

Ford Models, Inc. v Spears

2009 NY Slip Op 31920(U)

August 19, 2009

Supreme Court, New York County

Docket Number: 601372/2009

Judge: Marcy S. Friedman

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

PRESENT: MARCY S. FRIEDMAN
Justice

PART 57

FORD MODELS, INC.

INDEX NO.

601372/09

MOTION DATE

- v -
KENORA SPEARS

MOTION SEQ. NO.

1

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion ~~to~~ for preliminary injunction

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1

2

3

Memo. of Law

M1-M3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION/ORDER.**

FILED

AUG 26 2009

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 8/19/09

[Signature]
MARCY S. FRIEDMAN

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

THIS CASE IS REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

_____ x
FORD MODELS, INC.,

Petitioner,

- against -

KENDRA SPEARS,

Respondent.

Index No.: 601372/2009

DECISION/ORDER

Action #1

_____ x
FORD MODELS, INC.,

Plaintiff,

- against -

NEXT MANAGEMENT, LLC,

Defendant.

Index No.: 601373/2009

Action #2

FILED
AUG 26 2009
COUNTY CLERKS OFFICE
NEW YORK

In Action #1, Ford Models, Inc. (“Ford”) seeks an injunction in aid of arbitration pursuant to CPLR 7502(c), enjoining respondent Kendra Spears (“Spears”) from breaching her exclusive management contract with Ford (“Agreement”). In related Action #2, Ford as plaintiff seeks a preliminary injunction, pursuant to CPLR 6301, enjoining defendant Next Management, LLC (“Next”) from interfering with the Agreement. The motions are consolidated for disposition.

It is undisputed that Ford, a modeling agency, and Spears, a model, entered into an agreement, dated December 4, 2007, in which Spears appointed Ford, for a three year term, as

“the exclusive personal manager of [Spears] in the United States, Canada, Brazil and France in and with respect to advising, counseling, promoting and contracting print, runway, fitting, television and film work.” (Agreement, ¶¶ 1, 2.) The Agreement provides for mediation if “a dispute arises out of or relates to this Agreement, or the breach thereof,” and for mandatory arbitration “[i]f the dispute cannot be resolved within three (3) hours of mediation.” (*Id.*, ¶ 12.) It is further undisputed that Spears terminated her “association” with Ford, by letter dated April 19, 2009, and that Next became her manager on or about the same date.

By order to show cause dated May 6, 2009 in Action #1, this court issued a temporary restraining order enjoining Spears, pending the hearing of Ford’s motion for a preliminary injunction, “from hiring, retaining, contracting with, using, or accepting the services [of] any manager, agent, or “booker” . . . other than Ford, in connection with print, runway, fitting, television and film work” in the countries specified in the Agreement. By order to show cause also dated May 6, 2009 in Action #2, the court issued a temporary restraining order enjoining Next, pending the hearing of Ford’s motion for a preliminary injunction, from representing or managing Spears or from procuring services for Spears in connection with print, runway, fitting, television and film work in the specified countries. By orders dated May 26, 2009, the Appellate Division, First Department, without opinion, vacated the temporary restraining orders without prejudice to further proceedings in Supreme Court. Decision of Ford’s motions for injunctive relief was thereafter held in abeyance pending the parties’ efforts, which have proved unsuccessful, to mediate their dispute.

It is well settled that a motion for a preliminary injunction will be granted “only where the movant shows a likelihood of success on the merits, the potential for irreparable injury if the

injunction is not granted and a balance of equities in the movant's favor (Grant Co. v Srogi, 52 NY2d 496, 517; McLaughlin, Piven, Vogel, Inc. v Nolan & Co., 114 AD2d 165, 172, lv denied 67 NY2d 606).” (Chernoff Diamond & Co. v Fitzmaurice, Inc., 234 AD2d 200, 201 [1st Dept 1996]. Accord City of New York v 330 Cont. LLC, 60 AD3d 226 [1st Dept 2009].) “The movant has the burden of establishing a right to this equitable remedy.” (McLaughlin, Piven, Vogel, 114 AD2d at 172.) It is further settled that a motion for an injunction in aid of arbitration, pursuant to CPLR 7502(c), will be granted only where the arbitration award may be rendered ineffectual without the injunction and where the “general criteria” for injunctive relief under CPLR 6301 are met. (See Matter of Cullman Ventures, Inc. v Conk, 252 AD2d 222, 230 [1st Dept 1998]. Accord Erber v Catalyst Trading, LLC, 303 AD2d 165 [1st Dept 2003].)

Applying these standards, the court holds that Ford is not entitled to the requested injunction against Spears. In “certain narrowly tailored situations,” as “where an employee refuses to render services to an employer in violation of an existing contract, and the services are unique or extraordinary, an injunction may issue to prevent the employee from furnishing those services to another person for the duration of the contract.” (American Broadcasting Cos. v Wolf, 52 NY2d 394, 402 [1981].)

Here, upon consideration of the Appellate Division order vacating the temporary restraining order and the parties' extensive submissions, this court finds that although Spears is, according to Ford, on the verge of “a breakthrough,” Spears' services as a model may not be categorized as “unique” within the meaning of existing precedents. As the Appellate Division has reasoned, “[i]nsofar as defendant's model's services are ‘unique,’ in the sense that she looks like herself and not somebody else and is very popular, that uniqueness is not vis-a-vis plaintiff

but vis-a-vis photographers and commercial organizations who hire the model.” (Wilhelmina Models, Inc. v Abdulmajid [“Iman”], 67 AD2d 852, 853 [1st Dept 1979]. Compare King Records, Inc. v Brown, 21 AD2d 593 [1st Dept 1964] [musician]; Zomba Recording LLC v Williams, 15 Misc3d 1118(A) [Sup Ct, NY County 2007] [musician].) As Ford acknowledges, its agreement with Spears is “very similar to the thousands of agreements that Ford has with models around the world.” (Ponanski Aff., ¶ 7.) Ford does not employ Spears and receives commissions as compensation for services that Spears renders to third-parties rather than to Ford directly. Under these circumstances in which “[p]laintiff renders services to defendant model as manager and defendant model pays plaintiff,” damages have been held to be an adequate remedy. (Iman, 67 AD2d at 853.)

Ford’s request for injunctive relief against Next should also be denied. Ford asserts causes of action against Next for tortious interference with contract and unfair competition. In support of its motion for an injunction, Ford relies on the fact that Next began to manage Spears at about the time she purported to terminate her contract with Ford. However, the complaint and moving papers do not plead any factual details supporting Ford’s conclusory allegation that Next induced Spears to breach the contract. (See generally Guard-Life Corp. v S. Parker Hardware Mfg. Corp., 50 NY2d 183, 190-191 [1980].) At this early juncture in the action, Ford does not demonstrate the potential merits of its tortious interference claim. Ford’s assertion that Spears would not have left Ford unless Next had made her an “extraordinary offer” (see Ford Reply Memo. at 20) is speculative and therefore does not make the necessary showing of merit. Ford’s assertions that it will sustain reputational injury or loss of good will if the injunction is not granted are also speculative and therefore insufficient to demonstrate irreparable harm. (See GFI

Secs., LLC v Tradition Asiel Secs., Inc., 61 AD3d 586 [1st Dept 2009].)

Finally, Ford requests that the papers on this motion be sealed to the extent that they disclose the rate of compensation paid by Ford to Spears. The court finds that good cause exists for this request. In determining whether good cause exists, the court must balance the need to protect confidential information against the right of the public to obtain access to court records. (See 22 NYCRR § 216.1; Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd., 274 AD2d 1 [1st Dept 2000].) Ford's rate of compensation to Spears is confidential. Redaction of the rate from the papers is an appropriately limited means of sealing that information. (See id. at 8.)

It is accordingly hereby ORDERED that the motion of Ford Models, Inc. in Action #1 for an injunction in aid of arbitration and the motion of Ford Models, Inc. in Action #2 for a preliminary injunction are denied; and it is further

ORDERED that copies of the papers on these motions, redacted as to the compensation rate paid by Ford to Spears, shall be filed with the Clerk, and that each party shall promptly collect from the Clerk of Part 57 the unredacted papers, containing references to the compensation rate, that the party filed on these motions; and it is further

ORDERED that the parties shall appear for a preliminary conference in Part 57 of this Court on September 10, 2009 at 11:00 a.m., the date on which a preliminary conference was previously scheduled for Ford v Next Mgt., LLC, Index No. 603304/08.

This constitutes the decision and order of the court.

Dated: New York, New York
August 19, 2009



MARCY FRIEDMAN, J.S.C.

FILED
AUG 26 2009
COUNTY CLERK'S OFFICE
NEW YORK