

Grassi & Co., CPAS, P.C. v Honka

2025 NY Slip Op 33475(U)

September 12, 2025

Supreme Court, New York County

Docket Number: Index No. 651673/2018

Judge: Lori S. Sattler

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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: PART 02M

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GRASSI & CO., CPAS, P.C.,	INDEX NO. <u>651673/2018</u>
Plaintiff,	MOTION DATE <u>10/28/2024</u>
- v -	MOTION SEQ. NO. <u>005</u>
RONALD HONKA,	
Defendant.	
	DECISION + ORDER ON MOTION
-----X	

HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 89, 90, 91, 92, 93, 94, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113 were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

In this action alleging breach of an employment contract, Defendant Ronald Honka (“Honka”) moves for summary judgment seeking dismissal of all causes of action asserted against him by Plaintiff Grassi & Co., CPAs, PC (“Grassi”). Grassi cross-moves for summary judgment dismissing Honka’s counterclaim in its entirety. Both motions are opposed.

Grassi is an accounting and professional services firm. Honka, a licensed Certified Public Accountant, was a non-equity officer at the firm from November 2015 to May 11, 2017, pursuant to a Non-Equity Officer Agreement (NYSCEF Doc. No. 110, Employment Agreement; NYSCEF Doc. No. 101, Honka’s Deposition at 9, 11).

The Employment Agreement provides:

[a]fter the termination of his employment, [Honka] shall not, directly or indirectly, on behalf of himself of any other person, firm or entity, during the two years following such termination, solicit the employment of, nor employ, any person who was employed by [Grassi] at the date of the [Honka's] termination of employment or was employed by [Grassi] within the twelve-month period preceding such termination (an “Employed Person”)

(Employment Agreement ¶ 11). It further provides that

for a period of two (2) years following termination, [Honka] shall not (i) approach, contract with, solicit or accept business from, or provide accounting or consulting services for himself or herself or others, including any firm in which he or she becomes . . . partner, . . . directly or indirectly, from any Client which was . . . [Grassi's] Client . . . at the effective date of termination of [Honka's] employment by [Grassi] . . . (a "Restricted Client"); or (ii) disturb, or in any other manner interfere with or cause the termination of, the Employer's relationship with any Restricted Client

(Employment Agreement ¶ 12.a). "Client" is defined as

a person, corporation, partnership, other business entity, association, trust, estate, or not-for-profit entity, or who is or has been a client of [Grassi] (or of any other firm with respect to which entity [Grassi] has purchased the right to provide services) at any time during the two years prior to the date of termination . . . in each case, for whom [Honka] performed any professional services during the two years preceding the date of termination, about whom the Employee is aware of Confidential Information, or with whom the Employee has had direct personal communication during such two-year period

(Employment Agreement ¶ 12.b.i).

During his time at Grassi, Honka collaborated with David Abrams ("Abrams"), a Grassi employee since 2012 (NYSCEF Doc. No. 102, Abrams' Deposition at 34-36), and with Dominic Merlucci, another Grassi employee at that time. Honka worked on projects for Grassi's clients, including TBK Partners, LLC, Vanderbilt Partners, LLP, Tweedy, Browne International Partners, LLC, and Tweedy Browne Global High Dividend Partners, LLC (NYSCEF Doc. No. 103, Merlucci's Deposition at 112). These entities together with Tweedy Browne Company, LLC, (collectively "Tweedy Entities") had been Grassi's clients before Honka joined the company (NYSCEF Doc. No. 107, L. Grassi's Deposition at 16, 17).

Honka sent a 60 days' notice of resignation as required by ¶7(b) of the Employment Agreement on April 19, 2017. Following the filing of this notice, Grassi could elect to terminate Honka's employment earlier but only upon payment of the base salary for the entire 60 days period

(Employment Agreement ¶ 7.b). Thereafter, the parties agreed that Honka's employment would terminate on May 11, 2017 (Honka's Deposition at 143-146; NYSCEF Doc. No. 106, Agranoff's Deposition at 108). Honka continued to receive his base salary from Grassi until May 31, 2017 (Honka's Deposition at 152-153, Agranoff's Deposition at 108). On June 1, 2017, Honka joined Weaver and Tidwell LLP ("Weaver"), Grassi's competitor, as a partner (NYSCEF Doc. No. 105, Mackel's Deposition at 15, 39).

In summer 2017, Honka had a lunch with Abrams, then still employed at Grassi, during which Abrams asked about the possibility of working at Weaver (Abrams' Deposition at 46-47). Honka agreed to pass Abrams' name along (Honka's Deposition at 105-106, Abrams' Deposition at 46). Thereafter, Kevin Stafford from Weaver invited Abrams for an interview, following which Abrams received an offer from this company (Abrams' Deposition at 46-48; NYSCEF Doc. No. 104, Sanford's Deposition at 52-54). On September 25, 2017 Abrams joined Weaver (Abrams' Deposition at 31, 38; Honka's Deposition at 101), after submitting his notice of resignation to Grassi on August 30, 2017 (Agranoff's Deposition at 53-54).

The parties dispute who initiated contact between Tweedy Entities and Honka after he joined Weaver and when this contact was initiated (Honka's Deposition at 195-198; Merlucci's Deposition at 98, 177-179; Agranoff's Deposition at 85-86). According to Dominic Merlucci of Tweedy Entities, in March or April 2018, Tweedy Entities began to search for a replacement for Grassi (Merlucci's Deposition at 131-132, 183, 189) and contacted four different accounting and tax firms, including Honka at Weaver (*id.* at 114-18, 121). Tweedy Entities ultimately chose Weaver (*id.* at 131) and on September 25, 2018, signed the relevant engagement letters, with Honka acting as Weaver's engagement partner for some of the projects (Honka's Deposition at 169-173; Mackel's Deposition at 63-64). Following the engagement of Weaver, Tweedy Entities informed Grassi for the first time that they would no longer use its services (Merlucci's Deposition at 192-194).

On April 6, 2018, Grassi filed its Complaint interposing causes of action for breach of the Employment Agreement's employee non-solicitation clause and tortious interference with contractual relationships due to Weaver's hiring of Abrams (NYSCEF Doc. No. 1, Complaint). On March 5, 2019, Grassi amended its Complaint interposing an additional cause of action for breach of the client non-solicitations clause following Tweedy Entities' departure from Grassi (NYSCEF Doc. No. 98, Amended Complaint). Honka filed an answer and asserted counterclaim for breach of the Employment Agreement for failure to pay the agreed compensation for the period from June 1, 2017 through June 19, 2017 (NYSCEF Doc. No. 99). Honka now moves for a summary judgment dismissing Grassi's Amended Complaint, and Grassi cross-moves for dismissal of Honka's counterclaim.

On a motion for summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad*, 64 NY2d at 853). Should the movant make its prima facie showing, the burden shifts to the opposing party, who must then produce admissible evidentiary proof to establish that material issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

A court's function on summary judgment is issue finding rather than issue determination (*Kershaw v Hosp. for Special Surgery*, 114 AD3d 75, 82 [1st Dept 2013]). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions" (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2004], quoting *Anderson v Liberty Lobby, Inc.*, 477 US 242, 255 [1986]).

Honka seeks dismissal of the causes of action related to the breach of restrictive covenants claiming that they are overbroad and unenforceable. A restrictive covenant prohibiting solicitation of clients or employees is reasonable and enforceable if it “(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” (*Harris v Patients Med., P.C.*, 169 AD3d 433, 434 [1st Dept 2019], citing *BDO Seidman v Hirshberg*, 93 NY2d 382, 388-389 [1999]; *Perella Weinberg Partners LLC v Kramer*, 230 AD3d 451, 451 [1st Dept 2024] [“The enforceability of the personnel nonsolicitation clause is determined using the three-factor test from *BDO Seidman v Hirshberg*”]). While restrictive covenants must be strictly construed (*see Brown & Brown*, 25 NY3d 370), “the reasonableness, breadth, legality, and enforceability of the non-recruitment provision . . . are each fact-based determinations” (*Grassi & Co., CPAS, P.C. v Honka*, 180 AD3d 564, 565 [1st Dept 2020]).

With respect to the non-solicitation provision, Grassi claims it has a legitimate interest in preventing employee attrition (Egar’s Deposition at 108) and argues the clause sought “to protect trade secrets, customer relationships, and protect against the loss of unique and extraordinary employees to competitors” (NYSCEF Doc. No. 111, Grassi’s Memorandum of Law at 16). However, ¶ 11 of the Employment Agreement is not limited to extraordinary or unique employees (*see BDO Seidman*, 93 NY2d 389) or employees who “cultivated or developed personal relationships with clients through the use of the employer’s resources” (*Perella Weinberg Partners LLC*, 230 AD3d at 452). Issues of fact as to whether the clause satisfies the three-factor test therefore exist requiring a trial as to this cause of action. As for the cause of action for breach of the non-solicitation of clients provision, material issues of fact also exist with respect to the scope of this covenant’s restriction, its enforceability and circumstances of Tweedy Entities’ departure from Grassi, including Honka’s involvement (*see Grassi*, 180 AD3d at 565). Accordingly, those branches of the motion are denied.

The motion is also denied as to the tortious interference cause of action in light of parties' failure to address it in the motion.

Grassi's cross-motion for summary judgment seeking dismissal of Honka's counterclaim for breach of ¶ 7.b of the Employment Agreement due to non-payment of his salary from June 1, 2017 through June 19, 2017 is also denied, as material issues of fact exist as to the parties' arrangement at the time of Honka's resignation.

Accordingly, it is hereby

ORDERED that the motion and cross-motions are denied.

This constitutes the Decision and Order of the Court.



9/12/2025
DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE