

**ELITE SEM, INC. v Arabov**

2016 NY Slip Op 30287(U)

February 17, 2016

Supreme Court, New York County

Docket Number: 158575/2015

Judge: Debra A. James

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

At IAS Part 59 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, 71 Thomas Street, New York, New York on the 9th day of February, 2016

PRESENT: HON: DEBRA A. JAMES  
JUSTICE

\_\_\_\_\_  
ELITE SEM, INC.,

Plaintiff,

Index No. 158575/2015

- against -

BENJAMIN ARABOV a/k/a BENJAMIN ARABO  
and PURE DIGITAL CO.,

DECISION and ORDER GRANTING  
PRELIMINARY INJUNCTION

Defendant.  
\_\_\_\_\_

This order is based upon the reasons stated in the ruling on the record on February 9, 2016, which cited, inter alia, Ashland Management Inc. v Altair Investments NA, LLC, 59 AD3d 97, at 105 (1<sup>st</sup> Dept 2008), where the court held in pertinent part:

Courts have the “power to sever and grant partial enforcement of an over broad employee restrictive covenant” as long as the covenant does not otherwise “violate the tripartite common-law test for reasonableness” (BDO Seidman, 93 N.Y.2d at 393-394..), that is the covenant “(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”.

An order to show cause having duly come on to be heard on the 9<sup>th</sup> day of February 2016 for an order granting plaintiff ELITE SEM, INC. a preliminary injunction enjoining defendants Benjamin Arabov a/k/a Benjamin Arabo and Pure Digital Co. from, inter alia, directly or indirectly entering into, continuing in the employ of, or rendering services to any person, firm, corporation, or organization that is engaged or intends to engage in the business

of online marketing, which includes but is not limited to search engine marketing, in any of the following geographic areas in which plaintiff does business: the New York City metropolitan area; Philadelphia; Los Angeles; Atlanta; Fort Lauderdale; Tampa; and Austin; and upon the service of a Verified Complaint dated August 17, 2015,

NOW, on reading and filing the following papers submitted to the Court, the Order to Show Cause dated September 16, 2015, the Summons dated August 19, 2015, the Verified Complaint dated August 17, 2015, the Affidavit in Support of Zach Morrison, sworn to on August 17, 2015, the Affirmation in Support of Matthew M. Gordon dated August 19, 2015 and exhibits attached thereto, and the Affidavit in Opposition of Benjamin Arabov, sworn to on December 4, 2015, and exhibits attached thereto, and, and due deliberation having been had, and it appearing to this Court that a cause of action exists in favor of the plaintiff and against the defendants and that the plaintiff is entitled to a preliminary injunction on the ground that the defendants threaten or are about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiffs' rights respecting the subject of the action and tending to render the judgment ineffectual, as set forth in the aforesaid decision, it is

**ORDERED** that the undertaking shall be **in the amount to be determined at a further hearing on March 3, 2016, 11 AM in IAS Part 59, 71 Thomas Street, Room 103, New York, New York** and the provisional relief is conditioned upon plaintiff filing an undertaking in such amount as soon as practically possible so that if it is finally determined that plaintiff was not entitled to an injunction, plaintiff will pay to the defendants all damages and costs which may be sustained by reason of this preliminary injunction; and it is further

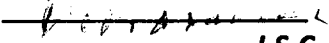
ORDERED that defendants, their agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of defendants, are prohibited from, during the pendency of this action, and upon service of this Order with notice of entry, directly or through any attorney, agent, servant, employee or other person under the supervision or control of defendants directly or indirectly entering into, continuing in the employ of, or rendering services to any person, firm, corporation, or organization that was engaged with plaintiff at the time that defendant Benjamin Arabov was in the employ of plaintiff in the business of online marketing, which includes but is not limited to search engine marketing, in any of the following geographic areas: the New York City metropolitan area; Philadelphia; Los Angeles; Atlanta; Fort Lauderdale; Tampa; and Austin; and it is further

ORDERED that on consent of all parties stated in open court, defendants, their agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of defendants, continuing from this determination and upon service of this Order with notice of entry during the pendency of this action, are prohibited from directly or through any attorney, agent, servant, employee or other person under the supervision or control of defendants from directly or indirectly encouraging or soliciting any employee or consultant in the employ of plaintiff to leave the employ of plaintiff; encouraging or soliciting any customer of plaintiff to cease business relations with plaintiff in favor of a business in competition with plaintiff; retaining, using, distributing, disclosing, or adapting any proprietary or confidential information obtained from plaintiff, including but not limited to plaintiff's employee list and employee records, vendor list and vendor records, customer lists

and related records, marketing plans and strategies, forms, manual, handbooks, and guidelines written for internal use, including but not limited to, materials for training employees, operating procedures and systems.

Dated: February 17, 2016

**ENTER:**

  
**DEBRA A. JAMES** J.S.C.