

ROC Capital Holdings LLC v Civic Fin. Servs.

2022 NY Slip Op 31870(U)

June 14, 2022

Supreme Court, New York County

Docket Number: Index No. 651328/2022

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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ROC CAPITAL HOLDINGS LLC,

Plaintiff,

- v -

CIVIC FINANCIAL SERVICES,

Defendant.

INDEX NO. 651328/2022

MOTION DATE 05/24/2022, 05/24/2022

MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 102, 116, 117, 118, 119

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 99, 100, 101, 103, 104, 105

were read on this motion to/for SEAL

Upon the foregoing documents and for the reasons set forth on the record (6.14.22), Roc Capital Holding's (Roc Capital) motion for a preliminary injunction (Motion 002) is granted to the extent that Civic and each of its agents, servants, employees and anyone acting for or on its behalf, in concert with or at its direction is enjoined from using Roc Capital's proprietary or confidential information.

Simply put, Roc Capital has demonstrated a likelihood of success on the merits of its claims against Civic that Civic and Mr. Dlott have used Roc Capital's proprietary confidential information. Previously, this Court denied without prejudice Roc Capital's application for a preliminary injunction based on Civic's representation that Mr. Dlott was not using proprietary confidential information of Roc Capital and Civic's representation that Mr. Dlott would only be

working on Civic's "pre-existing customers" and ordered Civic to produce a client list being used by Mr. Dlott. Now, on the record before the Court, it is clear that this representation was not true. Mr. Dlott was soliciting both Equus Capital and Flip Funding – accounts he had worked on while at Roc Capital. This is undisputed and demonstrates a likelihood of success on the merits. In addition, while at Roc Capital, Mr. Dlott participated in weekly planning and strategy meetings where leads were discussed and strategies to generate business based on those leads were devised. Given the time in which Pact Capital and theLender were solicited (*i.e.*, on or about the time of Mr. Dlott's engagement), there is also *prima facie evidence* of further use of Roc Capital's confidential by Mr. Dlott and Civic. It does not matter that Mr Dlott himself may not have picked up the telephone to call Pact Capital or theLender if he participated substantially, as is alleged, in the planning of how these client relationships were to be explored. Nor does it matter whether he himself makes the calls at Civic. What matters is that this confidential proprietary information likely came from Roc Capital. Given the foregoing, Civic must now produce on an attorney's eyes only basis their entire client list with names and addresses (and dates which the relationships were formed) so that Roc Capital can determine the scope of the misappropriation and unfair competition. This must be produced within the next 14 days.

Additionally, Roc Capital has also established a threat of irreparable harm based upon their loss of good will. Once these relationships are established, they have longevity and become an asset for future business.

The balance of the equities clearly favors granting the injunction as to Roc Capital's proprietary information because the scope of the injunction is limited, it preserves the status quo and it only

prevents Roc Capital from misappropriating that which it had no right to in the first instance (*Nobu Next Door, LLC v Fine Arts Housing, Inc.*, 4 NY3d 839, 840 [2005]).

In support of the foregoing, Roc Capital must post an undertaking in the amount of \$20,000 no later than June 28, 2022.

However, Roc Capital's request to preliminarily enjoin Civic from employing Mr. Dlott until March 2023 must be denied because the restrictive covenant is overbroad in its geographic scope (*Sussman Educ., Inc v Gorenstein*, 175 AD3d 1188, 1189 [1st Dept 2019]; *Good Energy, L.P. v Kosachuk*, 49 AD3d 331, 332 [1st Dept 2008]).

Roc Capital's motion to seal NYSCEF Docs. No. 78, 84-96 (Motion 003) is granted because good cause exists to protect Roc Capital and Civic Financial Services' (**Civic**) business practices, finances and client lists.

Accordingly, it is

ORDERED that Roc Capital's motion for a preliminary injunction (Motion 002) is granted solely to the extent that Civic and each of its agents, servants, employees and anyone acting for or on its behalf, in concert with or at its direction is enjoined from using Roc Capital's proprietary or confidential information; and it is further

ORDERED that Civic produce on an attorney's eyes only basis their entire client list with names, addresses and dates which the relationships were formed within 14 days of the date of this decision; and it is further

ORDERED that Roc Capital post an indenture pursuant to the CPLR in the amount of \$20,000 no later than June 28, 2022; and it is further

ORDERED that Roc Capital's motion to seal NYSCEF Docs. No. 78, 84-96 (Motion 003) is granted; and it is further

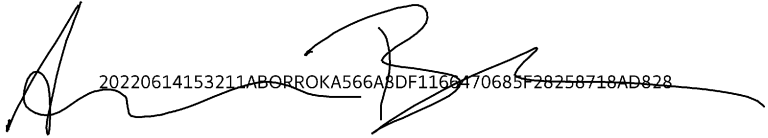
ORDERED that the Clerk of the Court is directed, upon service on him (60 Centre Street, Room 141B) of a copy of this order with notice of entry, to seal the Affirmation of Eric Abramovich and Exhibits F through R [NYSCEF Docs. No. 78, 84-96] in the docket of the New York State Courts Electronic Filing System) and to separate these documents and to keep them separate from the balance of the file in this action; and it is further

ORDERED that thereafter, or until further order of the court, the Clerk of the Court shall deny access to the said sealed documents to anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this case and any party; and it is further

ORDERED that service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for*

Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the parties appear for a status conference on June 16, 2021 at 12:00 p.m. The parties must provide an ESI protocol at or before the conference.



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6/14/2022

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE