

United Staffing Solutions, Inc. v Dicorcia
2021 NY Slip Op 30069(U)
January 7, 2021
Supreme Court, New York County
Docket Number: 655812/2020
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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UNITED STAFFING SOLUTIONS, INC.

Plaintiff,

- v -

DOMINICK DICORCIA,

Defendant.

-----X

INDEX NO. 655812/2020
MOTION DATE N/A
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2-13, 27, 28, 29, 30, 31, 32

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The motion by plaintiff for a preliminary injunction is denied and the cross-motion by defendant to dismiss is denied.

Background

Plaintiff is a staffing firm based in New York City and contends that it hired defendant (as an independent contractor through his advisory company) to serve as CEO in October 2018. It contends that defendant was supposed to receive a bonus if certain revenue targets were met and that defendant did not reach this goal in 2019. Plaintiff says that defendant baselessly alleged that plaintiff had discriminated against him based on his religion. The contract was eventually terminated and plaintiff took back defendant's company computer.

Plaintiff contends that defendant has engaged in a campaign to damage plaintiff's business by making false representations on social media that he is still CEO and has tried to exploit confidential information. It claims that defendant is using information about plaintiff's customers to market himself for new positions.

Plaintiff seeks a preliminary injunction barring defendant from using this confidential information, from holding himself out as the CEO of plaintiff and from interfering with plaintiff's operations by contacting plaintiff's employees.

In opposition and in support of his motion to dismiss, defendant points out that this action relates to another action in Suffolk County filed by defendant against plaintiff. Defendant asserts that he and his former business partner (O'Keefe) are 50/50 owners of a company (the company that plaintiff "hired" when it installed defendant as CEO). He claims that the agreement stated that both O'Keefe and defendant had to keep working for the company but O'Keefe continued to work for plaintiff even after defendant was fired in violation of the agreement.

Defendant claims he never had a login or password to the software platform containing the customer information about which plaintiff complains. He claims that all of plaintiff's causes of action (for misappropriation of trade secrets, unfair competition, and tortious interference of potential business relations) are based on conclusory allegations. Defendant claims that a preliminary injunction would be inappropriate because it would bar him from working with clients with whom he has developed relationships over the last 25 years based on a strained argument that he has confidential information.

In reply and opposition to the cross-motion, plaintiff insists it has stated three valid causes of action and that a preliminary injunction is appropriate to prevent irreparable harm to plaintiff.

Preliminary Injunction

"A preliminary injunction substantially limits a defendant's rights and is thus an extraordinary provisional remedy requiring a special showing. Accordingly, a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of

ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tipping in favor of the moving party” (*1234 Broadway LLC v W. Side SRO Law Project*), 86 AD3d 18, 23, 924 NYS2d 35 [1st Dept 2011] [citation omitted]).

Here, the Court denies the motion for a preliminary injunction because plaintiff’s requested restraints are too broad and not adequately supported. Plaintiff seeks an injunction that bars defendant from using any of plaintiff’s “trade secrets” or confidential information, including use of its client lists obtained while he was CEO. But the affidavit submitted by plaintiff (from defendant’s former partner O’Keeffe) states that defendant did not have access to the platform containing valuable customer information (NYSCEF Doc. No. 4 at 3). Instead, Mr. O’Keeffe vaguely asserts that defendant had access to proprietary and confidential information.

That cannot justify a preliminary injunction. Although plaintiff devotes substantial time explaining this software platform, the fact is that there is no dispute that defendant did not have access to it. If plaintiff thinks defendant got the information some other way, plaintiff has not explained or sworn to it.

The Court also recognizes that defendant was CEO of plaintiff so it is very likely that he came across important information. But the fact that he had such a role is not a basis to get a preliminary injunction. Plaintiff had to show exactly what information defendant possesses that he is not supposed to (given that defendant did not have access to the software, it is unclear what confidential information defendant allegedly has) and how he is using it. The only assertions offered on this motion are vague and conclusory allegations.

Plaintiff points to the fact that defendant’s LinkedIn profile states he is still CEO of plaintiff. While defendant should probably change his profile, an outdated item on the internet

does not constitute an act requiring a preliminary injunction. Any cursory investigation into defendant's job status would reveal he no longer works there.

The other basis for the preliminary injunction is that defendant is reaching out to plaintiff's employees about potentially poaching some of plaintiff's employees. But plaintiff provided no evidence of a non-compete agreement, so while it may not like that defendant may want to hire or talk to his former employees, that does not serve as a basis for a preliminary injunction. Nothing on this record comes close to harassment that might warrant a restraint.

Clearly, the parties had an ugly split. Defendant believes he was discriminated against and plaintiff insists defendant simply did a bad job. But plaintiff seeks a Court order restricting defendant's actions. Violation of such an order can have drastic consequences including potential fines or even imprisonment. This Court will not issue a preliminary injunction where plaintiff's basic argument is that defendant boasted that he had a "book of business" to potential customers after he was fired. Defendant has been working the industry for decades; obviously, his business contacts are not limited to his short stay working for plaintiff. Without any evidence as to how defendant is misusing information or what information he was not entitled to possess, the Court cannot grant plaintiff's motion.

Motion to Dismiss

"On a CPLR 3211(a)(7) motion to dismiss for failure to state a cause of action, the complaint must be construed in the light most favorable to the plaintiff and all factual allegations must be accepted as true. Further, on such a motion, the complaint is to be construed liberally and all reasonable inferences must be drawn in favor of the plaintiff" (*Alden Global Value*

Recovery Master Fund L.P. v Key Bank Natl. Assoc., 159 AD3d 618, 621-622, 74 NYS3d 559 [1st Dept 2018] [internal quotations and citations omitted]).

The Court denies the motion to dismiss. Plaintiff sufficiently alleged a cause of action for misappropriation of trade secrets (NYSCEF Doc. No. 1 at 5). It asserts that plaintiff came into possession of trade secrets and has improperly used and disclosed this information since his termination (*id.*). Similarly, plaintiff adequately alleged an unfair competition claim by insisting that defendant is using information he should not possess to gain an unfair advantage in the industry.

Moreover, plaintiff has alleged a cognizable cause of action for tortious interference with potential business relations by asserting that defendant is trying to steal plaintiff's customers with the confidential information.

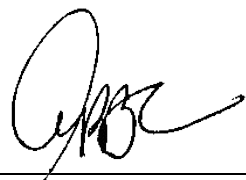
Summary

The Court recognizes that defendant views this case as retaliation for his case in Suffolk County. A motion to dismiss requires the Court to consider whether plaintiff has cognizable causes of action and to assume that the allegations are true. Obviously, it will be plaintiff's burden in this case to prove its claim that defendant possessed confidential information and that he used it improperly. Defendant's mere denial of the allegations against him is not sufficient to grant his motion to dismiss. And while plaintiff has alleged valid causes of action, the Court is unable to grant a preliminary injunction because the standard for such relief is greater, and plaintiff has not come close to meeting that standard.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for a preliminary injunction is denied and the cross-motion by defendant to dismiss is denied and defendant is directed to answer pursuant to the CPLR.

Remote Virtual Conference: April 14, 2021.



1/7/2021
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE