

Judgment rendered April 27, 2011  
Application for rehearing may be filed  
within the delay allowed by Art. 2166,  
La. C.C.P.

No. 46,222-CA

COURT OF APPEAL  
SECOND CIRCUIT  
STATE OF LOUISIANA

\* \* \* \* \*

HEART'S DESIRE, LLC

Plaintiff-Appellant

versus

WILLIE LEE EDWARDS, MYRA  
MCDANIEL, BOBBIE CHAPMAN HAILE,  
JACQUELINE ELROD AND GUARDIANS  
FOR ANGELS, LLC

Defendants-Appellees

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Appealed from the  
Fourth Judicial District Court for the  
Parish of Ouachita, Louisiana  
Trial Court No. 2008-1697

Honorable Alvin R. Sharp, Judge

\* \* \* \* \*

GOLD, WEEMS, BRUSER, SUES &  
RUNDELL

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CARAWAY, MOORE and LOLLEY, JJ.

NOT DESIGNATED FOR PUBLICATION.  
Rule 2-16.3, Uniform Rules, Courts of Appeal.

CARAWAY, J.

A limited liability company which provided services to developmentally disabled adults filed suit against four former employees and their competing business for injunctive relief and damages based upon claims of unfair trade practices, breaches of the duties of loyalty and confidentiality, interference with business relations and breach of employment agreement. After the trial court dismissed the entirety of the claims through exceptions of no cause and no right of action, this appeal ensued. We affirm in part, reverse in part and remand for further proceedings.

*Facts*

Heart's Desire, LLC ("Heart's Desire"), provides services to developmentally disabled adults in 12 parishes located in north central and eastern Louisiana. In May of 2008, Heart's Desire instituted suit against four former employees, Willie Lee Edwards, Myra McDaniel, Bobbie Chapman Haile, and Jacqueline Elrod (hereinafter collectively "defendants"), and their competing company, Guardians For Angels, LLC ("Guardians"), seeking injunctive relief and damages for the actions of the employees and their company.

Heart's Desire alleged that Guardians was formed by Edwards and Haile in April of 2008 and that Edwards, McDaniel and Elrod were employed by Heart's Desire until April of 2008. Heart's Desire claimed that each employee signed a written employment agreement<sup>1</sup> which prohibited

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<sup>1</sup>Heart's Desire attached the employment agreements of Haile, McDaniel and Edwards to its petition; Haile's was unsigned by a Heart's Desire representative. Heart's Desire alleged that

their ability to compete against Heart's Desire and required that matters related to clients be kept confidential. Heart's Desire claimed that the defendants breached the noncompetition and confidentiality agreements, the duty of loyalty owed to the employer, and otherwise engaged in actions which interfered with the plaintiff's business and were deceptive, unfair and violated the Louisiana Unfair Trade Practices and Consumer Protection Act ("LUTPA").

Each of the defendants and Guardians filed exceptions of no right and no cause of action. The defendants argued that Heart's Desire had no right to seek injunctive relief under LUTPA and failed to state a cause of action for breach of the employment agreements because no geographical limitations were set out in the defendants' employment contracts. The defendants specifically urged that "there is no agreement whatsoever with Jacqueline Elrod or with Guardians for Angels, LLC to enforce."<sup>2</sup>

After hearing the arguments and memoranda submitted by counsel, the trial court rendered judgment in favor of the defendants and Guardians on September 7, 2010. Specifically the court granted the defendants' exception of no right of action after determining that the Louisiana Attorney General was the proper party to seek injunctive relief under LUTPA. The court also sustained the defendants' exception of no cause of action on the

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it was "unable to locate the agreement signed by Elrod."

<sup>2</sup>In written opposition to the defendants' exceptions, Heart's Desire stated that "the lack of a written agreement with Jacqueline Elrod . . . does not dispense" with other causes of action, apparently admitting that no written agreement between Heart's Desire and Elrod existed. This conclusion is further supported by plaintiff's appellate brief which again concedes that the "lack of a written agreement with Jacqueline Elrod and Guardians for Angels does not dispense with the LUTPA cause of action" against those defendants or the remaining claims against Elrod.

remaining causes of action after determining that “no enforceable employment agreements existed between Plaintiff and Defendants.” The judgment dismissed all of the plaintiff’s claims with prejudice against the defendants and Guardians.

Heart’s Desire appealed, raising two assignments of error. In oral argument, plaintiff abandoned the first assignment of error, conceding the trial court’s denial of injunctive relief. Thus, the sole remaining assignment of error concerns whether the trial court properly dismissed the entirety of plaintiff’s remaining claims by sustaining defendants’ exceptions of no cause of action. As noted above, those causes of action include a claim for breach of loyalty, violation of LUTPA, breach of confidentiality, interference with business relations and breach of employment agreement.

Heart’s Desire argues that the failure of the employment agreements to list specific parishes “has no bearing on plaintiff’s other causes of action.” Further, plaintiff argues that the noncompetition clauses should be reformed to reflect the geographical limitations intended by the parties.

### ***Discussion***

The function of the peremptory exception of no cause of action is to question whether the law extends a remedy against the defendant to anyone under the factual allegations of the petition. *Industrial Companies, Inc. v. Durbin*, 02-0665 (La. 1/28/03), 837 So.2d 1207; *Cleco Corp. v. Johnson*, 01-0175 (La. 9/18/01), 795 So.2d 302. The peremptory exception of no cause of action is designed to test the legal sufficiency of the petition by determining whether the particular plaintiff is afforded a remedy in law

based on the facts alleged in the pleading. *Industrial Companies, Inc., supra; Fink v. Bryant*, 01-0987 (La. 11/29/01), 801 So.2d 346. The exception is triable on the face of the petition and, for the purpose of determining the issues raised by the exception, the well-pleaded facts in the petition must be accepted as true. *Industrial Companies, Inc., supra; Fink v. Bryant, supra*.

In reviewing rulings on exceptions of no cause of action, courts may consider exhibits attached to the petition in determining whether the law extends a remedy to the plaintiff under the factual allegations of the petition. *Kuebler v. Martin*, 578 So.2d 113 (La. 1991); *Creamer Brothers, Inc. v. Hicks*, 39,799 (La. App. 2d Cir. 6/29/05), 907 So.2d 880; *Winners Circle of Homes Inc. v. Barnette*, 28,673 (La. App. 2d Cir. 9/25/96), 681 So.2d 42; *Powell v. Dorris*, 35,510 (La. App. 2d Cir. 4/5/02), 814 So.2d 763.

In reviewing a trial court's ruling sustaining an exception of no cause of action, the appellate court should conduct a *de novo* review because the exception raises a question of law and the trial court's decision is based only on the sufficiency of the petition. *Industrial Companies, Inc., supra; Fink v. Bryant, supra*. Simply stated, a petition should not be dismissed for failure to state a cause of action unless it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim which would entitle him to relief. *Industrial Companies, Inc., supra*. Every reasonable interpretation must be accorded the language of the petition in favor of maintaining its sufficiency and affording the plaintiff the opportunity of presenting evidence at trial. *Id.*

Every pleading is construed so as to do substantial justice. La. C.C.P. art. 865. The caption of the pleading does not control; the court is obligated to determine the substance of the pleading. *Smith v. Cajun Insulation Inc.*, 392 So.2d 398 (La. 1980); *Steed v. St. Paul's United Methodist Church*, 31,521 (La. App. 2d Cir. 2/24/99), 728 So.2d 931, *writ denied*, 99-0877 (La. 5/6/99), 740 So. 2d 1290.

When the grounds of the objection pleaded by the peremptory exception may be removed by amendment of the petition, the judgment sustaining the exception shall order such amendment within the delay allowed by the court. If the grounds of the objection raised through the exception cannot be so removed, or if the plaintiff fails to comply with the order to amend, the action, claim, demand, issue, or theory shall be dismissed. La. C.C.P. art. 934.

*Breach of Noncompetition Agreement*

Heart's Desire alleges that the four employee defendants breached the provisions of their employment agreements by opening a competing business and soliciting Heart's Desire's clients.<sup>3</sup> Each of the employment agreements contained the following noncompetition agreement provision:

6. Employee acknowledges that he/she is employed to provide (sitting, Personal Care Attendant, Staff or Supervisor) related services to Employer's clients/patients. In consideration of employment and/or continued employment, Employee agrees that if Employee's employment by Employer is terminated for any reason, including voluntary or involuntary severance, employee shall refrain from carrying on or engaging in a business similar to that of Employer and from employment with the clients/patients who Employee served

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<sup>3</sup>As noted above Heart's Desire concedes in brief that the lack of an employment agreement with Guardians dispenses with all but the LUTPA claim against this defendant. Thus, we consider as final those portions of the judgment dismissing Guardians for failure to state a cause of action for all but the LUTPA claim.

while employed by Employer with the parishes of \_\_\_\_\_  
\_\_\_\_\_ or any part thereof, For a Period of Two (2) Years  
following the date of such termination.

The blank on the form contract was unfilled in the contracts signed by Haile and McDaniel. Notably, Edwards' agreement contained the handwritten phrase "Region 8" in the blank. The petition makes no allegation asserting that geographical limits were contemplated by the parties in the mutual intent for the contracts.

Noncompetition agreements in Louisiana are governed by La. R.S.

23:921 which provides in pertinent part:

A. (1) Every contract or agreement, or provision thereof, by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, except as provided in this Section, shall be null and void. However, every contract or agreement, or provision thereof, which meets the exceptions as provided in this Section, shall be enforceable.

\* \* \*

C. Any person, including a corporation and the individual shareholders of such corporation, who is employed as an agent, servant, or employee may agree with his employer to refrain from carrying on or engaging in a business similar to that of the employer and/or from soliciting customers of the employer within a specified parish or parishes, municipality or municipalities, or parts thereof, so long as the employer carries on a like business therein, not to exceed a period of two years from termination of employment. An independent contractor, whose work is performed pursuant to a written contract, may enter into an agreement to refrain from carrying on or engaging in a business similar to the business of the person with whom the independent contractor has contracted, on the same basis as if the independent contractor were an employee, for a period not to exceed two years from the date of the last work performed under the written contract.

D. For the purposes of Subsections B and C, a person who becomes employed by a competing business, regardless of whether or not that person is an owner or equity interest holder of that competing business, may be deemed to be carrying on or engaging in a business similar to that of the party having a contractual right to prevent that person from competing.

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H. Any agreement covered by Subsection B, C, E, F, G, J, K, or L of this Section shall be considered an obligation not to do, and failure to perform may entitle the obligee to recover damages for the loss sustained and the profit of which he has been deprived. In addition, upon proof of the obligor's failure to perform, and without the necessity of proving irreparable injury, a court of competent jurisdiction shall order injunctive relief enforcing the terms of the agreement. Any agreement covered by Subsection J, K, or L of this Section shall be null and void if it is determined that members of the agreement were engaged in ultra vires acts. Nothing in Subsection J, K, or L of this Section shall prohibit the transfer, sale, or purchase of stock or interest in publicly traded entities.

La. R.S. 23:291C sets forth an exception allowing restrictions on competition. *Action Revenue Recovery, LLC v. Ebusiness Group, LLC*, 44,607 (La. App. 2d Cir. 8/19/09), 17 So.3d 999. This exception must be strictly construed and agreements confected pursuant to this provision must strictly comply with its requirements. *Swat 24 Shreveport Bossier, Inc. v. Bond*, 00-1695 (La. 6/29/01), 808 So.2d 294; *Regional Urology, LLC v. Price*, 42,789 (La. App. 2d Cir. 9/26/07), 966 So.2d 1087, writ denied, 07-2251 (La. 2/15/08), 976 So. 2d 176.

The public policy of Louisiana disfavors noncompetition agreements. *SWAT 24, supra*; *Action Revenue Recovery, supra*. The desire to prevent an individual from contractually depriving himself of the ability to earn a living and consequently becoming a public burden is the basis for Louisiana's strong public policy restricting noncompetition agreements. Such agreements are in derogation of the common right and must be strictly construed against the party seeking their enforcement. *SWAT 24, supra*; *Action Revenue Recovery, supra*. A noncompetition agreement is a contract between the parties who enter it, and it is to be construed according to the general rules of contract interpretation. *Swat 24, supra*.

The lack of a geographical restriction in a noncompetition agreement is fatal to the agreement and renders it invalid and unenforceable. *Action Revenue Recovery, supra; Comet Industries, Inc. v. Colvin*, 600 So.2d 89 (La. App. 2d Cir. 1992), *writ denied*, 604 So. 2d 1002 (La. 1992); *Petroleum Helicopters, Inc. v. Untereker*, 98-1816 (La. App. 3d Cir. 3/31/99), 731 So.2d 965, *writ denied*, 99-1739 (La. 8/5/99), 747 So. 2d 40. Moreover, reformation of an otherwise invalid noncompetition clause would run counter to the requirement of strict and narrow construction, would allow ambiguous noncompetition agreements and would place courts in the business of either saving or writing a contract that is not generally favored in the law. *Comet Industries, supra*; La. C.C. art. 1848.

The employment contracts at issue contain no specific geographic restriction as required by La. R.S. 23:921. Even the term Region 8 is fatally unspecific to comply with La. R.S. 23:921. The absence of such a requirement renders a noncompetition/solicitation clause invalid and unenforceable. *Action Avenue Recovery, supra*. Nor is reformation of the clause asserted in the plaintiff's allegations or sanctioned by the jurisprudence. Because Heart's Desire has attached no enforceable employment agreements in support of its petition, it has failed to set forth a cause of action for breach of the agreements by Haile, Edwards and McDaniel.

Allegations that Elrod signed a similar written employment agreement which Heart's Desire was "unable to locate" and the subsequent concession by Heart's Desire that no written agreement existed are also insufficient to

state a cause of action for breach of the employment agreement by Elrod.

The meaning and intent of the parties to a written contract is ordinarily determined within the four corners of the document and extrinsic evidence is inadmissible either to explain or contradict the terms of the instrument.

*Barbe v. A.A. Harmon & Co.*, 94-2423 (La. App. 4th Cir. 1/7/98), 705 So.2d 1210, *writs denied*, 98-0526, 98-0529 (La. 5/15/98), 719 So. 2d 462. This rule applies to employment contracts. *Id.* The lack of a written employment agreement between Elrod and Heart's Desire precludes any claim by plaintiffs against Elrod for breach of that agreement. In the absence of a contrary agreement, an employee is free to compete with his or her former employer. *Action Avenue Recovery, supra.*

For these reasons, the dismissal of the defendants' claims for failure to state a cause of action arising out of the employment agreements is affirmed.<sup>4</sup>

#### *Breach of Confidentiality Agreement*

Heart's Desire also contends that the defendants breached a duty of confidentiality by using confidential information from corporate documents and client data.

The subject employment contracts contained the following confidentiality provisions:

4. Employee covenants and agrees that so long as Employee is Employed by Employer and at all times following termination (whether voluntary or involuntary) of such employment, Employee will not, without prior written consent of Employer, transmit or

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<sup>4</sup>This disposition would also include any breach of loyalty/fiduciary duty or unfair trade practices claims by Heart's Desire arising out of defendants' solicitation, competition or diversion of clients after the time of their employment.

disclose (either directly or indirectly) to any person, concern or entity, any of the terms and/or conditions of this agreement or any confidential information or any other information which Employee should reasonable (sic) know to be confidential. As used herein, confidential information shall mean any information not generally disclosed or known to Employer's competitors, including, but not limited to, customer/client list, files, lists, passwords, billings, ratings, sales techniques and policies of Employer. Upon the termination of your employment with us, you shall not retain any such confidential information but shall immediately return to us all such information within your possession.

5. Employee covenants and agrees that so long as Employee is employed by Employer and at all thereafter, he/she shall not disclose, directly or indirectly to any person, concern or entity, any person information regarding Employer's client/patient, including but not limited to, medical records or general information, whether in writing or not, regarding the client/patient's health medical condition or treatment.

Regarding the claims of breach of confidentiality Heart's Desire made the following allegations that each defendant:

(1) Improperly copied plaintiff's Policy and Procedure, Quality Assurance and Training Manuals.

(2) Heart's Desire evidenced a clear intent to keep consumer/client identity and related information confidential.

(3) The client/consumer identity information and the work contracts provide Heart's Desire with economic value.

Louisiana Courts will enforce an agreement not to use confidential information, if the information used is in fact confidential. *Southern Industrial Contractors, LLC v. Western Builders of Amarillo, Inc.*, 45,779 (La. App. 2d Cir. 12/15/10), 2010 WL 5099667. An employer may require an employee not to disclose confidential information. *NovelAire Technologies, LLC v. Harrison*, 09-1372 (La. App. 4th Cir. 10/13/10), 50 So.3d 913; *Engineered Mechanical Services, Inc. v. Langlois*, 464 So.2d 329 (La. App. 1st Cir. 1984), *writ denied*, 467 So. 2d 531 (La. 1985).

With these allegations, Heart's Desire has also failed to state a cause of action for breach of confidentiality. The pleadings set forth no facts which claim wrongful disclosure or transmission of confidential information as required by the clear wording of the employment agreement. The mere fact that defendants may have used their knowledge of company policies and client information does not amount to a breach of the foregoing confidentiality agreement. On these grounds, we find the dismissal of these claims appropriate.

*Unfair Trade Practices/Breach of Duty of Loyalty*

Regarding the remaining claims of Heart's Desire that the employee defendants and Guardians participated in unfair trade practices and breached loyalty duties owed to their employer, Heart's Desire made the following allegations:

- 1) Advised Medicaid Waiver clients and/or their parents, of their intent to open the competing business by June 1, 2008 and "solicited them to move their services to defendants' new business."
- 2) Approached a "former" case manager who worked with Heart's Desire clients and advised him of the plans for the competing company and requested his help in getting their license.
- 3) Began to tell certain of plaintiff's clients to only contact defendants if they had questions.
- 4) Engaged in a pattern of actions designed to improperly interfere with plaintiff's business which included "contacting plaintiff's clients, appearing at their homes and telling people they are going to put plaintiff out of business."
- 5) Towards the end of her employment with plaintiff, defendant **Edwards** was allowed certain Prior Authorization Number ("PA's") to expire. PA's are used for billing plaintiff's services, thereby making it difficult for plaintiff to bill for certain services once Edwards left Heart's Desire.
- 6) While still employed by plaintiff, defendant **Elrod** failed to perform certain billings on behalf of plaintiff for services plaintiff had performed, committed billing errors and failed to pay certain bills for clients, all of which was intended to sabotage plaintiff's business.

7) By failing to pay bills, allowing PA's to expire and improperly bill, individually, and/or in concert, the defendants breached their duty of loyalty to plaintiff.

8) Defendants actions while still employed were deceptive and unethical.

9) Defendants action are causing actual damages to plaintiff.

At the hearing on the exceptions, counsel for Heart's Desire stated that three of the four named defendants served in a supervisory capacity, as personnel director, direct care supervisor and billing coordinator. Heart's Desire also argued that employees alone owe a duty of loyalty and fidelity to their employers. Further, Heart's Desire argued that it lost actual profits as the result of the defendants' actions.

La. R.S. 51:1405 states, in relevant part:

A. Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

An act is not required to be both unfair and deceptive. What constitutes unfair and/or deceptive practices is not specifically defined, but is determined on a case-by-case basis. *Tyler v. Rapid Cash, LLC*, 40,656 (La. App. 2d Cir. 5/17/06), 930 So.2d 1135; *Wyatt v. PO2, Inc.*, 26,675 (La. App. 2d Cir. 3/1/95), 651 So.2d 359, *writ denied*, 95-0822 (La. 5/5/95), 654 So.2d 331.

The statutory definition of an "unfair" practice is broad and subjectively stated and does not specify particular violations. *Jarrell v. Carter*, 577 So.2d 120 (La. App. 1st Cir. 1991), *writ denied*, 582 So.2d 1311 (La. 1991). A practice is unfair when it offends established public policy. Fraud, deceit, breach of fiduciary duty and misrepresentation constitute deceptive practices. *SDT Industries, Inc. v. Leeper*, 34,655 (La.

App. 2d Cir. 6/22/01), 793 So.2d 327, *writ denied*, 01-2558 (La. 12/7/01), 803 So. 2d 973. A practice is unfair when it is immoral, unethical, oppressive, unscrupulous, or substantially injurious. *SDT Industries, Inc., supra*; *United Group of Nat. Paper Distributors, Inc. v. Vinson*, 27,739 (La. App. 2d Cir. 1/25/96), 666 So.2d 1338, *writ denied*, 96-0714 (La. 9/27/96), 679 So.2d 1358. A defendant's motivation is a critical factor; the actions must have been taken with the specific purpose of harming the competition. *STD Industries, Inc., supra*; *Nursing Enterprises, Inc. v. Marr*, 30,776 (La. App. 2d Cir. 8/19/98), 719 So.2d 524.

Employees and/or mandataries owe a duty of fidelity and loyalty to their employers and/or principals. *Texana Oil & Refining Co. v. Belchic*, 150 La. 88, 90 So. 522 (1922); *Neal v. Daniels*, 217 La. 679, 47 So.2d 44 (1950); *Harrison v. CD Consulting, Inc.*, 05-1087 (La. App. 1st Cir. 5/5/06), 934 So.2d 166; *Cenla Physical Therapy & Rehabilitation Agency, Inc. v. Lavergne*, 94-1538 (La. App. 3rd Cir. 5/3/95), 657 So.2d 175; *Odeco Oil & Gas Co. v. Nunez*, 532 So.2d 453 (La. App. 1st Cir. 1989), *writ denied*, 535 So. 2d 745 (La. 1989). An employee is duty bound not to act in antagonism or opposition to the interest of the employer. Everyone, whether designated agent, trustee, or servant, who is under contract or other legal obligation to represent or act for another in any particular business or line of business must be loyal and faithful to the interest of such other in respect to such business or purpose. *Texana Oil & Refining Co. v. Belchic, supra*; *Neal v. Daniels, supra*; *Harrison v. CD Consulting, Inc., supra*; *Cenla Physical Therapy & Rehabilitation Agency, Inc. v. Lavergne, supra*; *Odeco Oil &*

*Gas Co. v. Nunez, supra.* The employee cannot lawfully serve or acquire any private interest of his own in opposition to his employer's business or purpose. This is a rule of common sense and honesty as well as of law.

*Texana Oil & Refining Co. v. Belchic, supra; Neal v. Daniels, supra; Harrison v. CD Consulting, Inc., supra; Cenla Physical Therapy & Rehabilitation Agency, Inc. v. Lavergne, supra; Odeco Oil & Gas Co. v. Nunez, supra.*

The alleged actions of the defendants insofar as their conduct consisted of deliberate harm to the business of Heart's Desire during the time of their employment may amount in our opinion to a violation of LUTPA or the employee's duty of loyalty. While the allegations lack specificity, the trial court's dismissal of these claims on the basis of no cause of action was error. Accordingly, we reverse the trial court's ruling against the four defendants regarding these claims. Since this holding applies to the four defendants' actions during employment, we find the allegations against Guardians regarding a violation of LUTPA to be insufficient.

*Tortious Interference with Business Relations*

Heart's Desire alleges that the above-noted facts also raise a claim for tortious interference with business relations and prays for damages for "all losses sustained." Specifically, plaintiff alleged:

- 1) Since their resignations, defendants have engaged in a pattern of actions designed to improperly interfere with plaintiff's business.
- 2) Such actions have included contacting plaintiff's clients, appearing at their homes and telling people they are going to put plaintiff out of business.

The plaintiff in a tortious interference with business suit must show by a preponderance of the evidence that the defendant improperly and maliciously influenced others not to deal with the plaintiff. *Muslow v. A.G. Edwards & Sons, Inc.*, 509 So.2d 1012 (La. App. 2d Cir. 1987), *writ denied*, 512 So. 2d 1183 (La. 1987); *McCoin v. McGehee*, 498 So.2d 272 (La. App. 1st Cir. 1986). The cause of action has ancient vintage, and Louisiana jurisprudence has viewed it with disfavor and limited the cause of action by imposing a malice element which requires the plaintiff to show that the defendant acted with actual malice. *Brown v. Romero*, 05-1016 (La. App. 3d Cir. 2/1/06), 922 So.2d 742, *writ denied*, 06-0480 (La. 5/5/06), 927 So. 2d 315; *JCD Marketing, Co. v. Bass Hotels and Resorts, Inc.*, 01-1096 (La. App. 4th Cir. 3/6/02), 812 So. 2d 834.

In this matter, Heart's Desire has failed to allege facts sufficient to sustain their burden of proof that the employee defendants improperly influenced others not to deal with plaintiff. Allegations that defendants instructed "certain of plaintiff's clients to only contact defendants if they had questions," and "telling people they are going to put plaintiff out of business," fail to raise facts sufficient to state a cause of action for a claim that the defendants improperly and maliciously influenced others not to deal with Heart's Desire. Accordingly, we find no error in the trial court's ruling on this issue.

### ***Conclusion***

For the foregoing reasons, the judgment of the trial court dismissing the entirety of plaintiff's claims for failure to state a cause of action against

Guardians is affirmed. That portion of the judgment which dismissed plaintiff's claims against the defendants for injunctive relief, breach of the noncompetition and confidentiality agreements and tortious interference with business relations claims is also affirmed. That portion of the judgment which dismissed plaintiff's claims against the defendants for failure to state a cause of action for unfair trade practices and breach of the duty of loyalty is reversed. The case is remanded for further proceedings. Costs of this appeal are assessed equally between the parties.

**AFFIRMED IN PART; REVERSED IN PART; REMANDED.**