THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas,

Alex Kinlaw, Jr., Circuit Court

Appellate Case No. 2021-001137

Jennings-Dill, Inc., Respondent,

v.

Eric Israel, Appellant.

REPLY BRIEF OF APPELLANT

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ARGUMENTS IN REPLY

Appellant submits this brief response to address two arguments raised by Respondent's in their Response. Appellant fully incorporates the Initial Brief herein.

1. RESPONDENT STILL HAS FAILED TO CITE ANY EVIDENCE OF MISAPPROPRIATION IN ITS RESPONSE.

Respondent has not cited any evidence of misappropriation of any trade secret or proprietary information. Respondent failed to produce any evidence to the trial court and consequently cannot point to any in the record now before this Court. Respondent's sole argument is that Appellant "logged into the iPad ***issued by JDI***, accessed JDI's electronic data storage, and downloaded JDI's confidential information." (Initial Brief of Respondent at 11) (emphasis added). The iPad was returned to JDI the following day. (Israel Aff ¶ 13).

The record does not contain any evidence that the information ever left JDI's iPad. The ***only*** evidence in the record is Appellant's Affidavit which states that Mr. Israel did not misappropriate, take, copy, or otherwise retain any the files he viewed on the iPad, which he returned the following morning, and he did not disclose any proprietary information to his new employer. (Israel Aff ¶¶ 12-14).

Respondents have not disputed that each cause of action upon which they rely for an injunction requires misappropriation. The record does not support any misappropriation of proprietary information. The trial court erred by finding Respondent was likely to succeed on the merits.

2. RESPONDENT HAS NOT CITED ANY EVIDENCE OF SOLICTATION IN ITS RESPONSE OTHER THAN SPECULATION AND HEARSAY.

Respondent continues to rely on hearsay over direct, competent evidence to support its

argument that Mr. Israel improperly solicited Respondent's employees. On pages 12 through 13 of Respondent's Brief, Respondent repeatedly cites to the Complaint and to the Affidavit of Andy Locklair. Each and every one of these citations is to a hearsay statement or a statement outside the affiant's personal knowledge. Respondent has not cited a single piece of competent evidence of any solicitation.

Even more egregiously, Respondent cites to a hearsay statement in Mr. Locklair's Affidavit that Scottie Strickland was solicited by Mr. Israel. (Initial Brief of Respondent at 12.) Respondent and the trial court improperly rely on this hearsay evidence over the actual affidavit of Mr. Strickland. Mr. Strickland swore that he was *not* solicited by Mr. Israel and that he in fact reached out to Mr. Israel seeking employment at PSI. (Strickland Aff.) This is also supported by Mr. Israel's sworn affidavit. (Israel Aff.)

Respondent argues that hearsay statements are admissible to support an injunction. However, Respondent seeks to have this Court uphold an injunction based *solely* on hearsay statements in the face of competent sworn affidavits to the contrary. An injunction is an extraordinary and drastic remedy. *Hampton v. Haley*, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013). This high bar cannot be met solely with hearsay and speculation. Hearsay and speculation alone are insufficient to grant an injunction. *Fairfield Resorts, Inc. v. Fairfield Mountains Prop. Owners Ass'n, Inc.*, CIV. 1:06-cv-191, 2007 WL 186537 (W.D.N.C. Jan. 22, 2007) (citing *Atari Games Corp. v. Nintendo of Am., Inc.*, 897 F.2d 1572, 1575 (Fed. Cir. 1990) (a trial court "should be wary of issuing an injunction based solely upon allegations and conclusory affidavits submitted by plaintiff."). Respondent has not put forth any direct testimony or competent evidence that Mr. Israel solicited its employees. The only competent evidence in

the record contradicts the trial's courts findings. The court erred by relying on hearsay and speculative statements in Locklair's affidavits over the direct evidence provided by Israel when it issued the injunction.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

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