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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

J.C. EHRLICH CO., INC.,

Plaintiff,

-against-

DECISION and ORDER
INDEX NO. 5463-13
RJI NO. 01-13-111584

ATTENTION PEST SOLUTIONS, LLC; JASON A. GARNEY; JOHN W. MAZUREK; and MICHAEL C. CAMMARERE, Individually and in their capacities as principals of ATTENTION PEST SOLUTIONS, LLC,

Defendants.

Supreme Court Greene County All Purpose Term, November 12, 2013
Assigned to Justice Joseph C. Teresi

APPEARANCES:
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TERESI, J.:

Plaintiff commenced this action, for monetary damages and an injunction, against three of its former employees. Its Verified Complaint sets forth causes of action sounding in: breach of contract, breach of duty of loyalty, tortious interference with contract or prospective business relationships, fraud, and misappropriation of confidential information. Simultaneous with

commencement, Plaintiff moves for a preliminary injunction. It seeks to enjoin Defendants from contacting or performing services for Plaintiff's customers and to prohibit Defendants from using or divulging Plaintiff's confidential information. Defendants oppose Plaintiff's motion and move to dismiss the Verified Complaint pursuant to CPLR §3211(a)(7). Plaintiff opposes Defendants' motion. On this record, neither Plaintiff nor Defendants established their entitlement to the relief they seek and both motions are denied.

EMPLOYMENT BACKGROUND

Plaintiff is a pest control company. It has an office in Albany, New York, which services thirteen New York Counties, portions of Western Massachusetts, and Vermont (hereinafter "Albany Office").

Plaintiff formerly employed all three individual Defendants through its Albany Office. Plaintiff, and its predecessors, employed Defendant John Mazurek (hereinafter "Mazurek") from 1995 to April 28, 2012. When Mazurek separated from such employment, he was the District Manager for Plaintiff's Albany Office. Plaintiff, and its predecessors, also employed Defendant Jason Garney (hereinafter "Garney"). His employment started in 1999 and continued until September 21, 2012. Garney's last position with Plaintiff was as its Albany Office's Operations Manager. Defendant Michael Cammarere (hereinafter "Cammarere") was also employed by Plaintiff. He worked in Plaintiff's Albany Office from 2008 to May 6, 2013 as a Pest Control Technician. Plaintiff employed each of these individuals pursuant to a written contract, and attached each of their contracts to its Verified Complaint.

Plaintiff's contract with Mazurek was dated January 1, 2011. It includes a covenant not

to compete, a non-solicitation clause and a confidentiality agreement. The covenant not to compete prohibits Mazurek from engaging in Plaintiff's line of business, pest control, for two years from the termination of his employment. The two years may be lengthened, for an additional two years, upon Plaintiff obtaining an injunction against Mazurek. Additionally, it applies geographically to the entire area served by Plaintiff's Albany Office. The non-solicitation clause then prohibits Mazurek from soliciting, for the benefit of himself or others, Plaintiff's customers, prospective customers, and employees. The non-solicitation clause's duration and geographic reach is identical to the covenant not to compete's limitations. The confidentiality agreement portion of the contract restricts Mazurek from using or divulging "during or after the term of his employment... [Plaintiff's] confidential information." The contract defines confidential information, in part, as "information relating to sales, sales volume... strategy, [and] customers." The contract also prohibited Mazurek from participating in any business ventures, other than Plaintiff's, while employed by Plaintiff.

Garney's employment contract with Plaintiff is likewise dated January 1, 2011, and contains a covenant not to compete and a non-solicitation clause. Both clauses are substantively identical to those clauses in Mazurek's contract. The proposed contract Plaintiff delivered to Garney also included a two year time limit applicable to both clauses in both provisions, just like Mazurek's contract. However, as is uncontested, Garney modified the proposed contract Plaintiff delivered to him by reducing the two "year" provision down to two "months." He then executed the agreement, and his signature was "witnessed" by Mazurek. The employment contract Plaintiff attached to its Verified Complaint, and on which its claims against Garney are based, includes a two month, not a two year, time limitation. In addition, Garney's contract

includes a confidentiality agreement and a prohibition on outside business ventures clause, which are the same as those contained in Mazurek's contract as outlined above.

Plaintiff's contract with Cammarere is dated May 27, 2008, and includes a covenant not to compete but no non-solicitation provision. The covenant not to compete is similar to that provision in Mazurek's contract described above. It continues for two years from the time Cammarere leaves Plaintiff's employment, with an extension, and is geographically applicable to the area served by Plaintiff's Albany Office. Cammarere's contract also contains a confidentiality agreement substantially similar to, but not as precise as, the confidentiality provision included in both Mazurek's and Garney's contracts. Also, like both Mazurek and Garney's contracts, Cammarere's contract prohibits him from participating in any outside business ventures while employed by Plaintiff.

MOTION TO DISMISS

"It is well settled that in assessing the adequacy of a complaint under CPLR 3211(a)(7), the court must give the pleading a liberal construction, accept the facts as alleged in the complaint to be true and afford the plaintiff the benefit of every possible favorable inference." (Landon v Kroll Laboratory Specialists, Inc., __NY3d__ [2013], quoting J.P. Morgan Sec. Inc. v Vigilant Ins. Co., 21 NY3d 324, 334 [2013][citations and quotation marks omitted]; Smith v Meridian Tech., Inc., 52 AD3d 685 [2d Dept 2008]). A CPLR §3211(a)(7) inquiry determines only "whether the facts as alleged fit within any cognizable legal theory." (Scheffield v Vestal Parkway Plaza, LLC, 102 AD3d 992, 993 [3d Dept 2013]).

Defendants first failed to demonstrate that Plaintiff's breach of contract cause of action

fits within no cognizable legal theory.

This cause of action alleges that Mazurek, Garney, and Cammarere breached the terms of their respective employment contracts' covenants not to compete, non-solicitation clauses and confidentiality agreements. While these types of "[a]greements restricting an individual's right to work or compete are not favored and... strictly construed," they are enforceable if their terms are reasonable. (Goodman v New York Oncology Hematology, P.C., 101 AD3d 1524, 1526 [3d Dept 2012]; Zinter Handling, Inc. v Britton, 46 AD3d 998 [3d Dept 2007]; BDO Seidman v Hirshberg, 93 NY2d 382 [1999]). "Restrictive covenants in employment agreements will be enforced if reasonably limited temporally and geographically, and to the extent necessary to protect the employer's use of trade secrets or confidential customer information." (Michael G. Kessler & Assoc., Ltd. v White, 28 AD3d 724, 725 [2d Dept 2006]).

Affording the restrictions at issue the benefit of every possible favorable inference, each is reasonable. Geographically, the covenant not to compete and non-solicitation clauses are limited to the area covered by Plaintiff's Albany Office. The duration of each is either two years or two months. Here, viewed in a light most favorable, such restrictions are necessary to protect Plaintiff's confidential customer information and trade secrets. While the confidentiality agreement portion of each individual Defendants' employment agreement is not explicitly limited temporally or geographically, such absence is not dispositive. The provision, in this procedural context, is reasonable because an "employer has a legitimate interest in preventing former employees from exploiting or appropriating the goodwill of a client or customer, which had been created and maintained at the employer's expense, to the employer's competitive detriment." (Crown It Services, Inc. v Koval-Olsen, 11 AD3d 263, 265 [1st Dept 2004], quoting

BDO Seidman v Hirshberg, supra at 392).

Plaintiff also set forth sufficient facts, accepted as true, to allege that the individual Defendants' breached their covenants not to compete, non-solicitation clauses and confidentiality agreements. Plaintiff alleges that Mazurek, Garney, and Cammarere collectively created Defendant Attention Pest Solutions, LLC (hereinafter "Attention") on or about July 9, 2012. Then, on or before August 2012, the individual Defendants allegedly began soliciting Plaintiff's customers. By such solicitation the individual Defendants were engaging in Plaintiff's line of business and using confidential customer information. Because Mazurek's employment terminated on April 28, 2012, Garney's on September 21, 2012, and Cammarere's on May 6, 2013, each individual's restrictions were fully applicable during July / August 2012. As such, Plaintiff sufficiently plead that the individual Defendants breached their employment contracts. In addition, these allegations adequately plead that Garney and Cammarere breached their contracts' restrictions on participation in outside business ventures while employed by Plaintiff.

To the extent Defendants' motion is premised on Mazurek's affidavit's allegations, in this procedural context such reliance is misplaced. Moreover, because his affidavit is explicitly contradicted, in part, by documentation attached to Garney's affidavit, its value is negligible.

On this record, Defendants failed to demonstrate that Plaintiff has no breach of contract cause of action.

Similarly, Plaintiff's breach of duty of loyalty claims set forth a cause of action.

"[A]n employee is prohibited from acting in any manner inconsistent with his or her employment and must exercise good faith and loyalty in performing his or her duties, and may not use his or her principal's time, facilities or proprietary secrets to build [a] competing

business." (Calabrese Bakeries, Inc. v Rockland Bakery, Inc., 102 AD3d 1033, 1038 [3d Dept 2013], quoting Mega Group v Halton, 290 AD2d 673 [3d Dept 2002]).

Plaintiff's Verified Complaint's allegations, accepted as true, sufficiently set forth Mazurek, Garney, and Cammarere's breach of their duty of good faith and loyalty. Prior to Mazurek's termination, he allegedly misappropriated Plaintiff's confidential information, time, and resources to plan develop, and create Attention. Specifically, Plaintiff alleges that Mazurek's surreptitious modification of Garney's employment contract was undertaken to develop and build Attention. Additionally, as explained above, Plaintiff alleged that Garney and Cammarere formed Attention and began soliciting Plaintiff's customers while still employed by Plaintiff in July / August 2012.

On these allegations and within this procedural context, Defendants failed to demonstrate that Plaintiff has no breach of duty of loyalty cause of action.

Plaintiff also set forth a viable tortious interference with contract or prospective business relationships cause of action.

Considering first Plaintiff's tortious interference with a contract claim, "where there is an existing, enforceable contract and a defendant's deliberate interference results in a breach of that contract, a plaintiff may recover damages for tortious interference with contractual relations even if the defendant was engaged in lawful behavior." (NBT Bancorp Inc. v Fleet/Norstar Fin. Group, Inc., 87 NY2d 614, 621 [1996]). Here, Plaintiff's Verified Complaint alleges that it had a valid contract or service agreement with seventeen different entities. Plaintiff then properly supplemented its Verified Complaint (Torok v Moore's Flatwork & Foundations, LLC, 106 AD3d 1421 [3d Dept 2013]) with the affidavit of Kimberly McLaughlin, Plaintiff's current

district manager, who identified two valid contracts that were breached by its customers. Plaintiff's Verified Complaint, as supplemented by McLaughlin's allegations, then sufficiently alleged both Defendants' knowledge of the contractual relations and Defendants' intentional interference with them. These allegations set forth a tortious interference with a contract cause of action.

Plaintiff's tortious interference with prospective business relationships allegations were also sufficient. "[T]here is no liability for interference with performance of a competitor's voidable contract absent employment of wrongful means" (Guard-Life Corp. v. Parker Hardware Mfg. Corp., 50 NY2d 183, 193 [1980]), "e.g., physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure." (Nelson v Capital Cardiology Assoc., P.C., 97 AD3d 1072, 1074 [3d Dept 2012], quoting Guard-Life Corp. v. Parker Hardware Mfg. Corp., supra). Here, Plaintiff acknowledged that its service agreements are voidable on thirty days notice but alleges that many have been terminated due to Defendants' wrongful acts. By liberally construing its Verified Complaint's allegations and accepting them as true, Plaintiff set forth the requisite "wrongful means" by alleging that Defendants misappropriated Plaintiff's confidential information and goodwill to cause such terminations. (B-S Indus. Contractors Inc. v Burns Bros. Contractors Inc., 256 AD2d 963, 964 [3d Dept 1998]). The pertinent facts alleged fit within a cognizable tortious interference with prospective business relationships theory.

Turning to the Verified Complaint's fraud claim, again Plaintiff set forth a viable cause of action.

"To state a cause of action sounding in fraud, a plaintiff must allege that (1) the defendant

made a representation or a material omission of fact which was false and the defendant knew to be false, (2) the misrepresentation was made for the purpose of inducing the plaintiff to rely upon it, (3) there was justifiable reliance on the misrepresentation or material omission, and (4) injury." (McDonnell v Bradley, 109 AD3d 592 [2d Dept 2013], quoting Selechnik v. Law Off. of Howard R. Birnbach, 82 AD3d 1077 [2d Dept 2011]). Where the fraud is based on concealment, Plaintiff must also allege "that the defendant had a duty to disclose material information and that it failed to do so." (High Tides, LLC v. DeMichele, 88 AD3d 954, 957 [2d Dept 2011]).

Plaintiff's fraud claim is based wholly upon Garney's modification of his employment contract. On this record, Garney readily admits that he modified the contract Plaintiff initially presented to him. Although Garney justifies his changes as constituting a "counteroffer," he offers no proof that he discussed or negotiated his "counteroffer" with Plaintiff, offered Plaintiff a redlined or marked copy of the modified contract, or even notified Plaintiff that he was making a counteroffer. Instead, as the Verified Complaint alleges, the alterations were hidden. Garney modified the eight page typewritten contract by changing the typewritten word "years" to "months." In Garney's "counteroffer," no words were crossed out or initialed, and the font used to make the change was identical to the original contract he was directed to sign. This subtle change was then further concealed, according to Plaintiff, with Mazurek's assistance. Again, Mazurek acted as the witness to Garney's execution of the contract. Mazurek, like Garney, did not inform Plaintiff of the changes. Although the contract was required to be countersigned by Plaintiff's Human Resources Director, Mazurek never delivered it to her. Nor did Mazurek forward the contract to Plaintiff's corporate office's human resources department. Rather, after

Mazurek witnessed the contract, he allegedly filed it in Garney's personnel file, located in Plaintiff's Albany Office. On these factual allegations, Plaintiff complied with CPLR §3016(b)'s particularity requirement.

Liberally construing Plaintiff's allegations, which are accepted as true, Plaintiff stated a fraud cause of action. Plaintiff sufficiently alleged that Mazurek and Garney breached their duty to disclose the contract changes, which they knew concealed a material change and thereby induced Plaintiff to continue Garney's employment. Affording Plaintiff every possible favorable inference, their reliance was justified and the omission caused it injury.

Accordingly, Defendants' motion to dismiss Plaintiff's fraud cause of action is denied.

Plaintiff also set forth a viable cause of action premised on Defendants' alleged misappropriation of confidential information. To plead such a cause of action Plaintiff must allege a "possessory right or interest in the [confidential information] and... defendant's dominion over the [confidential information] or interference with it, in derogation of plaintiff's rights." (Pappas v Tzolis, 20 NY3d 228, 234 [2012], quoting Colavito v. New York Organ Donor Network, Inc., 8 NY3d 43 [2006]; Thyroff v Nationwide Mut. Ins. Co., 8 NY3d 283 [2007]). Accepting the Verified Complaint's allegations as true and affording Plaintiff every possible favorable inference, its customer and pricing information constitute confidential information meriting protection as trade secrets. (Marcone APW, LLC v Servall Co., 85 AD3d 1693 [4th Dept 2011]; E. Bus. Sys., Inc. v Specialty Bus. Solutions, LLC, 292 AD2d 336 [2d Dept 2002]). The Verified Complaint, in addition, set forth allegations that Defendants have used such confidential information to both solicit Plaintiff's clients and to undercut its pricing. Because this alleged use is in direct derogation of Plaintiff's rights, Defendants have not

demonstrated that Plaintiff has no misappropriation of confidential information cause of action.

Accordingly, this portion of Defendants' motion to dismiss is denied.

Lastly, contrary to Defendants' assertions, they neither demonstrated that Plaintiff's allegations consist of "bare legal conclusions" nor proffered documentary evidence that "flatly contradicted" Plaintiff's allegations. (Tenney v Hodgson Russ, LLP, 97 AD3d 1089, 1090 [3d Dept 2012], quoting Gertler v Goodgold, 107 AD2d 481 [3d Dept 1985]).

Accordingly, Defendants' motion is denied in its entirety.

PRELIMINARY INJUNCTION

"Preliminary injunctive relief is a drastic remedy which is not routinely granted" (Marietta Corp. v Fairhurst, 301 AD2d 734, 736 [3d Dept 2003]); especially where, as here, Plaintiff seeks to enforce a "restrictive covenant agreement against a former employee." (Cool Insuring Agency, Inc. v Rogers, 125 AD2d 758, 759 [3d Dept 1986]). "To obtain a preliminary injunction, a movant must demonstrate, by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) a balancing of the equities in the movant's favor." (Greystone Staffing, Inc. v Warner, 106 AD3d 954 [2d Dept 2013], quoting Yedlin v. Lieberman, 102 AD3d 769 [2d Dept 2013]; CPLR §6301; Schulz v State Exec., 108 AD3d 856 [3d Dept 2013]; Nobu Next Door, LLC v. Fine Arts Hous.,Inc., 4 NY3d 839 [2005]; Sutherland Global Services, Inc. v Stuewe, 73 AD3d 1473, 1474 [4th Dept 2010]). Unlike the presumptions applicable on a motion to dismiss, discussed and applied above, the movant seeking a preliminary injunction bears a "particularly high burden." (Sync Realty Group, Inc. v Rotterdam Ventures, Inc., 63 AD3d 1429, 1430 [3d Dept 2009], quoting

Council of City of New York v Giuliani, 248 AD2d 1 [1st Dept 1998][internal quotation marks omitted]).

On this record, Plaintiff failed to establish its likelihood of success on the merits.

An employee agreement that contains a restrictive covenant must be reasonable and is enforceable "only if it: (1) is no greater than is required for the protection of the legitimate interest of the employer, (2) does not impose undue hardship on the employee, and (3) is not injurious to the public." (BDO Seidman v Hirshberg, supra 388-89). As is specifically applicable here in considering Plaintiff's legitimate interests, "[a]nticompetitive employment agreements will only be enforced to the extent necessary to protect the employer from unfair competition which stems from the employee's use or disclosure of trade secrets or confidential customer lists or where the employee's services are unique." (Orkin Exterminating Co., Inc. v Dayton, 140 AD2d 748, 749 [3d Dept 1988]).

First, Plaintiff failed to proffer clear and convincing evidence that the subject restrictive covenants are necessary to protect its legitimate interest in its confidential customer list and trade secrets. In addition to the McLaughlin affidavit discussed above, Plaintiff also supports its motion with the affidavit of Vicki Fisher, its Director of Human Resources, and its Verified Complaint. Conspicuously absent from Plaintiff's submissions is any proof that Defendants "physically appropriated, copied or intentionally memorized plaintiffs' confidential customer list... or that the customers were not ascertainable through sources other than such a list." (Orkin Exterminating Co., Inc. v Dayton, supra at 749). As the Third Department specifically found when analyzing a restrictive covenant within the pest control industry: "it appears that the likely customers for plaintiffs' services, i.e., restaurants, taverns, schools, hospitals and other places

which store and serve food products, are readily ascertainable from a source as conventional and available as a telephone book." (Id.). Where an "employee engage[s] in no wrongful conduct and the names and addresses of potential customers [are] readily discoverable through public sources, an injunction [will] not lie." (Reed, Roberts Assoc., Inc. v Strauman, 40 NY2d 303, 308 [1976]; Leo Silfen, Inc. v Cream, 29 NY2d 387 [1972]). Morever, Plaintiff failed to proffer clear and convincing evidence establishing that its customer lists, pricing data, and market strategies constitute "trade secrets." (Ashland Mgt. Inc. v Janien, 82 NY2d 395, 407 [1993][requiring proof in accord with Restatement of Torts §757, comment b]; Marietta Corp. v Fairhurst, supra 738 ["pricing data and market strategies... would not constitute trade secrets"]; Leo Silfen, Inc. v Cream, supra ["trade secret protection will not attach" for customers who are readily ascertainable]). Contrary to Plaintiff's claims, "[t]he self-serving declarations as to the existence of [confidential information] that plaintiff inserted in the employment agreement it had defendant[s] sign have not been considered conclusive on these factual issues." (Cool Insuring Agency, Inc. v Rogers, supra 761).

Plaintiff similarly offered no proof that any of the individual Defendants is a "unique" employee. Defendants offered no proof that the "learned profession precedents" have any applicability to a manager or a technician. (BDO Seidman v Hirshberg, supra; Reed, Roberts Assoc. v Strauman, supra; Cool Insuring Agency, Inc. v Rogers, supra). Despite Plaintiff's assertions that these Defendants were "of high value," its allegations did not establish that Mazurek, Garney, or Cammarere's services were "unique." (Quandt's Wholesale Distributors, Inc. v Giardino, 87 AD2d 684, 685 [3d Dept 1982], quoting Columbia Ribbon & Carbon Mfg. Co., Inc. v A-1-A Corp., 42 NY2d 496 [1977]).

Plaintiff also failed to offer clear and convincing evidence that Defendants were "exploiting... the goodwill of a client or customer, which had been created and maintained at [their] expense." (BDO Seidman v. Hirshberg, supra at 392). McLaughlin listed numerous customers who have either canceled their contracts with Plaintiff in favor of Defendants or have been solicited by Defendants. She alleges that the individual Defendants, while employed by Plaintiff, established relationships with these companies and are now infringing on Plaintiff's goodwill. She offered no proof, however, to establish that Plaintiff assisted the individual Defendants in developing these relationships. (Scott, Stackrow & Co., C.P.A.'s, P.C. v Skavina, 9 AD3d 805 [3d Dept 2004]; BDO Seidman v. Hirshberg, supra). Her singular reliance on Plaintiff's mere employment of Mazurek, Garney, and Cammarere is insufficient. (Id.). Because Plaintiff offered no proof that "the goodwill of those clients was... acquired through the expenditure of [its] resources, [Plaintiff failed to demonstrate that it has a] legitimate interest in preventing defendant from competing for their patronage." (BDO Seidman v Hirshberg, supra 393).

Finally, Plaintiff offered no factual proof to establish that its employment contract's restrictive covenants' temporal and geographical limitations are reasonable and necessary to protect its legitimate interests. (Michael G. Kessler & Assoc., Ltd. v White, supra).

Due to the foregoing failure of proof, Plaintiff has not established its likelihood of success on the merits of its injunction cause of action.

Although Plaintiff failed to demonstrate its likelihood of success on the merits, this record does establish Plaintiff's irreparable harm. McLaughlin's affidavit listed six customers who canceled Plaintiff's services, which in turn adversely affects Plaintiff's goodwill. Although

McLaughlin alleged that all six customers left Plaintiff in favor of Defendants, her allegations for five of the six former customers constituted inadmissible hearsay. Defendants, however, admitted that they are servicing Plaintiff's former clients. This demonstrated "loss of clients and goodwill could create irreparable harm." (Confidential Brokerage Services, Inc. v Confidential Planning Corp., 85 AD3d 1268, 1269 [3d Dept 2011]).

Plaintiff did not establish, however, that the equities balance in its favor. It has long been held that "[s]ince there are powerful considerations of public policy which militate against sanctioning the loss of a man's livelihood... restrictive covenants which tend to prevent an employee from pursuing a similar vocation after termination of employment are disfavored by the law." (Columbia Ribbon & Carbon Mfg. Co., Inc. v A-1-A Corp., 42 NY2d 496, 499 [1977], quoting Purchasing Assoc. v Weitz, 13 NY2d 267 [1963][internal quotation marks omitted]).

Balancing the above factors, Plaintiff failed to demonstrate its entitlement to a preliminary injunction. Despite Plaintiff's irreparable harm showing, strong public policy weighs heavily against the grant of a preliminary injunction in this employment context. Such public policy, in conjunction with Plaintiff's failure to establish its likelihood of success on the merits, requires denial of preliminary injunctive relief.

Accordingly, Plaintiff's motion is denied

This Decision and Order is being returned to the attorneys for Defendants. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute

entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: November 27, 2013
Albany, New York

JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Order to Show Cause, dated October 2, 2013; Affidavit of Vicki Fisher, dated September 30, 2013, with attached Exhibits A-D; Affidavit of Joseph Dougherty, dated October 2, 2013; Affidavit of Kimberly McLaughlin, dated October 2, 2013, with attached Exhibits A-B; Summons, dated October 2, 2013; Verified Complaint, dated October 2, 2013, with attached Exhibits A-D.
2. Notice of Motion, dated October 22, 2013; Affidavit of Michael Cammarere, dated October 23, 2013; Affidavit of Jason Garney, dated October 23, 2013, with attached Exhibit A; Affidavit of John Mazurek, dated October 23, 2013, with attached Exhibits A-C.
3. Affidavit of Vicki Fisher, dated October 30, 2013, with attached Exhibit A; Affidavit of Kimberly McLaughlin, dated October 30, 2013, with attached Exhibits A-D; Affidavit of Stephanie Zoga, dated October 30, 2013; Affidavit of Lynn Hill, dated October 30, 2013, with attached Exhibit A.