

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 1
NASSAU COUNTY

CAMBRIDGE WHO'S WHO PUBLISHING,
INC.,

Plaintiff,

-against-

HARSHARAN SETHI,

Defendant.

INDEX No. 009175/10

MOTION DATE: Dec. 14, 2010
Motion Sequence # 003

The following papers read on this motion:

Order to Show Cause..... X
Affirmation/Affidavit in Opposition..... XX
Memorandum of Law..... XX

Motion by plaintiff for leave to renew its motion for a preliminary injunction is **denied**.

This is an action for breach of an employment agreement. Plaintiff Cambridge Who's Who Publishing provides marketing and networking services to business professionals. On July 21, 2008, defendant Harsharan Sethi was hired by Cambridge as director of management information systems. At the time of his employment, Sethi signed an "employee covenants and non-disclosure agreement." In the non-disclosure agreement, Sethi promised not to use confidential information of Cambridge, except in carrying out the business of the company. The company defines confidential information as including "client names, addresses, and credit card numbers." Sethi was terminated by Cambridge on February 12, 2010.

By order to show cause dated May 12, 2010, plaintiff moved for a preliminary injunction, restraining defendant from attempting to access plaintiff's data base; contacting plaintiff's "members," i.e. its customers; utilizing plaintiff's customers list; disclosing the customers' personal information; making any statements about plaintiff that might interfere with its good will, including contacting plaintiff's employees or vendors; and maintaining any "blog" or website concerning defendant's former employment.

In support of the motion, plaintiff submitted a web page, allegedly posted by defendant at www.cambridgeregistryscam.com. The webpage states that, "You might be legally entitled [to] a full refund of any membership fee...that you were charged by Who's Who businesses!...Please stand by for...information on various management personnel...their backgrounds...their life styles...their prior run ins with [the] law, IRS....Also coming up... their threatening tactics, their harassment tactics....You are entitled to file complaints with your District Attorneys Offices and or Attorney General's office...." Although it is unclear when the web page was first posted, it appears to have been viewed on May 11, 2010.

By order dated September 7, 2010, the court granted plaintiff's motion for a preliminary injunction to the extent of enjoining defendant from soliciting any of plaintiff's customers, or disclosing their names or personal information, during the pendency of the action. However, because plaintiff had failed to make a showing of extraordinary circumstances, the court denied the remainder of plaintiff's motion for a preliminary injunction, including the request that defendant be restrained from making any defamatory statements concerning Cambridge (See *Rombom v Weberman*, 309 AD2d 844 [2d Dept 2003]).

By order to show cause dated November 23, 2010, plaintiff moves for leave to renew its motion for a preliminary injunction to the extent that the court declined to restrain defendant from making any oral or written statements concerning Cambridge, including posting any "blog" or website, concerning defendant's former employment with the company. In support of the motion to renew, plaintiff submits certain allegedly defamatory statements, which were made after the court's order, denying in part plaintiff's request for a preliminary injunction. Plaintiff argues that disparagement of its business constitutes extraordinary circumstances which justify a prior restraint on speech. In the order to show cause dated November 23, 2010, the court granted a temporary restraining order, enjoining defendant from contacting plaintiff's employees concerning his former employment, or making any statements that may interfere with plaintiff's good will, including maintaining

a website or blog, pending the determination of the motion.

Among the documents submitted is a memo dated November 1, 2010 from defendant to plaintiff's human resources department concerning Cambridge's "illegal hold back of [defendant's] personal belongings." In the memo, defendant states that if his property is not returned, he will "take the matters up with the Attorney General, Federal Trade Commission, EEOC, and the Labor Department." The court notes that plaintiff claims that defendant's property has been returned. In the memo, defendant also states that he may contact Donald Trump, who is plaintiff's executive director of global branding, concerning plaintiff's "ongoing harassment and discrimination."

Also submitted is an email dated October 25, 2010 from defendant to the Consumer Frauds Bureau of the New York Attorney General. In the email, defendant stated that he believed that tapes containing personal data on 400,000 members was lost or stolen from Cambridge Who's Who Publishing. Defendant stated that the data included names, addresses, social security numbers, drivers license numbers, payroll data, checking account numbers, and credit card information. Defendant stated that as director of MIS he advised plaintiff's management to "log and report the data loss to the people compromised." Defendant further stated that he believed that nothing was done to "report the matter to the state and federal authorities." Defendant stated that the tapes had been lost or stolen by an "outsourced tech" and defendant had been harassed and discriminated against by Cambridge when he "questioned" them about the data loss. Defendant also stated that the Attorney General of every state had received complaints about plaintiff's "bait and switch practices, misrepresentations, and questionable business practices."

Additionally, plaintiff submits a series of emails between plaintiff and Stuart Ebner of Proactive Technology Group, which is apparently the "outsourced tech" to which defendant was referring in his email to the Attorney General. In an email to plaintiff dated October 20, 2010, Ebner stated that the tapes had been stored in a "tape library," or drive, which was not functioning properly and had been shipped back to the supplier, Tandberg, for repair. Ebner further stated that although the tapes should have been removed, they were shipped to Tandberg with the drive. Ebner claimed that Proactive's technician had removed the tapes the day before shipment and theorized that defendant, as the MIS director, must have reinserted the tapes into the drive. Although Ebner acknowledged responsibility for the data loss, he also attributed some of the fault to defendant.

Finally, plaintiff submits a web page allegedly posted by defendant at

www.whoswhoamongscammers.com. The web page has a headline which reads, "Did Your Who's Who Lose Your Personal Information?????" Although the web page does not identify Cambridge by name, it recites the items of data which were lost, the fact that Who's Who management was advised of the data loss, and their failure to report the loss to authorities. Defendant opposes plaintiff's motion for leave to renew its motion for a preliminary injunction on the ground that defendant's right of free speech has been violated.

The freedom of speech guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matter of public concern without previous restraint or fear of subsequent punishment (*FEC v Wis. Right to Life*, 449, 469 [2007]). To safeguard this liberty, on an application for a preliminary injunction, restraining defendant's speech on a matter of public concern, the court must focus on the objective content of the communication, rather than "amorphous considerations of intent and effect" (Id). The court must "give the benefit of any doubt to protecting rather than stifling speech" (Id).

The claimed data loss, involving social security numbers and credit card information, implicates the economic interests of a large number of people. Thus, the content of defendant's communication is a matter of public concern, even though its intent and effect may have been to disparage plaintiff's business, retaliate for defendant's discharge, or shift responsibility for the data loss. Thus, the court must give the benefit of any doubt to protecting defendant's right to free speech.

Plaintiff has a reasonable justification for not presenting the communications earlier because they were made subsequent to plaintiff's original motion. However, defendant's communications concerning the data loss are constitutionally protected, and plaintiff has not shown the extraordinary circumstances required for a preliminary injunction. Plaintiff's motion for leave to renew its motion for a preliminary injunction, restraining defendant from communicating with plaintiff's customers or law enforcement agencies concerning the data loss, is denied.

So ordered.

Dated JAN 25 2011

ENTERED

FEB 01 2011

NASSAU COUNTY
COUNTY CLERK'S OFFICE

Stephen A. Bucarin
J.S.C.