

EXHIBIT B

Dec 11 2023

SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Prisma Health,

Case No. 2023-CP-23-04332

Plaintiff,

v.

**ORDER DENYING PLAINTIFF’S
MOTION FOR TEMPORARY
INJUNCTION AND TEMPORARY
RESTRAINING ORDER**

UnitedHealthcare Insurance Company, and
UnitedHealthCare of South Carolina Inc.,

Defendants.

On August 23, 2023, Prisma Health filed a complaint against UnitedHealthcare Insurance Company and UnitedHealthcare of South Carolina Inc. (together, “United”) alleging breach of contract, seeking a temporary restraining order and temporary injunction, and seeking an order requiring United to retract certain statements. *See generally*, Compl. (Aug. 23, 2023). On August 24, 2023, Prisma filed a motion for temporary injunction and temporary restraining order. Pl.’s Mot. for Temporary Restraining Order and Temporary Injunction (Aug. 24, 2023). On August 25, 2023, Prisma notified the Court that it would serve United with its motion, effectively mooting the portion of its motion seeking an *ex parte* temporary restraining order and converting the motion to only a motion for temporary injunction. On August 29, 2023, United filed a response opposing the motion for temporary injunction. *See* United’s Resp. in Opp. (Aug. 29, 2023). The Court held a hearing on the motion for temporary injunction on August 30, 2023, where it took the matter under advisement. *See* Order dated August 31, 2023. At the hearing, Prisma requested permission to file an affidavit responding to United’s Opposition brief and accompanying exhibits. The Court granted that request, and Prisma filed its affidavit on August 30, 2023. Aff. of Malcolm W. Isley (Aug. 30, 2023).

Following the hearing, the Court issued a Form 4 Order holding that the “Plaintiff failed to establish the grounds necessary for a Temporary Injunction. Therefore, Plaintiff’s Motion is respectfully denied.” The Order further stated that “if a more formal order is required, Defendants shall submit proposed Order within 10 day.” With an extension granted for the submission of the proposed Order, Defendants submitted a proposed Order. The Court in consideration of the record, proposed Order and objections submitted by Plaintiff’s counsel, the Court issues this Order setting forth the grounds for denying the Plaintiff’s Motion. Further, this Order addresses only Prisma’s Motion for Temporary Injunction based on the record currently before the Court and does not address the merits of any of Prisma’s claims raised in the Complaint or claims or defenses raised by United other than those specifically addressed herein.

BACKGROUND

Prisma’s predecessors and United entered into two separate agreements relevant to this motion: the Hospital Participation Agreement, and the Facility Participation Agreement (the “Agreements”). *See* Compl. ¶ 12. Under those agreements, Prisma provides health care services to eligible South Carolinians enrolled in United’s health insurance plans who seek medical care at Prisma’s facilities. *Id.* For the past several months, Prisma and United have been in contract negotiations to determine what the parties’ relationship will be after December 31, 2023, when the agreements are set to expire. *Id.* ¶ 19.

Prisma claims that United breached the following confidentiality provisions in the Agreements, the language of which is identical:

Confidentiality. Neither party will disclose to a Customer, other health care providers, or other third parties any of the following information (except as may be required by law):

- i) any proprietary business information, not available to the general public, obtained by the party from the other party; or

- ii) the specific reimbursement amounts provided for under this Agreement, except to the extent necessary for claims processing.

At least forty-eight (48) hours before either party issues a press release, advertisement, or other media statement about the business relationship between the parties, that party will give the other party a copy of the material the party intends to issue.

Compl. ¶ 14. According to Prisma, United breached the Agreements by issuing the following statements without providing appropriate notice or a copy to Prisma:

United representatives were quoted in multiple media stories describing specific confidential pricing proposals discussed between the parties, including Prisma's alleged recent counterproposal. *See, e.g.,* (Riley Morningstar, *Prisma, UnitedHealthcare in Coverage Stare Down*, UPSTATE TODAY, <https://upstatetoday.com/news/prisma-unitedhealthcare-in-coverage-stare-down/article60a51dc2-3c93-llee-bl64-af68f8f6ca4e.html> (last visited on Aug. 23, 2023)); (Stephanie Moore, *Prisma Health, United Healthcare Negotiation Over Health Coverage*, WYFF4, <https://www.newsbreak.com/greenville-sc/3126692588512-prisma-health-united-healthcare-negotiation-over-health-coverage> (last visited on Aug. 23, 2023)); (Online Video, *Prisma Health Negotiating with UnitedHealthcare Ahead of 2024 Deadline*, FOX CAROLINA, <https://www.foxcarolina.com/video/2023/08/17/prisma-health-negotiating-with-unitedhealthcare-ahead-2024-deadline/> (last visited on Aug. 23, 2023)); (Online Video, *Patient Speaks Out About Failed Negotiations between Prisma Health and United Healthcare*, FOX CAROLINA, <https://www.foxcarolina.com/video/2023/08/18/patient-speaks-out-about-failed-negotiations-between-prisma-health-united-healthcare/> (last visited on Aug. 23, 2023) (“Patient Speaks Out Interview”).

Compl. ¶ 23; *see also* Pl.'s Mem. in Support of Mot. for Temporary Restraining Order and Temporary Injunction (Aug. 24, 2023) (“Pl.’s Mem.”) at 5–6.

Prisma claims that, by breaching the Agreements, United has “harmed, and absent injunctive relief from this Court, will continue to harm, Prisma’s ability to provide care to the communities it serves, as well as its reputation and goodwill in the community.” Pl.’s Mem. at 13. According to Prisma, “United’s actions have harmed Prisma’s ability to negotiate with United in good faith toward a 2024 contract and, without such an agreement, United-insured patients will lose the ability to seek in-network care from Prisma in 2024.” *Id.*

LEGAL STANDARD

“An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” *Scratch Golf Co. v. Dunes W. Residential Golf Props.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). “A preliminary¹ injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law.” *Poynter Invs. v. Century Builders of Piedmont*, 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010). The plaintiff must establish that “(1) it would suffer irreparable harm if the injunction is not granted[;] (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law.” *Scratch Golf Co.*, 361 S.C. at 121, 603 S.E.2d at 907.

DISCUSSION

As an initial matter, Prisma objected at the hearing to United’s serving an affidavit opposing Prisma’s motion less than two days before the hearing. *See* SCRCP 6(b). But Prisma served United with its motion on a Friday afternoon five days before the hearing, so fairness required allowing United to serve its opposing affidavit when it did.

Turning to the merits of Prisma’s motion, the Court finds that Prisma has failed to establish all of the elements required for the issuance of a temporary injunction. Accordingly, Prisma’s motion for temporary injunction and restraining order is DENIED.

I. PRISMA FAILS TO SHOW THAT IT IS LIKELY TO SUCCEED ON THE MERITS.

Prisma has not met its burden of proving that it is likely to succeed on the merits. In determining whether a temporary injunction should issue, “[t]he merits of the underlying case are

¹ South Carolina appellate courts use the terms “temporary injunction” and “preliminary injunction” interchangeably.

to be considered only to the extent necessary to determine whether there has been a prima facie showing to support a temporary injunction.” *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007). Prisma has not made even a prima facie showing that it is likely to succeed on the merits.

After carefully examining the evidence in the record and for the purpose of Plaintiff’s Motion only, the Court finds that Prisma had not shown that United’s alleged public statements contain proprietary or confidential business information or otherwise violate the parties’ Agreements. Neither the contracts nor South Carolina law defines “proprietary business information,” but federal courts in South Carolina have construed “proprietary business information” to mean information that, if disclosed, would present a risk of competitive or financial harm. *See Nielson v. Portfolio Recovery Assocs., LLC*, No. 2:18-1610-RMG, 2019 U.S. Dist. LEXIS 101302, at *7–8 (D.S.C. June 18, 2019) (“[I]t is unclear that this graph contains proprietary business information, disclosure of which could constitute a risk of harm.”); *Marlboro Elec. Coop. v. Cent. Elec. Power Coop.*, No. 4:20-cv-04386-SAL, 2021 U.S. Dist. LEXIS 244621, at *9 (D.S.C. May 13, 2021) (“[P]roprietary business information . . . has the potential for causing financial harm, competitive impact, or other injury to business.”).

Prisma has failed to establish that United’s alleged statements revealed proprietary business information. United did not reveal the parties’ actual or proposed contract rates for any particular service, the substance of their negotiations, the number of United members that Prisma serves, the number or mix of services that Prisma has provided under the existing Agreements, or anything else that might allow a reader to reverse engineer actual or proposed service rates. And the fact that Prisma is negotiating for higher rates is not a confidential negotiating strategy. As argued by United, Prisma has said publicly that it seeks higher rates. United’s Resp. in Opp. at 10–11.

Further, Prisma did not establish that United revealed information qualifying as “trade secrets.” United did not disclose any information that “derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use.” S.C. Code Ann. § 39-8-20(5). As argued by United, the statement confirms that Prisma seeks rate increases generally or in the aggregate, a fact that Prisma itself publicized. United’s Resp. in Opp. at 10–11. For the same reason, the information does not constitute “valuable business or professional information,” and its disclosure does not present a risk of harm to Prisma—much less irreparable harm.

II. PRISMA HAS NOT SHOWN THAT IT WILL SUFFER IRREPARABLE HARM ABSENT A TEMPORARY INJUNCTION OR THAT IT LACKS AN ADEQUATE REMEDY AT LAW.

Further, Prisma has not put forward evidence that it will suffer irreparable harm absent an injunction or that it lacks an adequate remedy at law. United’s alleged statement does not present a risk of competitive disadvantage or financial harm to Prisma, so there is no possibility of irreparable harm. Beyond that, United *must* disclose its contracted rates with providers like Prisma. *See* 45 C.F.R. § 147.212 (“Requirements for public disclosure of in-network provider rates for covered items and services, out-of-network allowed amounts and billed charges for covered items and services, and negotiated rates and historical net prices for covered prescription drugs.”). Prisma cannot claim that those already public rates qualify as trade secrets or proprietary business information any more than Prisma could claim that any future agreed-to rates qualified as trade secrets or proprietary business information. And Prisma has not shown that it lacks an adequate remedy at law. Indeed, it could file an arbitration pressing a breach-of-contract claim. Prisma’s failure to show irreparable harm and its failure to show there is no adequate remedy at law are each

independently fatal to its motion for injunctive relief. *See Roach v. Combined Util. Com.*, 290 S.C. 437, 442, 351 S.E.2d 168, 170 (Ct. App. 1986) (no irreparable harm requires denial of a temporary injunction); *Horry Cnty. v. City of Myrtle Beach*, No. 2020-CP-26-07070, 2021 S.C. C.P. LEXIS 2801, at *14 (S.C.C.P. Jan 25, 2021) (“Irreparable harm and inadequate remedy at law are closely related, if not identical, concepts.” (quotation omitted)).

CONCLUSION

Prisma has failed to establish that it would suffer irreparable harm if the injunction is not granted, that it will likely succeed on the merits of the litigation, or that there is no adequate remedy at law. *See Scratch Golf Co.*, 361 S.C. at 121, 603 S.E.2d at 907. Failure to establish any one of those elements is independently fatal to Prisma’s motion. For the reasons set forth above, Prisma has failed to establish any of the three elements. Prisma’s motion is therefore DENIED.

IT IS SO ORDERED.

E-signature of Judge Gravely to follow



Greenville Common Pleas

Case Caption: Prisma Health vs. UnitedHealthcare Insurance Company , defendant,
et al
Case Number: 2023CP2304332
Type: Order/Temporary Injunction

So Ordered

s/ Honorable Perry H. Gravely, #2755