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IN THE
COURT OF APPEALS OF INDIANA

ICON TRANSPORTATION CO., INC., and NEW MEDIA FULFILLMENT, LLC,	)	
Appellants-Plaintiffs,	)	
vs.	)	No. 84A01-0509-CV-403
THOMAS J. LEE and DMS DISTRIBUTION, INC.,	)	
Appellees-Defendants.	)	

APPEAL FROM THE VIGO SUPERIOR COURT, DIVISION I
The Honorable Michael H. Eldred, Judge
Cause No. 84D01-0501-PL-33

November 15, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellants-plaintiffs ICON Transportation Co., Inc. (ICON), and New Media Fulfillment, LLC (New Media), appeal from the denial of their motion for a preliminary injunction against appellees-defendants Thomas J. Lee and DMS Distribution, Inc. (DMS).[1] Finding that ICON failed to establish that its remedy at law is inadequate, that it has suffered irreparable harm, and that it has a reasonable likelihood of success on the merits at trial, we affirm the judgment of the trial court.

FACTS

The Parties

ICON, an Indiana corporation, and New Media, a wholly-owned subsidiary of ICON, provide transportation, packaging, configuring, fulfillment, warehousing, and other services to the home video and entertainment business. DMS provides fulfillment services to the home video and entertainment business.

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[1] Although all parties call DMS "Data Management Services, Inc.," in the captions on their appellate briefs, apparently DMS was "incorrectly denominated as Data Management Systems, Inc.," in the complaint and the error has carried through to the appeal. Appellants' App. p. 14. We have corrected the caption in our opinion and will refer to the entity as DMS.

ICON and DMS provide fulfillment services, including the packaging and preparation of DVDs to be sold on the retail market, to Warner Home Video (Warner). Warner is the largest fulfillment customer of both ICON and Warner but is under no contractual obligation to provide fulfillment work to either entity. Indeed, Warner uses multiple vendors in the industry to "avoid putting all of its eggs in one (1) basket" and to ensure that all fulfillment work is completed on schedule. DMS Br. p. 3.

Although Warner has no contractual obligation to obtain fulfillment services from ICON, it normally provides a generalized projection of the volume of fulfillment services it plans to seek from ICON in upcoming quarters. In August 2004, Warner projected that its fulfillment orders with ICON for the third and fourth quarters of the year would increase by approximately 20% compared to the same period of time in 2003. Notwithstanding that projection, ICON anticipated that its fulfillment business with Warner would increase between 50% and 60% in the third and fourth quarters of 2004. In fact, ICON created additional fulfillment capacity to handle this expected growth. In the end, ICON's fulfillment work for Warner in the third and fourth quarters of 2004 increased by approximately 100%, exceeding ICON's stated expectations.

In seeking fulfillment services for a particular order, Warner provides a vendor with a bill of materials (BOM) describing how the order is to be completed. Warner then asks the vendor if it can complete the order at the price set by Warner or, if not, at what price the vendor is willing to complete the order. Warner often sends a single BOM to multiple vendors, and an individual vendor does not know whether it will perform a

particular job until Warner accepts the vendor's BOM and sends it a consolidation order for the job.

The Relationship Between ICON and Lee

Lee began working for ICON in 1995 and at the time of his termination in 2004, he was employed as ICON's Senior Vice President and Chief Operating Officer. On February 1, 2002, Lee executed an Employee Confidentiality Agreement (the Agreement), providing, in relevant part, that Lee

> agree[s] that any and all knowledge that may be obtained in the course of the employment with respect to the conduct and details of the business and with respect to the secret processes, methods, electronic data, agreements, documentation, records, formulas, machinery, etc. used by ICON in providing a product or a service will be forever held inviolate and be concealed from any competitor and all other persons.

Appellants' App. p. 192. The Agreement contains no covenant not to compete.

As a result of his responsibilities as ICON's Chief Operating Officer, Lee had substantial contact with Ed Ross, Warner's Executive Vice President, and Andrew Blumke, Warner's Director of Operations. Ross and Blumke make the final decisions regarding the quantity of Warner work that is sent to each fulfillment provider. After many years of conducting business with Warner prior to and during his employment at ICON, Lee developed a close and personal friendship with Blumke. Because Warner obtains fulfillment services from several vendors, Ross and Blumke's identities and contact information are widely known in the industry.

During his employment with ICON, it was Lee's responsibility to approach and negotiate with DMS on behalf of ICON for the potential acquisition of additional

capacity to service Warner's fulfillment needs during the fourth quarter of 2004. At that time, DMS had not yet provided fulfillment services to Warner. The parties were unable to reach an agreement regarding ICON's overflow fulfillment work, and as a result, DMS did not perform any fulfillment services for Warner prior to the termination of Lee's employment with ICON.

On September 7, 2004, with no prior notice, Lee's employment with ICON was terminated. The document entitled "Talking Points for Termination Meeting with Thomas Lee" did not reference the Agreement and merely asked that Lee not contact ICON's customers until the parties completed discussions regarding Lee's severance package so that ICON could manage any rumors related to Lee's termination. Tr. Ex. 21. Thereafter, Lee was instructed to leave ICON's premises immediately without gathering his personal belongings.

ICON permitted Lee to retain his ICON-issued cell phone following his termination, simply asking that he return it in a few days, which he did. ICON also permitted Lee to take his briefcase with him and failed to perform an inventory of the ICON property in Lee's possession at that time or to ask Lee to return any ICON property in his possession. After ICON initiated this litigation, Lee voluntarily returned certain ICON documents that were in his briefcase at the time of his termination. Lee offered undisputed testimony that he did not realize that he possessed these documents and that they remained in his briefcase until after the litigation was initiated, when his attorney asked that he gather any documents relating to his employment with ICON.

Shortly after Lee's termination, his brother and secretary entered his former office to gather his personal belongings into several boxes and remove them from the premises. ICON permitted them to do so with no supervision. Lee's brother took a Rolodex containing contact information for ICON customers, believing it to be Lee's personal Rolodex file. Although ICON discovered that the Rolodex was missing shortly after Lee's termination, ICON neither questioned Lee or his brother about it nor asked that they return it. Lee believed that the boxes from his office contained personal items such as photographs, so he placed them in his garage and did not examine their contents until ICON initiated the instant litigation. At that time, prompted by a question asked during his deposition regarding the Rolodex's whereabouts, Lee examined the contents of the boxes, discovered the Rolodex, and promptly contacted ICON to inform it of the discovery and ask for guidance on what to do with the Rolodex. The record does not reveal ICON's response to this inquiry.

On April 1, 2004, Lee had executed a Termination Agreement for Stock Appreciation Rights and Deferred Compensation Agreement (the Termination Agreement), which set forth Lee's right to certain deferred compensation in the event of the termination of his employment. The Termination Agreement incorporated by reference the noncompete and confidentiality provisions of the Stock Appreciation Rights and Deferred Compensation Agreement (Deferred Compensation Agreement), which Lee had already executed. The noncompete and confidentiality provisions apply to Lee only if he is terminated for cause or if he voluntarily terminates his employment with ICON.

At the time of Lee's termination, ICON provided him with a proposed Voluntary Resignation Agreement and General Release, which contained a noncompete provision, and informed Lee that he had twenty-one days to consider signing it. In making that decision, Lee endeavored to determine whether he could compete against ICON without violating the noncompete provision of the Deferred Compensation Agreement. To that end, on September 10, 2004, Lee requested in writing that ICON identify what cause, if any, existed for his termination. ICON responded on September 14, 2004, and stated that it had no cause to terminate Lee's employment:

> Mr. Lee is employed at will and "cause" is not relevant to his termination. Under the Stock Agreement, ICON could elect to terminate Mr. Lee "for cause," which would cause a forfeiture of deferred compensation. ICON has decided not to pursue that right. This decision is without regard to whether or not Mr. Lee signs the Resignation Agreement. Thus, the information requested in this item is not relevant.

Tr. Ex. C. In the end, Lee elected not to sign the Voluntary Resignation Agreement. Consequently, there is no noncompete provision restraining Lee's behavior following the termination of his employment with ICON.

Lee Decides to Compete Against ICON

After receiving ICON's September 14 letter, Lee decided to enter the fulfillment business and obtain Warner work. He contacted Ross and Blumke of Warner to schedule a meeting to discuss potential business opportunities, making contact because of the personal relationships he had developed with them during his tenure at ICON.

