

Advanced Arch Grilles, Inc. v Coco

2011 NY Slip Op 32655(U)

October 5, 2011

Sup Ct, Nassau County

Docket Number: 005958-11

Judge: Timothy S. Driscoll

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**SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER**

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

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ADVANCED ARCH GRILLES, INC.,

**TRIAL/IAS PART: 20
NASSAU COUNTY**

Plaintiff,

Index No: 005958-11

Motion Seq. No. 1

Submission Date: 9/23/11

-against-

**JAMES R. COCO, SR., JAMES R. COCO, JR., AND
JC ENTERPRISES DISPLAY FIXTURE CO., INC.
d/b/a ARCHITECTURAL GRILLE DIVISION,**

Defendants.

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Papers Read on this Motion:

- Amended Order to Show Cause, Supplemental Affirmation,
Supplemental Affidavit, Affidavit and Exhibits.....x**
- Memorandum of Law in Support.....x**
- Affirmation in Opposition, Affidavit in Opposition and Exhibits.....x**
- Supplemental Affirmation in Support and Exhibits.....x**

This matter is before the court on the Order to Show Cause filed by Plaintiff Advanced Arch Grilles, Inc. ("Plaintiff" or "Company") on June 14, 2011 and submitted on September 23, 2011 (motion sequence # 1). The Court refers Plaintiff's Order to Show Cause to a conference on October 12, 2011 at 9:30 a.m. based on the Court's conclusion that this application is inextricably intertwined with a related matter pending before the Court and should be considered in conjunction with the pending motions in that related matter. The related matter, *In the Matter of the Application of James R. Coco, Sr., the Holder of More than 20 Percent of All Outstanding Shares of Advanced Arch Grilles*, Index Number 1930-11 ("Related Action"), is

scheduled for a conference before the Court on October 12, 2011 at 9:30 a.m., pursuant to a prior decision of the Court in the Related Action. The so-ordered stipulation dated June 17, 2011 (Ex. A to Tenedios Supp. Aff. in Supp.) shall remain in effect pending further Order of the Court.

BACKGROUND

A. Relief Sought

Plaintiff moves for an Order, 1) pursuant to CPLR Article 63, granting Plaintiff a Temporary Restraining Order, Preliminary Injunction and Permanent Injunction, restraining and enjoining the Defendants from a) providing goods or services of any nature, directly or indirectly, to any competitor of the Company; and b) providing goods or services of any nature, directly or indirectly, to any customer of the Company; and c) disclosing and/or utilizing the Company's trade secrets and proprietary information, including but not limited to customer lists and preferences, and pricing information; d) providing any information obtained from the Company either directly or indirectly, or arising out of any of the Defendants' ownership in, employment by, or performance of services for the Company, in whole or in part, to any other individual or entity; e) soliciting or attempting to solicit business from, or engage or attempt to engage in any business with any client, prospective client, customer, prospective customer, subcontractor or prospective subcontractor of the Company, or of any affiliates of the Company, or to compete with the existing or prospective business of the Company, within a 75 mile radius of any client, customer, or location of the Company, whether directly or indirectly, in any capacity whatsoever and whether individually or for a competitor or subcontractor of the Company; f) using the Architectural Grille Division trade name, or any similar name; g) representing that they are affiliated with Advanced Arch Grilles Group LLC; h) soliciting or attempting to solicit any sales representatives or employees of the Company to work for, or invest in, any business venture in which Defendants James R. Coco, Sr. ("Coco Sr.") and James R. Coco, Jr. ("Coco Jr."), or either of them, have any direct or indirect financial interest; and i) accessing any of the Company's documents or records, of whatever nature, including but not limited to hard copies and electronically stored files; 2) directing the Defendants to return to the Company, on or before the return date of this Order to Show Cause, all files and other documents of the Company, taken or obtained by any Defendant, of whatever nature, including but not limited to electronically stored files; 3) directing the Defendants to make available to the

Company for inspection and electronic retrieval and copying all electronic files, other data generated by and/or stored on any computer and/or storage media (*i.e.*, hard drive, hard disks, floppy disks, backup tapes), or other electronic data used by a Defendant from January 1, 2008 to date. Such items include, but are not limited to, e-mail and other electronic communications, word processing documents, spreadsheets, data bases, calendars, telephone logs, contact manager information, internet usage files, offline storage or information stored on removable media, information contained on laptops or other portable devices and network access information; 4) directing the Defendants to disclose all customers and potential customers, including names and addresses, contact persons, and dates of contact, any orders received, description of product and prices charged, solicited by any of the Defendants, on the return date of the Motion; 5) directing the Defendants to disclose all suppliers and subcontractors and potential suppliers and subcontractors, including names and addresses, contact persons, and dates of contact, any orders received, description of product and prices charged, solicited by any of the Defendants, on the return date of the Motion; 6) directing all of the Defendants to provide computer passwords and any other information so that the Company may have access to the information contained in their computers; 7) directing the Defendants to immediately provide an accounting of all monies received by the Defendants; 8) pursuant to CPLR § 6201, granting an attachment and/or constructive trust against all of the assets of the Defendants; and 9) granting an inversion of priority, and expedited discovery, and directing that the Defendants appear at the offices of the Company's counsel, or at some other location to be determined by the Court, for an examination before trial to begin at a date within the next 30 days, as Ordered by the Court.

Defendants Coco, Sr., Coco, Jr. and JC Enterprises Display Fixture Co., Inc. d/b/a Architectural Grille Division oppose Plaintiff's application.

B. The Parties' History

This action involves similar parties and issues as the Related Action. In the Related Action, Petitioner Coco Sr. seeks dissolution of the Company pursuant to BCL § 1104-a, based on the allegation that Daniel L. Roeper ("Roeper"), a 60% shareholder in the Company, has engaged in oppressive conduct towards Coco, Sr.

By decision dated July 28, 2011 in the Related Action ("Related Decision"), the Court granted Coco Sr.'s application to file an amended petition to add Coco Jr. as a petitioner. In the

Related Decision, the Court also directed that the other motions pending before the Court in the Related Action shall be the subject of a conference on October 12, 2011 at 9:30 a.m., at which time the Court will address whether counsel for the parties wish to provide the Court with supplemental submissions in connection with the pending motions, and/or file new motion(s) in light of the amendment that the Court permitted.

In support of the Order to Show Cause *sub judice* ("Instant Motion"), Roeper affirms that, following the filing of the motions in the Related Action, he learned of other improper acts committed by the Defendants. Roeper avers that 1) "at a point in time currently unknown to me" (Roeper Supp. Aff. at ¶ 3), Coco Sr. downloaded an entire drive from a computer server owned by the Company which contained, *inter alia*, price lists, a customer list and drawings, some of which constitute trade secrets of the Company; and 2) Coco Jr. has improperly solicited a sales representative of the Company named Donald Romano ("Romano") to invest in a business designed to compete with the Company. In light of these assertions, the Company requests an Order enjoining the Defendants from 1) soliciting Company representatives or employees to work or invest in a business venture in which Coco, Sr. and/or Coco, Jr. have a financial interest; and 2) accessing the Company's documents or records, including hard copies and electronically stored files.

Roeper cites other recent events that, he submits, support an award of injunctive relief. Roeper affirms that Coco, Sr. accessed the Company's computer system on October 22, 2010 using his remote access which provided him full access to the Company's file directory and company records. Coco, Sr. created two folders for the purpose of transferring the entire drive to an internet protocol ("IP") address located in Farmingdale. The drive contained, *inter alia*, the Company's price lists, technical drawings and marketing folders. Roeper provides a computer snapshot of the folders and the contents of the file folders (Ex. A to Roeper Aff. in Supp.). Roeper affirms that "it would appear" (Roeper Aff. in Supp. at ¶ 7) that these records were used by Coco, Sr. to create orders for products that Defendants intend to sell in a competing business.

Romano, a sales representative for the Company, affirms that he received a telephone call from Coco, Jr. on or about June 10, 2011. During this conversation, Coco, Jr. asked Romano whether he was interested in investing in a company he was forming. Romano affirms that it was "my understanding" (Romano Aff. in Supp. at ¶ 4) that Coco, Jr. intended to form a

company that would compete with the Company, and “[b]ased on [my conversation with Coco, Jr.], I believe that I was being asked to invest in a business which was specifically targeting the business line pursued by [the Company], that is, architectural grilles” (*id.* at ¶ 7).

