corp. v Gilenson*, 121 AD2d 443, 445). Matters of public knowledge or general knowledge in an industry cannot be appropriated by one as a trade secret (*see, Delta Filter Corp. v Morin*, 108 AD2d 991, 992). Accordingly, the identities of suppliers are not trade secrets (*see, Matter of Three Dots v Lonny's Wardrobe*, 292 AD2d 309, 310). Cost and price information is not a trade secret when, as here, the evidence establishes that the plaintiff's suppliers also supplied the plaintiff's competitors (*see, Cosmos Forms v American Computer Forms*, 193 AD2d 577, 579). There is no evidence in the record, other than the plaintiff's conclusory allegations, that the plaintiff's manufacturing, marketing, shipping, and inventory methods are materially different from those of its competitors (*see, Delta Filter Corp. v Morin, supra* at 992-993). The mere fact that it suited the plaintiff to keep such information from others does not confer trade secret status upon it (*see, Wiener v Lazard Freres & Co.*, 241 AD2d 114, 124). Moreover, the plaintiff's contentions to the contrary notwithstanding,

the record does not establish that the defendant disclosed to Consac any formulas for the production of the plaintiff's products. That the defendant had access to the plaintiff's trade secrets is not proof that he misappropriated them (*see, Falconwood Corp. v In-Touch Technologies*, 227 AD2d 215, 216).

The plaintiff appears concerned about the defendant's knowledge of the intricacies of its business operations. However, mere knowledge of the intricacies of a business is not enough. Absent any wrongdoing, it cannot be said that a former employee should be prohibited from utilizing his knowledge and talents in a particular area (*see, Reed, Roberts Assoc. v Struman, supra* at 309; *Marietta Corp. v Fairhurst*, 301 AD2d 734, 739; *Catalogue Serv. of Westchester v Henry*, 107 AD2d 783, 784). When, as here, the knowledge does not qualify for protection as a trade secret and there has been no conspiracy or breach of trust resulting in commercial piracy, there is no reason to inhibit an employee's ability to realize his potential both professionally and financially by availing himself of opportunity (*see, Reed, Roberts Assoc. v Struman, supra* at 309). Therefore, despite the defendant's excellence or value to the plaintiff, the court finds that his services were not extraordinary or unique.

In view of the foregoing, the court finds that the papers submitted by the plaintiff in opposition to the defendant's motion for summary judgment do not justify a severance or partial enforcement of the restrictive covenant in this case. The evidence does not establish that the defendant disclosed or misappropriated any secret information, that the defendant's services were extraordinary or unique, or, for that matter, that the plaintiff suffered any lost business, lost customers, or lost profits as a result of the defendant's purported misconduct (*see, Columbia Ribbon & Carbon Mfg. Co. v A-1-A Corp., supra* at 500; *Suburban Graphics Supply Corp. v Nagle*, 5 AD3d 663, 666; *Allan Dampf, P.C. v Bloom*, 127 AD2d 719, 720). Accordingly, the motion is granted.

HON. ELIZABETH HAZLITT EMERSON

DATED: July 23, 2007

J. S.C.