After Lee set up the meeting with Warner, he met with Mark Taylor of DMS, with whom he had developed a personal relationship during Lee's tenure at ICON. Lee

proposed a brokering arrangement with DMS whereby, should his meeting with Ross and Blumke prove to be successful, he would obtain Warner's fulfillment work and broker the actual fulfillment services to DMS. After Lee assured him that he was not bound by a noncompete obligation to ICON, Taylor agreed to the proposed arrangement.

On October 19, 2004, Lee met with Ross and Blumke, advising the men of the circumstances surrounding his termination—including the fact that he had no noncompete obligation to ICON—and explained the brokering arrangement between Lee and DMS. The timing of the meeting was fortuitous for Lee because Warner had been considering utilizing a new fulfillment services provider to help with its busy season in the third and fourth quarters of 2004 to prevent ICON from getting overloaded and potentially missing a DVD release date. At no point during this meeting did Lee ask Ross or Blumke to divert work designated to be performed by ICON to DMS nor did he refer to orders or projects that were in ICON's pipeline of potential work.

Ross and Blumke welcomed the opportunity to work with Lee and agreed to generate a vendor number for Lee and a warehouse number for DMS without inspecting the DMS warehouse because of the professional and personal relationship between Lee and Blumke. Ross and Blumke both testified that they decided to use Lee and DMS—even though they had no prior knowledge of or experience with DMS—because of their past business dealings and longstanding personal relationships with Lee.

In late 2004, Lee and DMS secured their first fulfillment order from Warner and have taken on more Warner fulfillment projects since that time. Warner deals with Lee as it deals with any other vendor—by sending him a BOM and asking the price at which

he and DMS can perform the services. Upon receiving a BOM, Lee sends it to Taylor, who calculates the price at which DMS can perform the requested fulfillment services. It is undisputed that DMS and Lee regularly charge Warner higher rates for fulfillment services than does ICON.

With respect to fulfillment orders that require the use of overtime labor, Blumke has specifically asked that Lee and DMS charge Warner the same overtime rate as does ICON. Although Blumke did not remind Lee of ICON's overtime rate when making this request, Lee inferred that Blumke had this information and would have provided it if Lee had asked.

With respect to the use of temporary labor, following Lee's termination from ICON, he received an unsolicited telephone call from Tom Morales of the Morales Group, an Indianapolis-based company that provides temporary labor services to ICON. Morales asked if Lee or DMS needed temporary labor, and at a meeting including Lee, Taylor, and Morales, the rate that the Morales Group offers to ICON was discussed in general terms. Lee and Taylor testified that Lee did not divulge ICON's labor rates with the Morales Group during this meeting. In the end, the Morales Group worked out an arrangement with Lee and DMS whereby it charged DMS more for temporary labor—$8.75 per hour—than it did ICON—$8.45 per hour. ICON's Vice President of Operations testified that there was no problem with the Morales Group providing temporary labor to ICON's competitors or telling those competitors its labor rates for ICON so long as it did not interfere with the supply of temporary labor to ICON.

ICON Learns of Lee's Competition

ICON learned that Lee was contacting, soliciting, and obtaining fulfillment business from Warner on behalf of DMS in mid- to late-October 2004. After that time, ICON handled almost all of the shipping for the Warner DVDs and related materials being transported to and from the DMS warehouse. ICON, however, offered no evidence that it conducted any investigation into or took any actions concerning Lee's allegedly problematic conduct for over two months.

In late December, ICON sent two separate letters to Lee concerning his conduct. The first letter directly contradicted ICON's prior representations to Lee by claiming for the first time that it had terminated him "with cause," that he was in violation of the noncompete obligation of the Deferred Compensation Agreement, and that he had consequently forfeited his entitlement to the payment of his deferred compensation account balance. Tr. p. 130-31, Exs. 21, B, C. The second letter claimed for the first time that Lee had violated his confidentiality obligations under the Agreement by doing business with Warner. On January 1, 2005, ICON failed to pay Lee $50,000 owed to him pursuant to the Deferred Compensation Agreement.

On January 4, 2005, ICON and New Media filed a complaint against Lee and DMS, seeking, among other things, an injunction prohibiting Lee and DMS from performing services for Warner for a period of twelve months. The trial court held a hearing on the motion on March 6, April 15, and May 15, 2005, and then asked the parties to submit proposed findings of fact and conclusions of law. On May 26, 2005, the trial court denied the motion for preliminary injunction. Lee and DMS had each

submitted separate proposed findings of fact and conclusions of law, and apparently, the trial court signed and entered both proposed orders. In the order submitted by Lee, the trial court found in pertinent part as follows:

> 16. . . . DMS determined the price [to be quoted to Warner for fulfillment services on a particular job] by performing a "time study" with no involvement, assistance, or other input whatsoever from Lee . . . .
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> ***
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> 19. . . . Lee at no time shared information with DMS or Taylor regarding Icon's price list information, customer list information, pricing methodology, pricing information, confidential customer requirements, customer contacts, confidential business opportunities or marketing strategy.
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> ***
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> 21. As evidenced by the testimony of . . . Icon's Vice President of Pacific Operations, Icon's alleged damages in this matter could easily be calculated based upon the value of the fulfillment services that Lee has brokered for [Warner]. Sam Lee also testified that Icon made twelve percent (12%) to fourteen percent (14%) profit for each [Warner] fulfillment order in 2004. DMS can calculate the precise number of Warner CDs/DVDs that have been fulfilled at its facility as well as DMS'[s] cost per unit and profit per unit for each and every CD/DVD.
>
> ***
>
> 24. As evidenced by the testimony of . . . [the] Executive Vice President of Operations for Icon, Icon has no knowledge or information that Icon's price lists, customer lists, pricing methodologies, marketing strategies, confidential customer requirements, or confidential business opportunities have ever been revealed or shared, by Tom Lee or anyone, with DMS and/or Mark Taylor.
>
> ***

35. . . . if [Lee] and DMS were enjoined, Icon would continue to receive a percentage, not the entire whole, or Warner's fulfillment work in this area as Warner is committed to not having "all its eggs in one basket."

***

Conclusions of Law

6. Icon has failed to allege or demonstrate that it suffered any potential injury or damage that is not monetary in nature.

7. In the present matter, Icon cannot demonstrate that it suffered any irreparable harm. In fact, the testimony and evidence has shown the damages, if any, suffered by Icon are exclusively monetary in nature and readily calculable.

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14. . . . Icon's Vice President for Operations stated that he had no knowledge or information that Icon's price lists, customer lists, pricing methodologies, marketing strategies, confidential customer requirements, or confidential business opportunities had ever been provided or revealed to Mark Taylor or any other representative or employee of DMS.

15. [Lee], at no time, either before or after being terminated by Icon, ever revealed any trade secret information . . . to Mark Taylor or any other employee or owner of DMS.

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17. Indiana courts have repeatedly held that the personal relationships an employee properly develops during the course of his employment with his employer's customers and vendors do not constitute trade secrets . . . .

***

24. The testimony of Warner executives demonstrates that entering this injunction could possibly fail to benefit Icon in any manner, whatsoever, as Warner was looking for an additional vendor when DMS and Lee entered the fulfillment business.

> 25. The potential harm to DMS, should injunctive relief be granted, far outweighs any threatened harm to Icon . . . .

Appellants' App. p. 14-22. In the order submitted by DMS, the trial court found in pertinent part as follows:

> Conclusions of Law
>
> ***
>
> 6. In the present matter, ICON cannot demonstrate that it has suffered any irreparable harm. In fact, ICON's own conduct demonstrates that it has not suffered any irreparable injury in the present matter.
>
> 7. . . . ICON waited over two months after learning of [Lee and DMS's] allegedly illegal conduct before filing this lawsuit and seeking injunctive relief.
>
> ***
>
> 9. Moreover, the damages which ICON has and is allegedly suffering are purely economic in nature . . . .
>
> 10. . . . If Lee and DMS are ultimately found to have misappropriated ICON trade secrets in soliciting work from [Warner], ICON's damages will be easily calculated based upon the value of the fulfillment services that Lee has broker[ed] for [Warner].
>
> ***
>
> 16. With respect to ICON's key contact information, customer preference and/or service requirements, business plans, and marketing strategies, ICON did not take reasonable steps to maintain the confidentiality of this information. Critically, ICON did not remind Lee of his obligations under the Confidentiality Agreement at the time of his termination or upon learning of his work with [Warner], allowed Lee to utilize his ICON-issued cell phone containing customer contact information subsequent to his termination, did not tell Lee that contacting ICON's customers would violate any legal or contractual obligations, did not conduct any inventory of the ICON property in Lee's possession at the time of or subsequent to his termination, and permitted Lee's brother to gather Lee's personal belongings from Lee's former office without management supervision.

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20. It is undisputed that Lee developed these relationships [with Blumke and Ross], and his relationship with Mark Taylor of DMS, through proper means based upon his responsibilities when serving for five years as ICON's Chief Operating Officer. Nevertheless, ICON, through the testimony of its President and CEO . . ., has claimed that these relationships constitute trade secrets . . . . ICON's claim lacks any legal basis.

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25. In the present matter, as is evident from the injunctive relief it has requested, ICON seeks only to prevent Lee and DMS from utilizing Lee's personal relationships with Ross and Blumke . . . to compete against it. . . . [S]ince ICON is not seeking to enforce a covenant not to compete, its use of the [Trade Secrets] Act to attempt to prevent this competition is improper, and it cannot prevail on the merits of its trade secret claim.

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32. [S]ince the Confidentiality Agreement purports to prohibit Lee from utilizing "any and all knowledge" that he acquired during the course of his employment with ICON, which necessarily includes any generalized knowledge or skills that he obtained, it is overly broad and unenforceable under Indiana law. . . .

***

34. Moreover, the Confidentiality Agreement does not prohibit Lee's use of the personal relationships that he developed with ICON's customers to compete against ICON, particularly his relationships with Ross and Blumke . . . .

Appellants' App. p. 24-51. ICON and New Media now appeal.[2]

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[2] Although the trial court found in its order that the Confidentiality Agreement is overly broad and unenforceable, it did not enter final judgment on ICON and New Media's breach of contract claim against Lee. Indeed, aside from the trial court's ruling on the motion for preliminary injunction, all remaining matters, including ICON's outstanding claims against Lee and DMS, are stayed pending resolution of this appeal. Appellants' App. p. 12. Thus, we will not address Lee's argument that ICON cannot succeed on its breach of contract claim.

DISCUSSION AND DECISION

I. Standard of Review

As we consider ICON's argument that the trial court erred in denying its motion for preliminary injunction, we observe that when reviewing findings of fact and conclusions of law entered upon the denial of a motion for preliminary injunction pursuant to Trial Rule 52(A)(1), we must determine if the trial court's findings support its judgment and will reverse the judgment only when clearly erroneous. Oxford Fin'l Group, Ltd. v. Evans, 795 N.E.2d 1135, 1141 (Ind. Ct. App. 2003). Findings of fact are clearly erroneous only when the record lacks any evidence or reasonable inferences therefrom to support them. U.S. Land Servs., Inc. v. U.S. Surveyor, Inc., 826 N.E.2d 49, 62 (Ind. Ct. App. 2005). The trial court's judgment is clearly erroneous only if it is unsupported by the findings and the conclusions that rely upon those findings. N. Elec. Co., Inc. v. Torma, 819 N.E.2d 417, 421 (Ind. Ct. App. 2004). We may neither reweigh the evidence nor reassess witness credibility. Oxford Fin'l, 795 N.E.2d at 1141. Additionally, even an erroneous finding is not fatal to a trial court's judgment if the remaining valid findings and conclusions support the judgment, rendering the erroneous finding superfluous and harmless as a matter of law. Lakes & Rivers Transfer v. Rudolph Robinson Steel Co., 795 N.E.2d 1126, 1132 (Ind. Ct. App. 2003).

Furthermore, ICON and New Media are appealing from a negative judgment and must, therefore, establish that the trial court's judgment is contrary to law. N. Elec. Co., 819 N.E.2d at 421. A judgment is contrary to law only if the evidence in the record, along with all reasonable inferences, is without conflict and leads unerringly to a

conclusion opposite that reached by the trial court. Id. We review conclusions of law de novo and give no deference to the trial court's determinations about such questions. Id. at 422.

II. Preliminary Injunction Elements

In seeking a preliminary injunction under the Indiana Uniform Trade Secrets Act (IUTSA),[3] ICON and New Media had the burden of establishing: (1) that their remedies at law are inadequate, causing irreparable harm pending resolution of its lawsuit; (2) that they have at least a reasonable likelihood of success on the merits at trial; (3) that the threatened injury to ICON and New Media outweighs the potential harm to Lee and DMS resulting from the proposed injunction; and (4) that the public interest would not be disserved by the granting of injunctive relief. U.S. Land Servs., 826 N.E.2d at 63. ICON and New Media were required to prove each of the four requirements by a preponderance of the evidence, and a failure to prove even one would have made the grant of an injunction an abuse of discretion. Paramanandam v. Herrmann, 827 N.E.2d 1173, 1179 (Ind. Ct. App. 2005). Finally, we note that an injunction is an extraordinary equitable remedy that should be granted only in rare instances where the law and facts are clearly within the moving party's favor. PrimeCare Home Health v. Angels of Mercy Home Healthcare, LLC, 824 N.E.2d 376, 380 (Ind. Ct. App. 2005).

[3] Ind. Code § 24-2-3 et seq.

A. Adequacy of Remedies at Law

As noted above, to obtain a preliminary injunction, a party must demonstrate that its remedies at law are inadequate, causing irreparable harm. U.S. Land Servs., 826 N.E.2d at 63. As our Supreme Court has recognized,

> "The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm."

Ind. Family and Social Servs. Admin. v. Walgreens, Inc., 769 N.E.2d 158, 162 n.4 (Ind. 2002) (quoting Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958)). Consequently, any loss that is "essentially financial in nature is . . . insufficient to warrant the grant of injunctive relief." PrimeCare, 824 N.E.2d at 383.

Here, James Kent, ICON's Vice President of Pacific Operations, testified that ICON would easily be able to determine the damages, down to the penny, that it has purportedly sustained as a result of allegedly losing Warner work to Lee and DMS. Tr. p. 230. There is support, therefore, for the trial court's conclusion that ICON's damages, if any, are purely economic in nature and readily quantifiable.

ICON directs our attention to the testimony of its CEO and Vice President of Operations, who insist that because of the relationship between Lee, DMS, and Warner, ICON has lost its key banking relationship with Fifth Third Bank, has had to lay off numerous employees, has suffered a significant morale decline, and has been unable to effectively implement its plan for strategic growth during 2004 and beyond. Appellants'

App. p. 116-18, 140-41. But whereas the fundamental purpose of injunctive relief is to prevent prospective harm, Washel v. Bryant, 770 N.E.2d 902, 904 (Ind. Ct. App. 2002), all of this alleged harm has already occurred. Enjoining Lee and DMS from working with Warner for twelve months will in no way recompense ICON for this purported harm nor will it prevent this harm from continuing to occur, inasmuch as it has already happened. Moreover, there is no evidence linking these problems to Lee's alleged misconduct. And in fact, the record reveals undisputed evidence that despite DMS and Lee competing against ICON for Warner's business, ICON's fulfillment business for Warner in the third and fourth quarters of 2004 significantly exceeded that which ICON had anticipated. Tr. p. 70, 151.

Additionally, we observe that ICON waited for over two months after learning of Lee's allegedly problematic conduct before filing this lawsuit and seeking injunctive relief. A "delay in requesting equitable relief is inconsistent with a claim of irreparable injury." College Life Ins. Co. of Am. v. Austin, 466 N.E.2d 738, 745 (Ind. Ct. App. 1984). Although ICON insists that it was conducting an investigation of the situation during those two months, there is no evidence in the record that it did so. Under these circumstances, we conclude that the trial court properly determined that ICON did not establish an inadequate remedy at law causing irreparable harm and, consequently, that its judgment denying the requested relief was not contrary to law.

B. Reasonable Likelihood of Success: IUTSA

Adequacy of a remedy at law notwithstanding, we will address ICON's assertion that it established a reasonable likelihood of success on the merits at trial. Pursuant to

Indiana Code section 24-2-3-2, a "trade secret" entitled to protection is information that derives independent economic value from "not being generally known" and "not being readily ascertainable by proper means" by other persons who can obtain economic value by its disclosure or use. Information is a "trade secret" only if it is "the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Id.

"Misappropriation" is defined in pertinent part as: "disclosure or use of a trade secret of another without express or implied consent by a person who used improper means to acquire knowledge of the trade secret . . . ." Id. Furthermore, "'improper means' includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means." Id.

A plaintiff seeking relief pursuant to the IUTSA must identify the trade secrets allegedly misappropriated by the defendant and carries the burden of proving that they exist. Zemco Mfg., Inc. v. Navistar Int'l Transp. Corp., 759 N.E.2d 239, 245-46 (Ind. Ct. App. 2001). What constitutes trade secret information is a determination for the court to make as a matter of law. PrimeCare, 824 N.E.2d at 381.

Although ICON points to multiple types of information allegedly protected by the IUTSA that Lee purportedly misappropriated, the essence of its argument is that Lee improperly relied upon relationships he formed with Warner and DMS employees as he began to compete against ICON. But it is well established that the personal relationships that an employee develops during the course of his employment with his employer's customers and vendors are not trade secrets under the IUTSA. PrimeCare, 824 N.E.2d at 381-82. Merely contending, essentially, that it is "not fair" that Warner so quickly

approved Lee and DMS as fulfillment providers, based on Lee's relationships with Ross and Blumke, is far from sufficient to establish a trade secret claim.

In PrimeCare, the plaintiff argued that a group of former employees had violated the IUTSA when they solicited business from its former customers. We rejected this argument, reasoning that the former employees had properly acquired their knowledge of the customers' identities during the course of their employment with no need to resort to improper means to gain the information. Thus, the knowledge was generally known or readily ascertainable information outside the purview of the IUTSA. Id.

Here, ICON complains about Lee's use of information including the identities of Ross, Blumke, and Morales, the rate at which the Morales Group charged ICON for temporary labor, and all of ICON's additional alleged trade secrets. Lee acquired this knowledge and information, however, through proper means during the course and scope of his employment with ICON. Consequently, even if we accept for argument's sake that the information at issue is protected under the IUTSA, ICON has not established that Lee has misappropriated this information. Additionally, we observe that there is ample support in the record—including the testimony of Lee, Taylor, and two ICON witnesses—for the trial court's conclusion that DMS neither acquired nor used any of ICON's alleged trade secrets. Tr. p. 330-33, 446, 452-54, 521-26. Although ICON directs our attention to evidence supporting an opposite conclusion, that is merely a request that we reweigh the evidence and judge the credibility of witnesses, which our standard of review does not permit.

Moreover, as in PrimeCare, ICON does not argue that Lee physically misappropriated a client or vendor list;[4] rather, ICON contends that Lee used that type of information together with his personal relationships in his endeavor to compete against his former employer. And as in PrimeCare, we conclude that the real thrust of ICON's argument is not that Lee disclosed ICON's customer list but that he used the information to benefit economically, possibly to the detriment of ICON. Thus, ICON seeks not to protect a trade secret but to restrain Lee's competition, and in the absence of an agreement not to compete, ICON seeks refuge in the IUTSA—an "'improper vehicle'" for such a complaint. Id. at 382 (quoting Steenhoven v. College Life Ins. Co. of Am., 460 N.E.2d 973, 975 n.7 (Ind. Ct. App. 1984)). More specifically,

> "The fact that [the former employee] possesses certain knowledge acquired within the course of his employment does not mandate that, upon his departure, [the former employee] must wipe clean the slate of his memory. Rather, it is clear from the language of the act that the [IUTSA] was promulgated by the legislature to prevent the abusive and destructive usurpation of certain economically-imbued business knowledge commonly referred to as trade secrets. We do not believe the legislature ever intended the statute's provisions to act as a blanket post facto restraint on trade. If [the employer] had desired to prevent competition by its former agents based upon the agents' acquired knowledge, it could have done so contractually via the provisions of a covenant not to compete. Having forgone that possibility, we believe it misguided to attempt to stem such competition by arguing, in essence, that properly-acquired knowledge of the employer's business is automatically made a trade

[4] To the extent that ICON contends that Lee improperly took and retained certain company property and documents, we note that he retained the company-issued cell phone with ICON's permission and that ICON did not request the return of any other property during the two months prior to instituting this litigation. Moreover, even if we accept this contention for argument's sake, we again emphasize that ICON has failed to establish that Lee used improper means to gain this knowledge or that he used or disclosed the information to anyone.

> secret pursuant to the Act, without regard to the nature of the information, simply because it can be compiled into a table or a list."

Id. Similarly, here it is apparent that ICON is attempting to shoehorn its complaint regarding Lee's competition into a claim under the IUTSA, which is a strategy that will ultimately prove to be unsuccessful. Thus, we agree with the trial court that ICON has failed to establish a reasonable likelihood of success on the merits at trial.

Inasmuch as we have concluded that the trial court properly determined that ICON did not establish that its remedies at law were inadequate, that it has suffered irreparable harm, or that it has a reasonable likelihood of success on the merits, it is apparent that the denial of the preliminary injunction was neither clearly erroneous nor contrary to law.

The judgment of the trial court is affirmed.

MATHIAS, J., and BARNES, J., concur.