

**AFFIRMED; and Opinion Filed March 28, 2016.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-15-00925-CV**

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**HMS HOLDINGS CORP., HEALTH MANAGEMENT SYSTEMS, INC., AND HMS  
BUSINESS SERVICES, INC., Appellants/Cross-Appellees**

**V.**

**PUBLIC CONSULTING GROUP, INC., JAMES GAMBINO, AND JASON RAMOS,  
Appellees/Cross-Appellants**

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**On Appeal from the 44th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-14-09047**

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**MEMORANDUM OPINION**

Before Justices Lang, Evans, and Whitehill  
Opinion by Justice Evans

In this interlocutory appeal from a temporary injunction in a trade secret misappropriation case, HMS Holdings Corp., Health Management Systems, Inc., and HMS Business Services, Inc. (collectively "HMS") generally contend the trial court abused its discretion by granting a temporary injunction that does not sufficiently protect HMS's rights through the date of trial. In their cross-appeals, Public Consulting Group, Inc., James Gambino, and Jason Ramos contend the trial court erred in granting any temporary relief because (1) the alleged trade secrets made the subject of the injunction have been made public, (2) HMS has "unclean hands," (3) the injunction is against the public's interest, (4) the injunction does not comply with Texas Rule of

Civil Procedure 683, and (5) HMS failed to meet its burden to show irreparable harm. For the reasons set forth below, we affirm the trial court's order.

It appears the trial court is making every effort to move this case to trial quickly. The temporary injunction at issue was signed on July 10, 2015 and this case is currently set for trial in four weeks. *See Iranian Muslim Organization v. City of San Antonio*, 615 S.W.2d 202, 208 (Tex. 1981) (all effort should be made to try an injunction case quickly with only one final appeal). The purpose of a temporary injunction is to maintain the status quo of a suit pending final disposition on the merits. *Perry Bros., Inc. v. Perry*, 734 S.W.2d 211, 212 (Tex. App.—Dallas 1987, no writ). A temporary injunction generally expires upon rendition of a final judgment by the trial court and the issue of the injunction's validity becomes moot. *Id.* Furthermore, when a temporary injunction becomes inoperative due to a change in status of the parties or the passage of time, the issue of its validity is also moot. *Nat'l Collegiate Athletic Ass'n v. Jones*, 1 S.W.3d 83, 86 (Tex. 1999). An appellate decision on a temporary injunction under such circumstances would constitute an impermissible advisory opinion. *Id.*

Despite the fact that the temporary injunction being challenged, absent an extension by the trial court, will expire once judgment in this case is rendered, the parties have requested that we issue an opinion resolving the matters presented in this appeal before the case goes to trial. Accordingly, in the interests of expediting resolution of the appeal, and because all dispositive issues are settled in law, we issue this memorandum opinion. *See* TEX. R. APP. P. 47.1. All issues are addressed as briefly as practicable. *See West v. Robinson*, 180 S.W.3d 575, 576-77 (Tex. 2005). The facts are known to the parties and we do not recite them in any detail.

The decision to grant or deny a temporary injunction is within the trial court's sound discretion. *See Amend v. Watson*, 333 S.W.3d 625, 627 (Tex. App.—Dallas 2009, no pet.). When we review the trial court's order, we view the evidence in the light most favorable to the

trial court's order, indulging every reasonable inference in its favor, and determine whether the order is so arbitrary that it exceeds the bounds of reasonable discretion. *Id.* The trial court does not abuse its discretion if some evidence reasonably supports the trial court's decision. *See Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 211 (Tex. 2002).

Importantly, in determining whether to grant trade secret protection by temporary injunction, a trial court does not determine whether the information sought to be protected is, in fact and in law, a trade secret. *See Mabrey v. SandStream, Inc.*, 124 S.W.3d 302, 311 (Tex. App.—Fort Worth 2003, no pet.). Rather, the trial court determines only whether the applicant has established that the information is entitled to trade secret protection until a trial on the merits. *Id.* The applicant for a temporary injunction is not required to establish that it will prevail upon final trial. *Id.* at 309. The merits of the applicant's suit are not presented for review. *Id.* Findings and conclusions made by the trial court in conjunction with the interlocutory order may be "helpful" in determining whether the trial court exercised its discretion in a reasonable and principled fashion, but they are not binding. *Tom James of Dallas, Inc. v. Cobb*, 109 S.W.3d 877, 884 (Tex. App.—Dallas 2003, no pet.). The ultimate merits of the controversy, both legal and factual issues, are not before the trial court. *See id.* Moreover, we do not assume that the evidence presented at the injunction hearing is the same as the evidence that will be developed at a full trial on the merits. *Id.* at 885. Our decision is expressly limited to whether the trial court's interlocutory order was an abuse of discretion and, like the temporary injunction, has no bearing on the ultimate merits of the case. *Id.* at 890.

This suit was brought by HMS alleging that PCG improperly used HMS's confidential and proprietary information, including trade secrets, to compete with HMS in the provision of

third-party liability (TPL) services.<sup>1</sup> After a lengthy hearing, and the rendition of extensive findings, the trial court issued a temporary injunction prohibiting the defendants and related persons and entities from using or disclosing the alleged confidential information and trade secrets.

HMS generally argues the trial court abused its discretion in failing to grant a temporary injunction that prevented PCG from performing all TPL services pending trial including soliciting customers and pursuing pending bids to perform TPL services which HMS contends PCG could not have pursued absent use of its confidential information. HMS complains the trial court “was more concerned with not interfering with PCG’s purported right to compete than it was with protecting HMS’s confidential information or preventing PCG from profiting from its wrongful conduct.” While a temporary injunction should be sufficient to protect against the use of trade secrets, it should not restrict lawful competition. *Sharma v. Vinmar Intern., Ltd.*, 231 S.W.3d 405, 429 (Tex. App.—Houston [14th Dist.] 2007, no pet.). A restriction on lawful competition should particularly be avoided in a temporary injunction where there has been no final determination that the plaintiff does, in fact, have confidential information, and a concomitant legal right, that needs to be protected.

In this case, the trial court enjoined PCG and related persons and entities from using any “HMS Information” and from “disclosing, . . . , using, replicating, or otherwise misappropriating for their own individual or collective use or benefit (or for the benefit of any person or entity other than HMS), any of HMS’s trade secrets or other confidential or proprietary information.” “HMS Information” was defined as “any non-public document or electronic information originating within and obtained from HMS and accessed, used, or disclosed by the individual

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<sup>1</sup> TPL services include the identification and verification of alternative forms of coverage available to Medicaid enrollees and recovering from liable third parties amounts previously, but erroneously, paid by Medicaid. TPL services are generally provided to government healthcare agencies and managed-care organizations.

defendants in this action or any PCG employee without HMS's authorization" including "all of the documents and materials that PCG identified and removed from its computer systems in accordance with the Court's protocol Order . . . regardless of whether such documents otherwise meet the definition of 'HMS Information' herein." This language effectively prohibits the defendants from using any of HMS's alleged trade secrets in their performance of TPL services. We conclude that, for the purposes of a temporary injunction, the trial court did not abuse its discretion in striking this balance between protecting HMS's rights and allowing legitimate competition. We resolve HMS's issues against them.

PCG raises several issues in a cross-appeal. First, PCG contends the injunction should be dissolved because HMS disclosed the trade secrets at issue by inadvertently including them in an unsealed filing in a New York case where they were available to the public for approximately one month before being removed. During that time, two individuals accessed the materials. HMS has alleged that the two individuals who accessed the information did so at the behest of PCG. Whether or not HMS's inadvertent disclosure was sufficient to destroy the trade secret status of the information is an issue that will be finally resolved at trial on the merits. After reviewing the record in the light most favorable to the trial court's order, we conclude there was sufficient evidence to support the trial court's finding that HMS showed a probable right to relief on its request for trade secret protection. *See Rugen v. Interactive Bus. Sys., Inc.*, 864 S.W.2d 548, 551–52 (Tex. App.—Dallas 1993, no writ.).

PCG next contends HMS is not entitled to injunctive relief because it comes to the court with unclean hands. PCG lists several alleged actions by HMS that it argues are part of an anti-competitive campaign against PCG. The doctrine of unclean hands allows a court to decline to grant equitable relief, such as an injunction, to a party whose conduct in connection with the same matter or transaction has been unconscientious, unjust, or marked by a want of good faith,

or one who has violated the principles of equity and righteous dealing. *See Stewart Beach Condo. Homeowners Ass'n, Inc. v. Gili N Prop Invs., LLC*, No. 01-15-00169-CV, 2015 WL 7263705 at \*10 (Tex. App.—Houston [1st Dist.] Nov. 17, 2015, no pet.). But a party seeking to invoke this doctrine must show that it has been seriously harmed and the wrong complained of cannot be corrected without applying the doctrine. *Id.* PCG points to nothing in the record to show that it has suffered any serious harm or that any alleged wrong cannot be corrected without applying the doctrine. Furthermore, to the extent PCG raises matters that are defensive in nature to the merits of HMS's claims, the trial court does not abuse its discretion in granting the injunction and reserving those matters to be determined along with the ultimate rights of the parties. *See Keystone Life Ins. Co. v. Marketing Mgmt., Inc.*, 687 S.W.2d 89, 93 (Tex. App.—Dallas 1985, no writ.).

PCG contends the trial court erred in granting the temporary injunction because HMS did not meet its burden to show irreparable harm. Specifically, PCG argues that HMS's only alleged injury is the loss of business, which is purely economic and can be compensated with money damages. However, the use of confidential information to gain access to customers of a competitor is a recognized ground for injunctive relief because of the difficulty of establishing the amount of damages. *Id.* at 92. In addition, injunctive relief is a proper remedy to protect confidential information and trade secrets. *See Rugen*, 864 S.W.2d at 551. We conclude PCG's argument is without merit.

Finally, PCG argues the injunction is not in the public interest because it prevents a "free and open market for TPL services." The injunction at issue does not prevent PCG from competing; merely from competing unfairly. *See Keystone*, 687 S.W.2d at 93. So long as the injunction is narrowly tailored, the fact that it may have the effect of restraining some

competition does not render it an abuse of discretion. *See Frequent Flyer Depot, Inc. v. American Airlines, Inc.*, 281 S.W.3d 215, 226 (Tex. App.—Fort Worth 2009, pet. denied).

James Gambino and Jason Ramos bring a separate cross-appeal asking this Court to declare certain paragraphs of the temporary injunction void and to dissolve those prohibitions. They first complain that those paragraphs fail to meet the specificity requirements found in rule 683 of the Texas Rules of Civil Procedure. Rule 683 states that “[e]very order granting an injunction . . . shall set forth the reasons for its issuance; shall be specific in its terms; [and] shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained . . . .” Gambino and Ramos contend that the order fails to sufficiently specify the acts sought to be restrained because the terms “HMS’s Information,” “HMS’s trade secrets,” “HMS’s confidential and proprietary information,” and “actual or prospective clients of HMS” are vague and overly broad.

The terms and paragraphs being challenged cannot be read in a vacuum, but must be read in the context of the injunction order as a whole. *See IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 202 (Tex. App.—Fort Worth 2005, no pet.). The lengthy injunction order details the specific information HMS claims was misappropriated and identifies HMS’s actual and prospective clients as state Medicaid, other government healthcare agencies, and managed-care organizations. We conclude the order is sufficiently specific to inform the parties as to the acts being enjoined.

Gambino and Ramos also contend the order does not adequately state the reasons for its issuance against them. The order states that it is being issued because “Defendants remain in a position to use HMS’s confidential and trade secret information” and, as a result, “HMS is threatened with imminent, irreparable harm including, but not limited to, loss of client relationships, goodwill, reputational harm, and the misappropriation of its trade secret

information—none of which can be adequately compensated or addressed with money damages in this case.” This type of reasoning has been held sufficient to support injunctive relief. *See Keystone*, 687 S.W.2d at 93–4. Gambino and Ramos contend the statement is insufficient as to them because it “lumps them in” with PCG rather than setting forth the particular reasons why the injunction is required as to each of them individually. The injunction order sets forth findings regarding the misappropriation of confidential information by both Gambino and Ramos individually and portions of the injunctive relief are directed exclusively at each of them. Accordingly, the injunction does not merely “lump” Gambino and Ramos together with PCG. The fact that the reason for issuing the injunctive relief against Gambino and Ramos individually is the same as the reason for issuing the injunctive relief against PCG does not render the order insufficient under rule 683.

Finally, Gambino and Ramos contend there is no evidence that either of them would cause HMS imminent, irreparable injury. They argue they have deleted all the alleged confidential information in their possession pursuant to a prior court order and Gambino is no longer working for PCG or in the TPL industry. Evidence that a former employee possesses confidential information and is in a position to use it against the employer supports the issuance of an injunction. *See Conley v. DSC Commc'ns Corp.*, No. 05-98-01051-CV, 1999 WL 89955, at \*5 (Tex. App.—Dallas Feb. 24, 1999, no pet.) (not designated for publication). This is true regardless of whether the information is contained in documents or the employee’s brain. *Id.* Given the trial court’s findings with respect to Gambino’s and Ramos’s misappropriation and disclosure of HMS’s alleged confidential information to HMS’s competitors in the past, and their ability to do so in the future regardless of their current employment status, we conclude the trial court did not abuse its discretion in enjoining them. We resolve Gambino and Ramos’s issues against them.



We affirm the trial court's order.

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/David Evans/  
DAVID EVANS  
JUSTICE

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**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

HMS HOLDINGS CORP., HEALTH  
MANAGEMENT SYSTEMS, INC., AND  
HMS BUSINESS SERVICES, INC.,  
Appellant

No. 05-15-00925-CV      V.

PUBLIC CONSULTING GROUP, INC.,  
JAMES GAMBINO, AND JASON  
RAMOS, Appellee

On Appeal from the 44th Judicial District  
Court, Dallas County, Texas  
Trial Court Cause No. DC-14-09047.  
Opinion delivered by Justice Evans. Justices  
Lang and Whitehill participating.

In accordance with this Court's opinion of this date, the temporary injunction order of the trial court signed July 10, 2015 is **AFFIRMED**.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 28th day of March, 2016.