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Preliminary Injunction Granted Against Former Employees of Wealth Management Firm

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A recent decision by EDVA District Judge Henry Hudson granting a preliminary injunction to a wealth management firm against four of its former employees who left to open a competing firm is a good example of the speed of the EDVA on requests for preliminary injunctions. Salomon & Ludwin, LLC v. Winters, Civil Action No. 3:24-cv-389 (HEH), 2024 U.S. Dist. LEXIS 13038 (July 23, 2024). Judge Hudson's ruling also illustrates how employment agreements with confidentiality and nonsolicitation provisions can be used to prevent former employees from using a company's confidential customer information to solicit the company's clients.

Background

The plaintiff, Salomon & Ludwin, required its employees to sign employment agreements containing two key provisions. First, the agreements contained a nonsolicitation provision barring employees from soliciting clients for two years after the end of their employment. Second, the agreements included confidentiality provisions in which the employees acknowledged that the company's client relationships are trade secrets. The agreements also explicitly prohibited employees from disclosing or using client lists and company information.

The defendants were two financial advisors and two operational professionals who left Salomon & Ludwin to form a competing firm. None of the employees had brought clients to Salomon & Ludwin when they were hired and none had brought in new clients while working for Salomon & Ludwin. The four employees left at the same time, formed a new firm and immediately began soliciting their former employer's clients. By the time of Judge Hudson's decision, Salomon & Ludwin had lost over 100 clients and $300 million in client assets to the new firm.

Salomon & Ludwin brought suit against the former employees asserting multiple claims, including violations of the Defend Trade Secrets Act (DTSA), 18 U.S.C. § 1836(b)(1), the Virginia Uniform Trade Secrets Act (VUTSA), Va. Code § 59.1-336, et seq., and breach of the defendants' employment agreements.

Likelihood of Success on the Merits and "Raiding"

Judge Hudson applied the traditional four-factor test for a preliminary injunction, looking at the likelihood of success on the merits, the irreparable harm to the plaintiff and the defendants, the balance of the equities and the public interest. As is often the case, though, the key factor was the likelihood of success on the merits.

Judge Hudson's analysis focused on the DTSA and the VUTSA, both of which require that a plaintiff show that the information at issue is a trade secret and that the defendant misappropriated the trade secret by improper means.

Judge Hudson quickly found that Salomon & Ludwin's client information, including client lists, client background information and account names were trade secrets. The client information was protected by several layers of user IDs and passwords, employees were required to sign confidentiality agreements, and the information had economic value because it could be used to poach clients.

The defendants' primary defense was that they were allowed to use the client information under the Protocol for Broker Recruiting. Both Salomon & Ludwin and the defendants' new firm were signatories to the Protocol, which allows financial advisors to take certain information if they leave to join another firm.

Salomon & Ludwin argued that the defendants' employment agreements overrode the Protocol, but Judge Hudson avoided that issue by finding that the Protocol's exception for "raiding" applied. Since the Protocol does not define "raiding," the parties introduced articles by industry experts and expert testimony on the definition of the term. Adopting a definition from one of the articles, Judge Hudson found that the combination of the number of employees who left and the number of clients lost constituted a severe economic impact to Salomon & Ludwin that satisfied the definition of "raiding."

Irreparable Harm, Balance of the Equities and the Public Interest

Judge Hudson's conclusion on the likelihood of success on the merits led directly to a finding that Salomon & Ludwin had suffered irreparable harm from the potential loss of goodwill, loss of customers and loss of the ability to attract new customers. Conversely, the defendants faced little irreparable harm because they were allowed to continue to service their existing clients. The only limitation was that they were prohibited from further soliciting Salomon & Ludwin's customers. Lastly, the court noted that the public interest favors the protection of confidential business information, and an injunction would not prohibit clients from leaving Salomon & Ludwin of their own volition.

Takeaways

An important takeaway is that this decision demonstrates, once again, how swiftly plaintiffs can obtain injunctive relief in the EDVA. Salomon & Ludwin filed suit in late May and were able to get a hearing on a request for a temporary restraining order within a few days. The court entered a standstill agreement at that hearing and held a second hearing on the preliminary injunction a month later. In total, only two months passed between the filing of suit and the entry of a preliminary injunction.

The case also illustrates how important it is for employers to develop strong employment agreements to protect their trade secrets and confidential information and to institute policies to protect the secrecy of their most important company information. Taking those steps eliminates many of the arguments a defendant can raise regarding a claim under the DTSA or the VUTSA.

Finally, the entry of a preliminary injunction in a case such as this one is often dispositive of the merits. There has been no further activity in the case since Judge Hudson's decision, but his finding that Salomon & Ludwin is likely

to succeed on the merits could well lead to an early settlement.

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