

Independent Chem. Corp. v Puthanpurayil
2019 NY Slip Op 33097(U)
October 17, 2019
Supreme Court, New York County
Docket Number: 159142/2015
Judge: Paul A. Goetz
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. PAUL A. GOETZ PART IAS MOTION 47EFM

Justice

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INDEX NO. 159142/2015

INDEPENDENT CHEMICAL CORPORATION,

MOTION DATE 10/10/2019

Plaintiff,

MOTION SEQ. NO. 011

- v -

SUJANAN THUNDEL PUTHANPURAYIL, ARCADIA
CHEMICAL AND PRESERVATIVE, LLC

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 011) 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252

were read on this motion to/for JUDGMENT - SUMMARY

Plaintiff Independent Chemical Corporation, a distributor of food preservative products, commenced this action against its former sales representative, defendant Sujanan Thundel Puthanpurayil (“Sujanan”), after he terminated his employment with plaintiff in August 2015, and began working for defendant Arcadia Chemical and Preservative, LLC, allegedly in violation of a non-compete and non-solicitation employment agreement Sujanan signed with plaintiff when he began his employment there in 2009. On October 15, 2015, this court granted plaintiff’s motion for a preliminary injunction and by order dated January 12, 2016, the court clarified the terms of the preliminary injunction, stating that defendant Sujanan was enjoined from soliciting any business in the six States prohibited by the non-compete agreement and from soliciting business from any entities, in any State, which were customers of plaintiff or which were on the verge of becoming customers of plaintiff.

Thereafter, the parties proceeded with document discovery, including filing multiple discovery motions, due in part to the difficulty of obtaining sales information from defendants.

By order dated April 12, 2018, this court directed defendants, including Arcadia, to provide all information relating to their solicitation, sales and profits for customers in the six prohibited states and for restricted customers. In doing so, the court rejected defendants' argument that defendant Arcadia was not bound by the terms of the preliminary injunction, as the injunction prohibited defendant Sujanan from making these sales either directly or through defendant Arcadia. By order dated October 25, 2018, the First Department affirmed this court's order. During the pendency of defendants' appeal, and also after the First Department order was issued, defendants finally produced their sales information which showed that defendant Arcadia made sales to customers in the six prohibited States.

Plaintiff now moves, pursuant to CPLR 3212 for partial summary judgment on the first cause of action finding that defendant Sujanan breached the parties' employment agreement; on the third cause of action finding that defendant Arcadia tortuously interfered with the parties' employment agreement; and for an order holding defendants in contempt for violating the preliminary injunction orders.

For each of these claims, plaintiff must make a *prima facie* showing that defendant Sujanan breached the terms of the employment agreement or the preliminary injunction by soliciting business, either directly or through defendant Arcadia, to customers in the six prohibited States or to restricted customers. *See Oddo Asset Management v. Barclays Bank PLC*, 19 N.Y.3d 584, 594 (2012) (setting forth elements of tortious interference with contract claim); *Morpheus Capital Advisors LLC v. UBS AG*, 105 A.D.3d 145 (1st Dep't 2013) (setting forth elements of breach of contract claim). In support of its motion, plaintiff relies primarily on documents produced in discovery which show that defendant Arcadia made sales to customers in the six prohibited States while the preliminary injunction was in effect. Affirmation of Jeffrey N.

Levy dated June 20, 2019, Exhs. L and M. Although it appears that defendant Sujanan owned a large share of Arcadia, plaintiff has not provided any admissible evidence to show that defendant Sujanan directed Arcadia's sales during this time. Levy Aff., Exh. G. Presumably, such information could be obtained at defendants' depositions, which have not yet been held. Nor has plaintiff argued or demonstrated that defendant Arcadia was an alter ego of defendant Sujanan, such that its actions could automatically be imputed to defendant Sujanan. *See Milistar (NY) Inc. v. Natasha Diamond Jewelry Mfrs., LLC*, 18 A.D.3d 402, 403 (1st Dep't 2005). Thus, plaintiff has failed to meet its *prima facie* burden of showing that defendant Sujanan breached the employment agreement or the preliminary injunction, through defendant Arcadia's sales.

To the extent plaintiff argues that defendant Arcadia is barred by the terms of the preliminary injunction from making these sales, whether at the direction of defendant Sujanan or not, such an argument is misplaced. The employment agreement was signed by defendant Sujanan and prohibited him, whether acting directly or indirectly through another entity like Arcadia, from making sales in the six prohibited states. The preliminary injunction order, by which plaintiff sought to enforce the terms of the employment agreement, cannot exceed the terms of the employment agreement by binding another, separate entity from engaging in lawful conduct. The First Department's decision, which affirmed this court's discovery order, did not change the terms of the preliminary injunction orders, which were not on appeal, and plaintiff's citation to a quotation in this decision which plaintiff argues supports its position is taken out of context. Levy Aff., Exh. K.

Finally, plaintiff's application for a contempt order must be denied for the additional reason that plaintiff failed to include the warning required by Judiciary Law § 756 in its notice of motion. Accordingly, it is

ORDERED that the motion is denied.

10/17/19

DATE

Paul A. Goetz
PAUL A. GOETZ, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: