Filed 2/11/13 G.I. Services v. Feola CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

G.I. SERVICES LLC, Plaintiff and Respondent, v. JOHN FEOLA et al., Defendants and Appellants.	2d Civil No. B238720 (Super. Ct. Case No. 56-2011-00403025-CU-BT-SIM) (Ventura County)

John Feola (Feola) and his business All Desert Service Corporation (All Desert) appeal the entry of a preliminary injunction ordering them not to solicit the customers of Feola's former employer, G.I. Services LLC (G.I. Services). We affirm, but limit the scope of the preliminary injunction to its plain terms.

FACTS AND PROCEDURAL HISTORY

For nearly 20 years, Feola worked as the operations manager for Delta Landscape Management, Inc. (Delta). Delta was in the business of sweeping the parking lots of strip malls and other commercial properties. Delta used contractors, so it had only five employees. While Feola worked at Delta, he was also running his own sweeping business on the side, which was All Desert.

G.I. Services acquired Delta for over $500,000 in December 2010. Feola resigned from G.I. Services in mid-May 2011. Within months of Feola's departure, G.I. Services lost 20 percent of its monthly revenue as customers defected to All Desert.

G.I. Services sued Feola and All Desert, and sought to enjoin Feola's alleged misappropriation of its customer information. In early July 2011, the parties voluntarily entered into a standstill order providing that Feola would stop soliciting or entering into new contracts with G.I. Services's customers starting June 30, 2011. In September 2011, G.I. Services moved for a temporary restraining order (TRO). The trial court granted a TRO which prohibited Feola and All Desert from "soliciting" or entering into new contracts based on any prior solicitation of companies who were G.I. Service customers as of June 30, 2011. In response to questions by Feola's counsel and despite the TRO's plain language, the court suggested that the TRO also prohibited Feola from accepting business from G.I. Services customers who had not been "solicited" (that is, those who had approached Feola on their own).

On November 7, 2011, the trial court issued a preliminary injunction. The injunction reaches anyone who was a client of G.I. Services as of June 30, 2011. As to those clients, the injunction—like the TRO it replaced—bars Feola and All Desert from "soliciting" their business and from performing sweeping services if they had previously been solicited.

DISCUSSION

In issuing a preliminary injunction, the court weighs the likelihood the moving party will prevail at trial and the relative interim harm to the parties. (*Butt v. State of California* (1992) 4 Cal.4th 688, 677-678.) This is a sliding scale. (*Ibid.*) We review the issuance of an injunction for an abuse of discretion. (*Costa Mesa City Employees Assn. v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 306.) Because the injunction here orders Feola to refrain from soliciting G.I. Services's customers and uses the date of the standstill agreement as its starting point, we reject Feola's argument that the injunction is subject to more probing review as a mandatory injunction. (Cf. *Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, 446-447.)

I. *Likelihood of Success on the Merits*

Feola proffers three reasons why the trial court was wrong to conclude that G.I. Services would likely prevail in its misappropriation claims.

First, Feola argues that G.I. Services's customer list is not a "trade secret" because (1) it is merely a list of customers and their addresses and (2) Delta did not take reasonable efforts to keep that information secret. (See Civ. Code, § 3426.1, subd. (d).) The first part of Feola's argument overlooks that Feola is alleged to have misappropriated not just the names and addresses of G.I. Services's customers, but also the pertinent contact persons, the contract rates, and the terms of the contracts. It is this *additional* information that Feola is alleged to have used to target those G.I. Services's customers most readily able to switch companies (*i.e.*, those with 30-day notice to terminate provisions) and to underbid G.I. Services's prices by as little as $25 per month. Such customer data is undoubtedly valuable to G.I. Services's competitors. (*Id.* at § 3426.1, subd. (d)(1); see *Readylink Healthcare v. Cotton* (2005) 126 Cal.App.4th 1006, 1018; *Morlife, Inc. v. Perry* (1997) 56 Cal.App.4th 1514, 1521-1522 (*Morlife*).) It is especially valuable where, as here, compiling this data took substantial time and effort. (*Morlife*, *supra*, at p. 1522.)

The trial court also did not abuse its discretion in concluding that G.I. Services made reasonable efforts to keep its customer information secret. (Civ. Code, § 3426.1, subd. (d)(2).) Feola complains that this information was never labeled a "trade secret;" that he and other Delta employees never signed confidentiality agreements; and that all Delta employees had access to this information during business hours. However, Delta was a small company with five employees who regularly used this information to do their jobs. (See *Courtesy Temp. Service, Inc. v. Camacho* (1990) 222 Cal.App.3d 1278, 1288.) Under these circumstances, the absence of confidentiality agreements and labels is not fatal. Feola also argues that Delta shared this information with All Desert. But Feola's evidence on this point was contradicted by other evidence, and the trial court reasonably found that other evidence sufficient to create a reasonable likelihood G.I. Services would prevail.

Second, Feola contends that he merely sent an announcement of his new employment to G.I. Services's customers, and that this does not constitute a "misappropriation" of any trade secret. To be sure, an employee does not misappropriate a trade secret by sending announcements of his new job to his former clients. (*Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1156.) But Feola crossed the line from permissible announcement to impermissible solicitation when, as the trial court found, he used G.I. Services's proprietary information to target, entice, and ultimately steal G.I. Services's customers. (See *American Credit Indemnity Co. v. Sacks* (1989) 213 Cal.App.3d 622, 634-636 (*American Credit Indemnity Co.*).)

Third, Feola asserts that he developed the customers he eventually solicited, and those relationships belong to him. He relies on *Moss, Adams & Co. v. Shilling* (1986) 179 Cal.App.3d 124, 129 (*Moss*). To the extent *Moss* holds that an employee may appropriate the proprietary information regarding the clients he services, it conflicts with Labor Code section 2860. That section provides that "[e]verything which an employee acquires by virtue of his employment, except [his] compensation . . ., belongs to the employer . . . ." Labor Code section 2860 reaches information about customers. (*Alex Foods, Inc. v. Metcalfe* (1955) 137 Cal.App.2d 415, 423-424; see also *Retirement Group v. Galante* (2009) 176 Cal.App.4th 1226, 1237 [solicitation by former employees using trade secret information may be enjoined without violating Business and Professions Code section 16600's prohibition on anti-competition agreements].) We accordingly join other courts in rejecting *Moss's* language to the contrary. (Accord *Morlife, Inc.*, *supra*, 56 Cal.App.4th at pp. 1526-1527; *American Credit Indemnity Co.*, *supra*, 213 Cal.App.3d at p. 636.)

II. *Balancing of interim harms*

Feola further argues that the trial court erred in two ways in balancing the interim harms. He asserts that the court underestimated the harm to All Desert because customers who leave G.I. Services voluntarily and who go to another sweeping company will probably not switch to All Desert if the injunction is lifted. This is not a worry, however, because the preliminary injunction only enjoins *solicitation*; it does not prevent

All Desert from accepting business from former G.I. Services's customers who come to it voluntarily. To the extent the trial court placed a different construction on the similarly worded TRO, we reject that construction.

Feola also posits that injunctive relief is inappropriate because G.I. Services has an adequate legal remedy with damages. However, the trial court properly considered Feola's financial difficulties. (*West Coast Constr. Co. v. Oceano Sanitary Dist.* (1971) 17 Cal.App.3d 693, 700.) Moreover, the court required G.I. Services to post a $230,000 bond to protect Feola's and All Desert's interests should the injunction be overturned at trial.

DISPOSITION

For the reasons explained above, we modify the judgment by confining the scope of the preliminary injunction to its plain language: Feola and All Desert are enjoined from soliciting anyone who was a G.I. Services customer as of June 30, 2011, but they may accept business from those customers should those customers seek out All Desert on their own. We affirm the judgment in all other respects. Costs on appeal are awarded to G.I. Services.

NOT TO BE PUBLISHED.

HOFFSTADT, J.*

We concur:

GILBERT, P. J.

PERREN, J.

* Assigned by the Chairperson of the Judicial Council.

Barbara A. Lane, Judge

Superior Court County of Ventura

Catanese & Wells, T. Randolph Catanese, Douglas R. Hume; Grant, Genovese & Baratta, James M. Baratta, Jason S. Roberts for Defendants and Appellants.

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