

**Stone Sec. Serv. & Investigations Inc. v Panoramic  
Sec. & Consulting Servs., LLC**

2024 NY Slip Op 33776(U)

October 11, 2024

Supreme Court, New York County

Docket Number: Index No. 653701/2024

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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INDEX NO. 653701/2024

STONE SECURITY SERVICE & INVESTIGATIONS INC.,

MOTION DATE 09/03/2024

Plaintiff,

MOTION SEQ. NO. 002

- v -

PANORAMIC SECURITY & CONSULTING SERVICES,
LLC, CHRISTOPHER SHOULDERS

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 25, 27, 28, 29, 30, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, defendants' motion to vacate is denied except as regards subsection (b) of the preliminary injunction.

Background

This motion to vacate arises out of an employment dispute between Defendant Christopher Shoulders ("Shoulders"), owner of Defendant Panoramic Security & Consulting Services, LLC ("Panoramic", together with Shoulders "Defendants"), and Plaintiff Stone Security Service & Investigations, Inc. ("Stone"). Shoulders, operating through Panoramic as an alleged independent contractor, was hired by Stone as a Chief Operating Officer. At that time, Shoulders signed a Terms and Conditions of Employment or Contract Work agreement (the "Contract"). This Contract contains non-compete and non-disparagement clauses. Shoulders alleges that he signed the Contract "[u]nder duress."

Part of Shoulders' job was to lead and supervise security services for one of Stone's clients. This client's name is withheld for confidentiality reasons and will be referred to here as

the Permanent Mission. This job included working closely with the Head of Support Services for the Permanent Mission, an individual whose name is likewise withheld for confidentiality purposes.

In June 2024, four of Stone's employees made complaints about Shoulders, including accusations of "bullying, workplace harassment, and creating a toxic and intimidating work environment." The parties dispute the validity of these complaints as well as the motivation of the employees in making them. In July of 2024, Shoulders was notified that he was being placed on administrative leave pending an investigation. This same letter from Plaintiff's counsel told Shoulders that, pursuant to the terms of the Contract, Shoulders was prohibited from contacting any Stone employee related to the investigation and from communicating with any Stone clients or employees regarding work matters or the investigation. Shoulders was also required to provide certain documents related to his employment that are required by New York law.

Shoulders allegedly continued to contact Stone's employees and clients and allegedly disparaged Stone in violation of the Contract. Stone's counsel sent another cease and desist letter. Then both Shoulders and the Head of Support Services for the Permanent Mission contacted Stone and insisted that the four employees who complained about Shoulders be replaced, and the Head of Support Services informed Stone that the four employees were banned from the Permanent Mission while the investigation against Shoulders was ongoing.

Stone brought the underlying action in July 2024, claiming breach of contract against Panoramic, intentional interference with business relationships against Shoulders, and breach of fiduciary duty and breach of faithless servant doctrine against Defendants. Stone asked the Court for a temporary restraining order and preliminary injunction against the Defendants, seeking to enforce the terms of the non-disparagement and non-impairment clauses in the Contract.

Defendants did not timely respond to the order to show cause and the temporary restraining order was granted on August 28, 2024. September 3, 2024, Defendants filed the present motion seeking to vacate the temporary restraining order and preliminary injunction (the “Order”).

### **Standard of Review**

Pursuant to CPLR § 6314, a defendant may, with notice to the plaintiff, move at any time to vacate or modify it. The judge who granted a temporary restraining order may, upon motion of the defendant, vacate or modify the order. *Id.* Such a motion is “addressed to the sound discretion of the court and may be granted upon compelling or changed circumstances that render continuation of the injunction inequitable.” *Wellbilt Equip. Corp. v. Red Eye Grill, L.P.*, 308 A.D.2d 411, 411 (1st Dept. 2003).

### **Discussion**

Preliminary injunctive relief is available where “a plaintiff is able to demonstrate a likelihood of ultimate success on the merits, irreparable injury if the provisional remedy is not granted, and a balancing of equities in the plaintiff’s favor.” *City of New York v. Love Shack*, 286 A.D.2d 240, 241 (1st Dept. 2001). Here, Plaintiff has been able to demonstrate all three requirements and has met their burden for preliminary injunctive relief for all aspects of the original Order except for the portion regarding all communication with Stone’s employees and clients.

#### **I: Likelihood of Success**

For the purposes of a provisional injunction and establishing a likelihood of success on the merits, “a *prima facie* showing of a reasonable probability of success is sufficient.” *Bass v. WV Preserv. Partners, LLC.*, 209 A.D.3d 480, 481 (1st Dept. 2022). Defendants argue that Stone cannot show likelihood of success on the breach of contract claims because the Contract is not

valid (on the grounds that Stone breached the restrictive covenants), did not demonstrate a continued willingness to employ Defendants, and that there was no consideration. Stone denies all allegations that they breached any term of the Contract and while they argue that they did not disparage Shoulders, they point out that it is irrelevant as there is no clause in the Contract requiring Stone to refrain from disparaging Shoulders.

Defendant Shoulder's argument that Stone breached the Contract's restrictive covenants via disparaging Shoulders is unavailing, as he does not point to any specific covenant in the Contract that requires *Stone* to refrain from disparagement. Stone has, however, introduced evidence that Defendant Shoulders was violating the Contract and the temporary restraining order based upon the Contract and communicating with Stone's employees and clients. Regarding the willingness to employ Defendants, the case law that Defendants cite to involves the termination of employees without cause. *See, e.g., Post v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 48 N.Y.2d 84, 89 (1979). Here, Defendant Shoulders was placed on leave pending investigation into complaints made against him. While on leave, Defendant Shoulders continued to communicate with Stone's clients, including (as Shoulders admits) having conversations about potential future consulting services. Furthermore, Defendant Shoulders has allegedly refused to provide proof of insurance and license (required under New York law and the Contract), despite repeated requests to do so from Stone. The case at hand is distinguishable from cases like *Post* where the employee was terminated without cause.

Finally, Defendants argue that because the employees were given the option of signing the Contract or being terminated, that constituted duress, meaning that there was no consideration, and therefore there can be no likelihood of success on the merits for the breach of contract claim. But for both independent contractors and employees, continuing employment is

sufficient consideration for a restrictive covenant. *See, e.g., Zellner v. Stephen D. Conrad, M.D., P.C.*, 183 A.D.2d 250, 254 (2nd Dept. 1992); *see also Noto v. Planck, LLC*, 225 A.D.3d 499, 499-500 (1st Dept. 2024). Here, Stone has established a likelihood of success on the merits as regards the breach of contract claim, as there is prima facie showing of a reasonable probability of success.

As regarding the likelihood of success of the breach of fiduciary duty claims, Defendants argue that Stone has failed to meet their burden for preliminary injunctive relief because the claim is duplicative of the breach of contract claim and that Stone has failed to show any misconduct by the Defendants. The elements of a claim for breach of fiduciary duty are “(1) the existence of a fiduciary relationship (2) misconduct by the defendant, and (3) damages directly caused by the defendant’s misconduct.” *Rut v. Young Adult Inst., Inc.*, 74 A.D.3d 776, 777 (2nd Dept. 2010).

In support of their claim for breach of fiduciary duty of loyalty, Stone has offered evidence including emails that Shoulders contacted the Permanent Mission in violation of Stone’s instructions, that Shoulders made disparaging remarks about Stone and was in communication with Stone’s clients regarding potential future business. Shoulders freely admits to violating the temporary restraining order and communicating with Stone’s current clients. Here Stone has sufficiently established that there was a fiduciary relationship (the employment relationship and signed Contract) and offered evidence of misconduct (the uncontested violation of the TRO and the communication with Stone’s client).

Stone has also shown a likelihood of success on the merits as regards the final element of damages in a breach of fiduciary duty claim. Because “damages have never been considered to be an essential requirement for a cause of action founded on a breach of fiduciary duty”, a

plaintiff's claim does not necessarily fail for lack of damages. *Miami Firefighters' Relief & Pension Fund v. Icahn*, 199 A.D.3d 524, 526 (1st Dept. 2021); *see also Diamond v. Oreamuno*, 24 N.Y.2d 494, 498-99 (1969). Even so, Stone has sufficiently shown damage done as a direct result of Defendants' actions. Stone has submitted emails showing that as a direct result of Shoulders' improper communications with the Permanent Mission, the four employees who filed complaints against Shoulders have been banned from the Permanent Mission leaving Stone with difficulties in replacing said employees. Stone has shown a likelihood of success on the merits as regards the breach of fiduciary duty claim to a reasonable probability.

## II: Irreparable Injury

Stone argues that the company will face a risk of irreparable injury to Stone's reputation and the potential loss of goodwill and contracts with Permanent Mission as a result of Defendants' actions. Defendants offers, in a short paragraph of conclusory remarks, that Stone's "alleged irreparable harm was caused solely by himself" and that the "sole reason for the strain with the Permanent Mission" is that Stone misrepresented his company's security background. Defendants do not offer any evidence supporting their argument nor do they cite to any supporting case law.

In order to obtain a preliminary injunction, a plaintiff must establish irreparable harm. The loss of goodwill, reputation, and client relationships can constitute irreparable harm. *Newmark Partners, L.P. v. Hunt*, 200 A.D.3d 557, 558 (2021). Importantly, when an agreement has a clause that explicitly states that a breach of the agreement concedes that damages are irreparable, such a clause is enforceable, the element of irreparable injury is conceded, and injunctive relief is appropriate. *Vector Media, LLC v. Go New York Tours Inc.*, 187 A.D.3d 531 (1st Dept. 2020). Here, the Contract contained a clause stating that "[y]ou agree that, if you

breach any of your obligations in Section II, such breach will inflict irreparable harm on the Company, entitling the Company to injunctive relief.” Shoulders admits to breaching the Contract (while arguing that the Contract is void), therefore here the irreparable harm requirement for injunctive relief is established.

### III: Balancing of Equities

Finally, to obtain injunctive relief Stone must show that the balancing of equities favors them. This analysis “requires the court to determine the relative prejudice to each party accruing from a grant or denial of the requested relief.” *Barbes Rest. Inc. v. ASRR Suzer 218, LLC*, 140 A.D.3d 430, 432 (1st Dept. 2016).

Here, Defendants argue that the balance favors them. They argue that “it is unjust to prevent Defendants from having friendly conversations with those who reach out to him”, and that over the six years spent working with Stone, they have developed friendships with individuals that the preliminary injunction would prohibit Defendants from communicating with. Defendants allege, and in support submit a sworn affidavit from Defendant Shoulders, that Stone made disparaging remarks about Shoulders and offered pay increases to employees if they would complain about Shoulders.

Stone argues that the balance favors them for several reasons. First, they have submitted evidence that Stone has been communicating with Stone’s employees and clients regarding the investigation and has made disparaging remarks about Stone that has impaired Stone’s business. They also allege that Shoulders shared confidential information with the Permanent Mission. The strictness of the preliminary injunction is required, Stone argues, because of Shoulders’ history of violating the Contract’s restrictive covenants. While the Court is sympathetic to the impairment of friendships that would result from the preliminary injunction, the balance of

equities overall for the preliminary injunction does favor Stone given the history of Shoulders' actions and the potential for further damage to Stone's business.

Finally, Defendants argue that the terms of the preliminary injunction are beyond the scope of the restrictive covenants in the Contract.

The Contract's non-compete clause reads:

During, and for a period of two years after a termination of, your employment or contract work with the Company, you agree not to take any action directly or indirectly that could impair any aspect of the Company's contractual or business relationship with any Client or Customer of the Company. During, and for a period of two years following a termination of your employment or end of contract work with the Company, you agree not to enter into discussions for a commercial, business, or employment relationship, nor consummate a commercial or employment relationship, with (i) any Client or Customer of the Company (ii) any prospective Client or Customer of the Company that Company pitched, solicited, or quote or was preparing to pitch, solicit, or quote within the 12 months prior to your termination of employment or contract work.

The non-disparagement clause reads:

Both during your employment or contract work with the Company and at all times thereafter you agree that, except as required by applicable law or compelled by process of law, you will not, nor will you permit anyone acting on your behalf to, (i) disparage or make any critical statement about the Company or the Company's Clients or Customers, whether to the press, via social media. or to any other third party (ii) make any derogatory, disparaging, or critical about the Company or the Company's Clients or Customers regarding any of their respective current or former employees, or representatives.

The preliminary injunction order reads:

ORDERED that Defendants Panoramic Security & Consulting Services, LLC, and Christopher Shoulders are enjoined from (a) violating the Non-Disparagement Clause and Non-Impairment Clause contained in the Terms and Conditions of Employment or Contract Work; (b) directly or indirectly communicating with Plaintiff's clients and employees; (c) disparaging or making critical statements about Plaintiff and Plaintiff's employees to any client or third party; and (d) communicating directly and indirectly with the Permanent Mission and the Head of Support Services.

Defendants argue that the disparagement clause in the Contract does not contain anything about no direct or indirect communication with Stone's clients and employees. Stone argues that


the extent of the preliminary injunction is necessary because of Shoulders' past actions in refusing to comply with instructions not to communicate with employees or clients regarding the investigation. Furthermore, Stone argues, the limitation on communications with Stone's clients and employees (which includes the Permanent Mission and the Head of Support Services), is encompassed by the non-compete clause because such communication impairs Stone's business and involves discussion for future employment or services relationships. Stone submits emails from the Permanent Mission in support of this argument. The content of Shoulders' communication with Stone's employees and clients also, Stone argues, contains disparaging comments about Stone.

Defendants are by the terms of the non-compete clause prohibited from taking any direct or indirect actions that would impair any aspect of Stone's business relationships with clients, and Shoulders' communications with the Permanent Mission and others has allegedly already impaired Stone's business relationships (as seen in the emails regarding the four employees). But a ban on all forms of communication with Stone's clients and employees does appear overly broad, and here Stone has cited to no support for their contention that a preliminary injunction can be granted for behavior beyond the scope of the original agreement. Because the scope of the Contract, and the scope of the rest of the preliminary injunction, encompasses all disparaging remarks made to clients or third parties regarding Stone, as well as any action that would violate the Contract or impair Stone's business relationships (such as an attempt to enter into discussions for a business relationship with Stone's clients), a *total* ban on communication is not necessary. Accordingly, it is hereby

ORDERED that subsection (b) reading "directly or indirectly communicating with Plaintiff's clients and employees"; of the Court's Decision and Order dated August 28, 2024, in

this matter is vacated, with the rest of such Order remaining in full force and effect; and it is further

ADJUDGED that defendants' motion that the Court find the restrictive covenant clauses in the Contract invalid is denied.

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LYLE E. FRANK, J.S.C.

10/11/2024  
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DATE

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