In opposition, Defendants’ counsel submits that the Instant Motion “improperly seeks to render moot the Motions pending before the Court and the schedule for briefing set out by the Court in the [Related Action]” (Lefkowitz Aff. in Opp. at ¶ 2). Defendants’ counsel affirms that the “only new and relevant fact” is that on June 10, 2011, Coco, Jr. was fired from his position with the Company. In support, Defendants’ counsel provides a copy of a letter (“Termination Letter”) dated June 9, 2011, on Company stationery, addressed to Coco, Jr. and signed by Roeper. The letter advised Coco, Jr. that his employment with the Company was terminated as of receipt of the letter. The letter also, *inter alia*, 1) “reminded” Coco, Jr. to return all Company property before leaving the premises; 2) advised Coco, Jr. that he was forbidden from accessing or copying any Company records; and 3) “reminded” Coco, Jr. of the limitations imposed by the non-compete agreement that he signed.

Defendants’ counsel affirms, further, that the name “Advanced Architectural Grilles” is a d/b/a of JC Enterprises Display Fixtures Co., and has been a d/b/a of that entity for six years. It was never transferred to the Company, or purchased by Roeper or the Company.

Coco, Jr. affirms that he was employed by the Company until June 10, 2011 when he received the Termination Letter. He submits that Defendants filed this motion “seeking to restrain me from metal fabrication under the guise that it would be “competition” with [the Company]” (Coco, Jr. Aff. in Opp. at ¶ 2). Coco, Jr. denies ever competing with, or diverting a business opportunity from, the Company.

Coco, Jr. avers, further, that he and Coco, Sr. previously worked in a family business known as JC Enterprises Fixture Co., Inc. The Coco family has been involved in the metal fabrication business for eighty (80) years. They created an architectural grilles division and filed a d/b/a Certificate to engage in business as “Advanced Architectural Grilles.” They also created a distinctive logo, consisting of a capitalized and italicized “AAG” which represented this company. When he and his father became involved with the Company, Roeper advised them that he did not want to purchase the business name and logo of Advanced Architectural Grilles (“AAG”), but rather wished to operate his company under a different name. It was then that

Advanced Arch Grilles, the Plaintiff in this action, was formed.

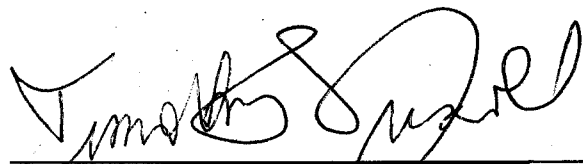
Coco, Jr. affirms that he hired a crew, developed a business plan and ran educational training seminars for the employees. In support, he provides a curriculum of the in-house training that he organized (Ex. 3 to Coco, Jr. Aff. in Opp.), that was required for every AAG employee. Roeper began using the "AAG" mark over the objection of Coco, Jr. and Sr. and Coco, Jr. affirms that if Roeper is using its name, logo or website, he is doing so without authorization.

In reply, Plaintiff submits that they have demonstrated, based on the new information provided herein, that it was always Defendants' intention to compete with Plaintiff. Plaintiff alleges, *e.g.*, that Defendants attempted to transfer Plaintiff's website in their own name without Plaintiff's consent, and provide documentation in support (Ex. E to Tenedios Supp. Aff. dated September 9, 2011). That documentation relates to Advanced Arch Grilles, Inc., the company that Coco Jr. and Sr. contend was their own.

RULING OF THE COURT

The Court concludes that Plaintiff's Order to Show Cause is inextricably intertwined with the Related Action, and should be considered in conjunction with the motions pending in the Related Action. Accordingly, the Court refers Plaintiff's Order to Show Cause to a conference on October 12, 2011 at 9:30 a.m. The so-ordered stipulation dated June 17, 2011 (Ex. A to Tenedios Supp. Aff. in Supp.) shall remain in effect pending further Order of the Court.

ENTER



HON. TIMOTHY S. DRISCOLL

DATED: Mineola, NY
October 5, 2011

J.S.C.

ENTERED
OCT 12 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE