

2016 IL App (1st) 152939-U
No. 1-15-2939
September 20, 2016

SECOND DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JR LIMOUSINE OF CHICAGO, LLC,)	Appeal from the Circuit Court
)	Of Cook County.
)	
Plaintiff-Appellee,)	
)	No. 14 CH 12516
v.)	
)	The Honorable
JOHN PSARROS and JR LIMOUSINE)	Sophia H. Hall,
SERVICE, INC.,)	Judge Presiding.
)	
Defendants-Appellants,)	
)	
and)	
)	
BALLINES LIMOUSINE SERVICE, INC.,)	
and LAURA IVONNE BALLINES,)	
)	
Defendants.)	

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Hyman and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held:* When a plaintiff alleges that a breach of a non-compete clause caused the loss of only specific, identifiable sales that would lead to calculable profits, the plaintiff has not alleged facts that can support the award of a preliminary injunction.

¶ 2 After John Psarros sold his limousine business to JR Limousine of Chicago, LLC (JRL Chicago), JRL Chicago filed a lawsuit against Psarros, seeking damages and an injunction to prevent Psarros from providing limousine services to specified customers. The trial court entered a preliminary injunction barring Psarros from serving customers listed on a document Psarros gave to JRL Chicago at the time of the sale of his limousine business. In this appeal, we hold that JRL Chicago failed to show that money damages would not adequately compensate it for its alleged injuries, and it failed to show that the court would face any difficulty calculating the damages. Accordingly, we reverse the order for a preliminary injunction.

¶ 3 **BACKGROUND**

¶ 4 Psarros bought a limousine business in 2010 and operated the corporation under the name JR Limousine Service, Inc. (JRL Service). On February 27, 2014, JRL Service sold its assets to JRL Chicago, which was a corporation set up by John Kamplain and Diane Rivera-Roels to purchase those assets and operate as a limousine business. The contract between JRL Service and JRL Chicago included a non-compete clause, in which JRL Service promised:

"1. For a period of three years *** after the Closing Date, the Seller will not, either individually or in conjunction with any other person or business entity or in any other manner whatsoever, have interest in, enter employment with, lend money to, advise or permit its name to be associated with any business similar to or in competition with the Purchaser.

3. Mr. Psarros will not, except as authorized by JR Limousine of Chicago LLC, reveal or divulge to any competing and/or non-competing person, entity, or business any confidential information concerning JR Limousine of Chicago LLC ***.

Furthermore, Mr. Psarros will keep in complete secrecy all confidential information entrusted and will not use or attempt to use any such information in any manner which may injure or cause loss either directly or indirectly to JR Limousine of Chicago LLC's business interests and/or profitability. This includes using information concerning JR Limousine of Chicago LLC's business that could be used by Mr. Psarros to enrich himself, another person, and/or another entity at the cost of JR Limousine of Chicago LLC, its affiliates, and/or ownership.

Confidential information shall be defined *** to include *** customer lists, customer contacts, clients, *** and customer agreements."

¶ 5 In July 2014, Laura Ballines, a personal friend of Psarros who had worked as a dispatcher for JRL Service and JRL Chicago, set up a business she called Ballines Limousine Company. Some persons on the JRL Chicago customer list contacted Psarros directly and told him that under the new management, JRL Chicago had given them substandard, unsatisfactory service. Psarros referred the callers to Ballines, and Ballines Limousine, with Psarros serving as the driver, provided limousine service to the customers.

¶ 6 On July 31, 2014, JRL Chicago filed a complaint for an injunction to stop Ballines Limousine from offering rides to persons listed on the list of customers JRL Chicago

obtained from JRL Service when it purchased the assets of JRL Service. In an amended complaint, JRL Chicago added Psarros and JRL Service as defendants, alleging that they breached their contract with JRL Chicago. JRL Chicago sought a preliminary injunction pending trial, and a permanent injunction and damages.

¶ 7 At the hearing on the motion for a preliminary injunction, Kamplain testified that JRL Chicago competed with about 500 limousine companies and 340 cab companies in the Chicago market. JRL Chicago had no exclusive contracts with any customers. JRL Chicago's primary customer, Pepsico, provided about 90% of JRL Chicago's business, but Pepsico also used several of JRL Chicago's competitors.

¶ 8 Kamplain testified that Winona Capital was JRL Chicago's second most significant customer. Laird and Deirdre Koldyke, who ran Winona Capital, preferred to get rides from Psarros. In April 2014, the Koldykes complained about service they had received from JRL Chicago.

¶ 9 Leticia Jaimes, who worked as a dispatcher for both JRL Service and JRL Chicago, testified that customer service changed after Kamplain bought the business. Several of the drivers Kamplain hired provided poor service. After the sale of the business, Psarros told Jaimes that in his opinion, Kamplain was not managing the business well, and "everything would fall apart." Winona Capital stopped using JRL Chicago's services in August 2014.

¶ 10 The parties stipulated that of the trips Psarros drove for Ballines Limousine, 185 involved customers listed on the customer list JRL Chicago obtained when it bought JRL Service's

assets. The parties also stipulated that Psarros's conversations with the customers "led him to believe they no longer wished to use [JRL Chicago]."

¶ 11 Psarros testified that he provide rides for only about a dozen of the listed customers. He had known the Koldykes for 19 years. He knew the other customers for whom he provided services for similar lengths of time.

¶ 12 Ballines Limousine shut down its operations by February 2015. Psarros continued to provide limousine services for listed customers, working for First Class Limousine, another competitor of JRL Chicago.

¶ 13 The trial court held that JRL Chicago raised a fair question as to whether Psarros violated the agreement between JRL Service and JRL Chicago when he provided rides to listed customers. The court added, without any further elaboration:

"Under the evidence presented, money damages are inadequate and injunctive relief is appropriate. *Sheehy v. Sheehy*, 299 Ill. App. 3d 996, 1005-06 (1st Dist. 1998) ('The loss of customers and sales and the *threat of the continuation of such loss* to a legitimate business interest is sufficient to show that plaintiff will suffer irreparable injury unless protected by the court.')

¶ 14 The trial court entered a preliminary injunction barring Psarros from providing limousine services to customers named on the list JRL Service gave JRL Chicago at the time of the sale. Psarros and JRL Service now appeal.

¶ 15

ANALYSIS

¶ 16

Psarros argues that the evidence does not establish grounds for a preliminary injunction. "The trial court has broad discretion in determining whether to grant a preliminary injunction. [Citation.] A reviewing court will reverse a trial court's order granting a preliminary injunction only when it constitutes an abuse of discretion." *Franz v. Calaco Development Corp.*, 322 Ill. App. 3d 941, 946 (2001).

¶ 17

The trial court should grant a preliminary injunction only when the party seeking the injunction shows a clear need for the extraordinary remedy. *Franz*, 322 Ill. App. 3d at 946. "[T]he party seeking relief must establish by a preponderance of the evidence that *** (1) it has a certain and clearly ascertainable right which must be protected; (2) it will be irreparably injured in the absence of that protection; (3) it has no adequate remedy at law for its injury; and (4) it is likely to be successful on the merits." *Best Coin-Op, Inc. v. Old Willow Falls Condominium Ass'n*, 120 Ill. App. 3d 830, 834 (1983).

¶ 18

"[I]rreparable harm occurs only where the remedy at law is inadequate; that is, where monetary damages cannot adequately compensate the injury, or the injury cannot be measured by pecuniary standards." *Best Coin-Op*, 120 Ill. App. 3d at 834. "A preliminary injunction should not be granted where damages caused by alteration of the status quo pending a final decision on the merits can be compensated adequately by monetary damages calculable with a reasonable degree of certainty." *Shodeen v. Chicago Title & Trust Co.*, 162 Ill. App. 3d 667, 674 (1987).

¶ 19 For its finding that JRL Chicago sufficiently raised a fair question concerning irreparable harm and the inadequacy of legal remedies, the trial court relied on *Sheehy*. The *Sheehy* court found no grounds for a preliminary injunction, in part because the plaintiff in *Sheehy* failed to show that he lost any business due to the defendant's acts. The *Sheehy* court quoted the general principle that "[t]he loss of customers and sales and the threat of the continuation of such loss to a legitimate business interest is sufficient to show that plaintiff will suffer irreparable injury unless protected by the court." *Sheehy*, 299 Ill. App. 3d at 1005-6, quoting *Central Water Works Supply, Inc. v. Fisher*, 240 Ill. App. 3d 952, 959 (1993). But the *Central Water Works* court emphasized that a plaintiff seeking a preliminary injunction must also show the inadequacy of legal damages, by showing the difficulty of calculating damages when the plaintiff only seeks to recover lost profits. *Central Water Works*, 240 Ill. App. 3d at 959-60.

¶ 20 Here, we see no difficulty calculating JRL Chicago's damages due to competition from Psaros. Psaros's calendar recorded rides he provided to listed customers, and the charges for those rides. The parties may readily calculate the profits JRL Chicago would have earned had it provided the rides. JRL Chicago has presented no evidence of further damages it would suffer, beyond the loss of those specific transactions. The parties may contest the issue of whether the specified customers would have requested service from JRL Chicago if Psaros had not provided limousine services for them, but the evidence does not present any issue of loss of business with persons not on the list, or loss of business to customers who did not seek rides from Psaros. Because JRL Chicago has not presented evidence establishing

the inadequacy of legal remedies, incalculable damages or irreparable injury in the absence of an injunction, we find that the trial court abused its discretion when it entered the preliminary injunction.

¶ 21

CONCLUSION

¶ 22

JRL Chicago presented no evidence of any difficulty calculating damages due to Psarros's provision of rides to listed customers, and it presented no evidence to show that money damages would not fully compensate JRL Chicago for its alleged losses. Accordingly, we reverse the order for a preliminary injunction.

¶ 23

Reversed.