

D.N. FST CV 12 6015400 S SUPERIOR COURT : SUPERIOR COURT
STAMFORD - NORWALK
JUDICIAL DISTRICT : STAMFORD/NORWALK JUDICIAL
DISTRICT AT STAMFORD
2013 MAY - 7 A 10: 30
SAYLAVEE, LLC
VS
RHONDA HUNT : MAY 7, 2013

MEMORANDUM OF DECISION
RE: MOTION FOR TEMPORARY INJUNCTION (150.00) and
OBJECTION (153.00)

This case comes to this court as a Motion for Temporary Injunction, pleading 150.00 and the objection thereto, pleading 153.00. The court heard the evidence in the case, has reviewed all of the exhibits in the case, has listened to the arguments of counsel, has reviewed all of the claims of law and fact in the case and has rendered its decision accordingly.

The plaintiff Saylavee, LLC seeks a temporary injunction enforcing a non-competition agreement between the parties and prohibiting the defendant Rhonda Hunt from continuing to work at Equinox in Scarsdale, New York, or any other exercise facility within ten miles of the Bodyfit exercise studio in Scarsdale for a period of two years.

Saylavee operates an exercise studio in Scarsdale, New York called Bodyfit. Bodyfit offers a mix of exercise classes to its clients. The defendant Rhonda Hunt, was an instructor at that facility. On August 12, 2011, the defendant Rhonda Hunt resigned her position at Bodyfit.

An injunction is an equitable remedy to protect a plaintiff from irreparable injury to property or other rights. The court may order a person to do something, or to refrain from doing something.

The order to refrain from doing something is called a prohibitory injunction. A party may apply to the court for a temporary injunction to maintain the status quo prior to the adjudication of the civil action. A permanent injunction may issue only after the pleadings are closed, and the trial on the merits has been conducted. There is provision under our law however, for the parties to consent to a temporary injunction being the full hearing. In this case there was no consent.

In an injunction the complaint must allege irreparable harm, and lack of an adequate remedy at law. In granting an injunction, the court should consider whether the relief is inequitable. The interested parties are entitled to appear and be heard.

The purpose of a temporary injunction is to preserve the status quo until the final determination of the parties rights after a full hearing on the merits.

In addition to the requirements for injunctive relief at the temporary stage, the plaintiff must prove that it will likely prevail on the merits. The court must consider a bond under § 52-472 to insure that the defendant is indemnified from any damages which they might sustain if the plaintiff failed to prosecute the action to effect. A temporary injunction automatically terminates upon the issuance of a permanent injunction. Note, that an order granting or denying a temporary injunction is interlocutory, and not immediately appealable.

Exhibit Two is the Non-competition Agreement. The court finds that the Non-competition Agreement was a condition of employment, and that the employee accepted that as a term of employment. The court finds that the two year period for the non-compete is reasonable. The court finds that the restriction concerning a ten mile radius is reasonable. The restriction is that the employee may not in any capacity become involved as an employee as otherwise "in any business which engages in the same or similar business of the company or otherwise competes with the

business of the company within a ten mile radius of any exercise studio owned and operated by the company.” The court finds that the defendants work at Equinox is violative of the covenant.

The court finds that the defendant knowingly and voluntarily entered into this agreement. The defendant had a husband who was a lawyer. She took the agreement home, chose not to show it to him, and signed it the next day. The court has reviewed this Agreement and finds nothing in the Agreement that is not in the nature of “plain speak.” In the Agreement, the employee affirmatively represents that in the event of the termination of his employment (Agreement is not gender neutral) with the company, the employee is capable of earning a living in a field for which the employee is qualified without violating the terms of the foregoing covenants. Therefore, this issue is raised up front concerning convenience and other concerns of the employee.

The defendant employee resigned on August 12, 2011 which means the two year period runs August 11th of 2013. For ten and one-half months after her termination, the defendant honored the non-compete and worked at exercise studios in the area that were more than ten miles from Bodyfit. However, starting in or approximately July 2012, the defendant began working at Equinox Scarsdale, a gym less than two miles from Bodyfit. She is on the Equinox schedule teaching exercising classes that are similar to those offered at Bodyfit, and which have the same potential clientele.

The remedies provision Paragraph 3 of the Agreement provides that the equitable relief may be granted without the necessity of proving irreparable harm or the inadequacy of money damages.

The Agreement, Exhibit Two in Paragraph 1B addresses trade secrets. Although it is difficult to pin down exactly what are the trade secrets, it is clear to this court that all of these expensive facilities like to have what they call at Equinox, their “signature programs.” The

Equinox Studio and the plaintiff both seem to have Lotte Berk, plus or minus other programs.

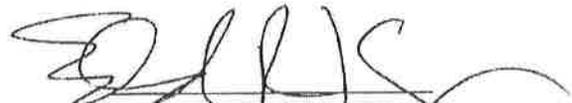
The court finds that it is necessary to grant the temporary injunction to maintain the status quo until the full hearing on the merits. The status quo was that the defendant was working in places outside the ten mile radius, and was not disclosing trade secrets prior to her relocation at Equinox.

Accordingly, the court finds that the plaintiff has sustained its burden of proof. The court enters a temporary injunction enjoining the defendant from the following until a final order of the court in this action:

1. Working at Equinox or any other exercise establishment within ten miles of Bodyfit.
2. Revealing any of Bodyfit's proprietary business information to anyone.
3. Soliciting any current or former Bodyfit client for business.

The court orders that the plaintiff post a \$10,000.00 cash or professional surety bond to ensure performance under this order pursuant to Connecticut General Statutes § 52-472.

SO ORDERED


EDWARD R. KARAZIN, JR.
JUDGE TRIAL REFEREE

*Decision entered in accordance with the foregoing. All counsel and pro-se parties of record notified 5/17/13,
dkt [signature]*