

Tangent Data Servs. LLC v Hauer

2015 NY Slip Op 30674(U)

April 17, 2015

Supreme Court, New York County

Docket Number: 651985/2014

Judge: Robert R. Reed

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 43

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TANGENT DATA SERVICES LLC,

DECISION/ORDER

Plaintiff,

-against-

Index No.: 651985/2014

JORDAN HAUER, et al.,

Defendants,

-----X

ROBERT R. REED, J.:

Plaintiff Tangent Data Services LLC, a provider of data analytics to the financial services industry, seeks, among other things, a preliminary injunction, pursuant to CPLR 6301 *et seq.*, to bar defendant Jordan Hauer, its co-founder and former chief information officer, and defendant Insightful Analytics, Inc., a rival data analytics provider with which Hauer has become employed, from using Tangent’s confidential and proprietary information. For the reasons stated below, Tangent’s motion is DENIED.

After having helped to co-found Tangent and serving as its chief information officer, pursuant to an operating agreement dated November 20, 2012, Hauer became dissatisfied with his role with the company and gave notice that he planned to leave the company effective March 6, 2014.

Tangent, however, asked that Hauer stay for a brief time longer to assist in transition. So, following execution of a release and consent agreement, finally signed on March 13, 2014, Hauer terminated his employment and membership with Tangent effective March 17, 2014.

Neither the operating agreement nor the release and consent agreement contained a non-compete

agreement. On March 19, 2014, Hauer joined Insightful, with Insightful and Hauer jointly executing an employment letter agreement and a confidentiality, non-competition and assignment of inventions agreement (“confidentiality agreement”) on such date. Both the employment letter agreement and the confidentiality agreement contained express provisions prohibiting Hauer from using proprietary information and/or trade secrets of other companies or third parties in the performance of his duties with Insightful.

In seeking extraordinary relief, Tangent relies largely upon the self-serving affidavit of its chief executive officer, and often hearsay-laden and innuendo-laden attachments, to assert Tangent’s “belief” that Hauer pilfered confidential files from Tangent, including customer/client lists (actual and prospective), a proprietary source code, historical data, and client agreements, all in an effort to compete unfairly with Insightful against his former company. Included as attachments are letters/emails from a client representative, whose identity has been redacted, advising that he or she has been contacted by Insightful, which note (1) Insightful’s similarity to Tangent and (2) the author’s understanding that Hauer was at that time newly working at Insightful. Included as well are a string of emails from 2013 between Hauer and persons associated with a company related to Insightful that Tangent suggests indicate a scheme by Hauer to defect. In addition, there are a string of email conversations between Hauer and his private attorney discussing the negotiation of his departure from Tangent that were captured on Tangent’s server.

Tangent also includes an affidavit from Hauer’s replacement as chief information officer. That

new chief information officer joined Tangent on March 10, 2014. In this additional affidavit, Tangent's new chief information officer asserts that, on March 11, 2014, Hauer uploaded Tangent's proprietary source code to his private folder, and, notably, characterizes Hauer as having "unlawfully (he was no longer an employee) entered Tangent's offices" on such date. How one who had only assumed his role as chief information officer the previous day is in a position to weigh in on the proprietary nature of such source code is one question. More importantly, though, the assertion that Hauer had entered Tangent's offices "unlawfully" is specifically belied by the language of the previously mentioned release and consent agreement -- which fixed the date of Hauer's separation as "Member" of Tangent as March 17, 2014. Indeed, the new chief information officer explains that Hauer gained such "unlawful entry" into Tangent's offices by using Hauer's duly issued and still active employee access keycard. The illogic of such contention notwithstanding, the affidavit of Tangent's chief executive officer "doubles down" on the baseless unlawful entry assertion, stating that "on March 11, 2014, after resigning from Tangent, it is believed that Hauer *broke into* Tangent's office[s]." (Emphasis added.) Such baseless and reckless claims cast doubt upon all the other assertions offered by Tangent.

The decision to grant or deny a preliminary injunction rests within the sound discretion of the Court (*Merscorp, Inc. v. Romaine*, 295 AD 2d 431). In exercising that discretion, the Court must consider whether the moving party has established that (1) it is likely to succeed on the merits of its claims, (2) irreparable harm will result if preliminary relief is denied, and (3) the balance of the equities weigh in its favor (*id.*). Importantly, a preliminary injunction is considered a drastic

remedy, and will only be granted if the movant establishes a clear right to it under the law and the undisputed facts found in the moving papers (*Koultukis v. Phillips*, 285 AD 2d 433). In addition, it is settled that, absent extraordinary circumstances, a preliminary injunction will not be granted if it provides the ultimate relief that the movant would gain via a final judgment (*SHA Baisley, LLC v. Res Land, Inc.*, 18 AD 3d 727).

In this Court's assessment, Tangent fails to establish a likelihood of success on the merits of any claim for which injunction would be an appropriate remedy. Tangent has failed to submit in support of this motion substantive, credible, non-self-serving and admissible evidence to establish clearly that defendants have misappropriated or converted Tangent's historical data, source code, client list and/or prospective client list. Indeed, Tangent has not established by any credible or persuasive evidence that it has taken the necessary steps to demarcate the subject source code and other disputed information as proprietary or confidential. It certainly has done nothing to prove to this Court's satisfaction that Insightful has thus far used or at any point intends to use, anything other than Hauer's brainpower. That Insightful may employ similar marketing materials to those of Tangent or that Insightful may happen to contact Tangent's clients is not enough for this Court to conclude that something nefarious has arisen from Insightful's employment of Hauer. Perhaps discovery will yield such evidence, but it has not been established on the papers before the Court on this motion. In its consideration of this motion, the Court takes special cognizance of defendants' execution of their employment letter agreement and confidentiality agreement, which at least purport to show an effort at self-regulation.

Finally, the Court takes this opportunity to remind the parties of their obligation to preserve all documents and electronic information in their possession, custody or control that may be pertinent to the prosecution or defense of this action. Any willful or negligent spoliation of such evidence may warrant appropriate sanction.

NOW, THEREFORE, it is ORDERED as follows:

1. Plaintiff's motion, pursuant to CPLR 6301 *et seq.*, and for expedited discovery, is denied in all respects; and it is further
2. ORDERED that the temporary restraining order previously issued herein be lifted, effective immediately; and it is further
3. ORDERED that any outstanding responsive pleadings be filed by May 26, 2015; and it is further
4. ORDERED that counsel for the parties shall appear for a preliminary conference in Part 43, located in Room 581 at 111 Centre Street, New York, New York on June 25, 2015, at 9:30 a.m.

Dated: April 17, 2015

ENTER



ROBERT R. REED
J.S.C.