

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Albert R. LaFleur and Eileen M. LaFleur,)
)
Plaintiffs,)
)
vs.)
)
Coral Resorts, LLC,)
)
Defendant.)

Docket No. 2012-CP-07-3746

**ORDER GRANTING TEMPORARY
RESTRAINING ORDER**

13 JUN 11 PM 2:24
CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter comes before the Court on the Defendant's Motion for *ex parte* Temporary Restraining Order and Expedited Hearing on June 10, 2013. Having reviewed said Motion, the Affidavit of Kathleen McDaniel, the Affidavit of B. Dean Pierce, and the Affidavit of Holly Palmer Beeson, the Court finds that it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss or damage will result to the Defendant before notice can be served and a hearing had thereon. Therefore, the Court considered this matter on an expedited, *ex parte* basis. Representing the Defendant at the hearing were Nekki Shutt, Esq. and Kathleen M. McDaniel, Esq.

The instant controversy arose when, by letter dated May 30, 2013, Plaintiffs' counsel mailed Plaintiffs' Memorandum with more than 800 pages of documents attached as Exhibits A, B, and C (herein after "Exhibits") to the Beaufort County Clerk of Court for filing. Reportedly, the Memorandum and Exhibits were received and filed by the Court on June 3, 2013. After defense counsel received said documents on June 4, 2013, she contacted Plaintiffs' counsel to try to ascertain the Exhibits' origin and to try to negotiate a confidentiality order; Plaintiffs' counsel refused to enter into a confidentiality order. (Aff. McDaniel ¶¶ 10.) There is evidence that Plaintiffs' counsel did not receive Exhibits A and B through authorized channels but that, instead, they came from an unsanctioned release from a regulator.

The defense has objected to said Exhibits being entered into the public record because the defense alleges that they contain, in part, highly-sensitive, private, proprietary, confidential, commercial information, which are classified as trade secrets. (Aff. Pierce ¶¶ 8-9.) The Defendant is a private, closely-held company. The Exhibits contain some documents that are already in the public domain, but they also contain documents such as budgets, insurance policies, a marketing plan, promissory notes, contracts with service providers, minutes, etc. which are not publicly available through authorized sources. The Defendant has provided evidence that it exerted all reasonable efforts to maintain the secrecy of this information, including seeking and obtaining orders of this Court prohibiting certain litigants, including other clients of the Plaintiffs' counsel, from obtaining similar information in other lawsuits and requiring confidentiality agreements with its independent contractor sales force. (Aff. Pierce ¶ 12.)

From a cursory review of the Exhibits and other evidence presented today, it appears to the Court that many of the documents which the Defendant seeks to protect are confidential commercial documents which are generally protected from disclosure under South Carolina law.

A trade secret is defined as follows:

(a) Information including, but not limited to, a formula, pattern, compilation, program, device, method, technique, product, system, or process, design, prototype, procedure, or code that:

(i) 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, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) A trade secret may consist of a simple fact, item, or procedure, or a series or sequence of items or procedures which, although individually could be perceived as relatively minor or simple, collectively can make a substantial difference in the efficiency of a process or the production of a product, or may be the basis of a marketing or commercial strategy. The collective effect of the items and procedures must be considered in any analysis of whether a trade secret exists and not the general knowledge of each individual item or procedure.



S.C. Code Ann. § 39-8-20(5)(a)-(b) (emphasis added). By regulation, regulators cannot release trade secret information. See e.g., S.C. Code Ann. Regs. § 71-1106. Had the information been obtained through the authorized channels, regulators would have omitted or redacted the confidential business information per South Carolina Code Annotated section 30-4-10 so as to prevent disclosure of the Defendant's confidential business information. (Aff. Beeson ¶ 4.)

Because the Exhibits detail the Defendant's business model and marketing and commercial strategies, the information contained therein derives independent economic value by not being generally known by the public. (Aff. Pierce ¶ 13.) Such independent economic value will be lost if this confidential business information becomes generally ascertainable and available for use by the Defendant's competitors to their own advantage. (Aff. Pierce ¶¶ 17-18.) The Court takes judicial notice that Plaintiffs' counsel currently represents one such competitor which is has been subject to two orders of contempt for violating a previous injunction as to unfair trade practices aimed at the Defendant.

Plaintiffs are not prejudiced by the withdrawal or sealing of the Exhibits because no hearing on their Motion to Amend the Complaint has been scheduled. Nor is there any imminent deadline for submission of a memorandum of law in support of said motion. For the same reasons, there is no conceivable damage to Plaintiffs from not being able to publish or disseminate the Exhibits until this Court has an opportunity to review them thoroughly in the next ten days.

Based upon the foregoing and for good cause show,

IT IS HEREBY ORDERED that Defendant's Motion for *ex parte* Temporary Restraining Order and Expedited Hearing is granted, and the Temporary Restraining Order shall expire after June 20, 2013, unless within the time so fixed the Order, for good cause shown, is extended by this Court or by consent.

IT IS HEREBY ORDERED that Plaintiffs through their counsel immediately retract and withdraw Exhibits A, B, and C to Plaintiffs' Memorandum dated May 27, 2013, and clocked-in by



the Beaufort County Clerk of Court's office on or about June 3, 2013. Such retraction and withdrawal shall be completed as soon as possible but in no case later than three business hours after receipt of this Order by Plaintiffs' counsel.

IT IS FURTHER ORDERED that the Beaufort County Clerk of Court is directed to immediately remove, withdraw, and hold in a sealed envelope until this Court further directs Exhibits A, B, and C to Plaintiffs' Memorandum dated May 27, 2013, and clocked-in by the Beaufort County Clerk of Court's office on or about June 3, 2013.

IT IS FURTHER ORDERED that during the pendency of this Order, Plaintiffs and their counsel are enjoined from further publishing and disseminating the Exhibits, copies thereof, and the information contained therein to anyone including but not limited to each other, to clients, to other clients, and to any co-counsel. This Order is binding upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them pursuant to Rule 65(d), SCRPC.


IT IS ALSO ORDERED that the parties appear before the undersigned on Monday, ^{June 17} 17 at 3:30 p.m. for a hearing on Defendant's application for a temporary injunction and such other and further relief as is sought.

IT IS FURTHER ORDERED that defense counsel transmit a sealed copy of the Exhibits to the undersigned for *in camera* review as soon as is practicable before the June 17 hearing; such documents will be utilized only for the Court's review, and they will not be included in the record.

IT IS ALSO FURTHER ORDERED that this Court deems proper under Rule 65(c) that Defendant shall secure a security bond in the amount of \$100.00 pertaining to the Temporary Restraining Order.

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AND IT IS SO ORDERED.



The Honorable Carmen T. Mullen
Presiding Judge
Fourteenth Judicial Circuit

Cowart, South Carolina

Date and hour of issuance: 4:30 pm.

6-10, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
CARMEN T. MULLEN, JUDGE

CASE NO. 2014-CP-000-827

Albert and Eileen LaFleur.....Appellants

v.

Coral Resorts, LLC, Hilton Head Hospitality, LLC d/b/a Hilton Head Guest Services, Sunrise
Vacation Properties, Ltd., Sherri J. Smith, Patrick Budnik, Steven Deutsch, Katherine Swisher,
and Reba Management, Inc.....Respondents

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on May 8, 2014, in Hilton Head Island, South
Carolina, I served a copy of the foregoing letter enclosing Orders being appealed by depositing
the same in the United States Mail, postage prepaid, and addressed as follows:

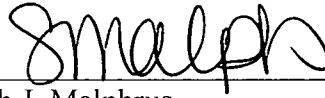
Nekki Shutt, Esquire and Kathleen McDaniel, Esquire
Callison Tighe & Robinson, LLC
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P.O. Box 1390
Columbia, SC 29202

Thornwell Sowell, III, Esquire
SOWELL GRAY, STEPP & LAFITTE, LLC
Post Office Box 11449
Columbia, SC 29211

Beaufort County Clerk of Court
P.O. Box 1128
Beaufort, SC 29901-1128

The Honorable Carmen T. Mullen
P.O. Drawer 1128
Beaufort, SC 29901

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