2018 IL App (2d) 180210-U
No. 2-18-0210
Order filed December 4, 2018

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

SECOND DISTRICT

MOVES DANCE STUDIO, INC.,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	
ANTHONY J. FOSTER, VICTORIA L.	)	No. 15-CH-1231
BUNCH, DIANA C. TRUE, GERA M. KLUG,	)	
SAMANTHA HALLBERG, HEATHER	)	
KLAUS, and S.U.D.C., INC. d/b/a SOLE	)	
UNIQUE DANCE COMPLEX,	)	Honorable
	)	Bonnie M. Wheaton,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Hudson and Justice Jorgenson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in failing to grant plaintiff's motion to disqualify defendants' counsel because of an alleged conflict arising from counsel's prior representation of plaintiff's predecessor. The trial court properly granted summary judgment for defendants on all counts. We affirm.

¶ 2 This appeal arises from a dispute between plaintiff, Moves Dance Studio, Inc., and defendants, Anthony J. Foster, Victoria L. Bunch, Diana C. True, Gera M. Klug, Samantha Hallberg, Heather Klaus, and S.U.D.C., Inc. d/b/a Sole Unique Dance Complex, Inc. (Sole

Unique). Plaintiff's unverified amended complaint specifically alleged claims against defendants for a violation of the Illinois Trade Secrets Act, breach of fiduciary duty, constructive fraud, civil conspiracy, and for an accounting. Plaintiff appeals the granting of summary judgment in favor of defendants on all counts. Plaintiff also appeals the trial court's failure to grant its motion to disqualify Donner & Company Law Office LLC (Donner) because of an alleged conflict arising from Donner's prior representation of plaintiff's predecessor in a trademark dispute. We affirm.

¶ 3 I. FACTS

¶ 4 Plaintiff's action sought preliminary and permanent injunctive relief and monetary damages to redress the alleged illegal misappropriation of plaintiff's confidential business information and other wrongful conduct by defendants, former employees of plaintiff. The unverified amended complaint alleged that defendants intentionally and wrongfully accessed, copied, and/or disseminated plaintiff's confidential business information for purposes of soliciting and diverting plaintiff's clients to their newly-formed dance studio in direct competition with plaintiff. Plaintiff further alleged that defendants breached their fiduciary duty to plaintiff by engaging in various conduct while still employed with plaintiff including, but not limited to, soliciting plaintiff's clients and employees, and actively promoting their competing dance studio.

¶ 5 The following facts are alleged in the amended complaint and taken from the record. From 1987 through 2014, Kimberly Farah owned and operated a dance studio business in North Aurora, known as "Moves, A Dance and Fitness Studio, Inc." (Moves I). In October 2014, Carol Davis entered into an asset purchase agreement to purchase Moves I. In December 2014, Davis assigned and transferred all of her right, title, and interest in Moves I to a new Illinois corporation entitled, "Moves Dance Studio, Inc." (Moves II or plaintiff). Following the sale, Davis became the general manager of plaintiff and Tenisha Miedel became the assistant general manager/director of operations.

¶ 6 Plaintiff is engaged in the business of providing dance and performing arts training to students ranging from age three through adult and maintains its principal place of business in North Aurora, Illinois. Prior to December 2014, defendants Foster, Bunch, True, Klug, Hallberg, and Klaus were employees of Moves I. From approximately December 2014 through June 15, 2015, they were employees of plaintiff.

¶ 7 Plaintiff maintained a client list regarding each of its students. Plaintiff alleged that the information and data contained in the client list was not generally known and not publicly available. The list included the student's name, age, birth date, and corresponding contact information such as home address, phone number, email address, and related dance training history. The dance training history identified each class the student previously completed, the age of the student at the time he or she completed each class, the year and "term" of the year the student completed each class, and the name of the dance instructor who taught each class.

¶ 8 The client list also contained information relating to "prospective" students, such as those who expressed interest in enrolling in dance classes while attending an outreach event at local schools, libraries, and community centers. Plaintiff would collect contact information from these prospective students, incorporate this information into the client list, and use that information to solicit these students for enrollment. The client list also contained information regarding the identity and dance training history of former students. This information allowed plaintiff to solicit former students with "returning student" discount offers, and similar targeted solicitations. In total, the list contained information on more than 1,400 current students, former student, and prospective students. Plaintiff alleged that the list gave it a competitive advantage in its business by allowing plaintiff to tailor its marketing of dance class offerings to individual students based on their age, skill level, class history, as well as their personal preferences or requirements.

¶ 9 Bunch, Foster, True, and Klug had management roles in Moves I and Davis's purchase of the assets anticipated that they would stay and work with Moves I for at least one year. Davis proposed that they enter into employment agreements under which they would each receive an initial $500 payment and be subject to a number of restrictions on certain aspects of their employment, including their receipt of "Confidential Information" and their ability to compete with Moves I for a period of one year after the termination of their employment. They were given draft agreements to review just before Thanksgiving 2014. Klug and True reviewed the drafts and agreed to accept them with minor clarifications. Bunch and Foster retained counsel who provided Moves I's counsel with a counter-proposal. Davis then purchased Moves I's assets with no agreement in place for any of defendants, advising them instead that they would be retained on an at-will basis.

¶ 10 Plaintiff alleged in its complaint, however, that it advised its employees that all student information was proprietary information of plaintiff and must be maintained confidential and used solely in furtherance of its business. As a condition of employment, plaintiff provided each employee with an Employee Handbook at the beginning of their employment. Plaintiff alleged that it required each employee to sign an acknowledgement confirming that they had read and understood all terms of the Employee Handbook.

¶ 11 The handbook specifically provides:

> "Confidential Information—You must treat all information received from or concerning students and all proprietary business information of the Company (collectively the

> "Confidential Information") as confidential and not use Confidential Information for any purpose other than to serve our students, in furtherance of the Company's business, or as otherwise authorized by applicable law. You must return all such information to [the owners of plaintiff] when you leave the employ of the Company and not make or keep any copies of any confidential information."

¶ 12 The client list is maintained on the "JackRabbit Dance" (JRD) data base, which is a subscription-based computer software used by dance studios for student registration, class scheduling, student tracking, and financial reporting. Plaintiff alleged that it prevented unauthorized access to the dance studio location through the use of locked doors, a monitored alarm system, and security cameras. Plaintiff granted access to the client list to "manager level" employees and on a need-to-know basis. Plaintiff assigned a unique log-in name and password to each individual granted access to the JRD data base system. The system allows plaintiff to monitor and record any unauthorized access to the client list through an electronic log detailing the "user activity" of all persons accessing the JRD data base.

¶ 13 "iDance" is a recreational dance program operated by plaintiff for more than 5 years. Plaintiff created a record of confidential financial data reflecting its internal costs and income associated with the operation of its iDance program, known as the iDance budget. Plaintiff alleged that the budget had been refined over several years and gave plaintiff a competitive advantage in its dance studio business. Plaintiff alleged that the budget was not generally known and not publicly available. The budget included income data for the iDance program, including tuition charges, registration fees, the number and identity of iDance students receiving scholarships, and the mark-up that plaintiff adds to the iDance costumes and apparel sold by plaintiff. Plaintiff alleged that the budget also included confidential expense data for the iDance program regarding salary information, staff expenses, costume and clothing expenditures, and facility rental costs.

¶ 14 Plaintiff alleged that it maintained the secrecy of the budget by granting access only to select "manager level" employees and on a need-to-know basis, specifically to Klaus, Tenisha Miedel, and Davis.

¶ 15 Plaintiff further alleged that defendants breached their fiduciary duty owed to plaintiff by copying and removing documents containing confidential, non-public data relating to students enrolled with plaintiff, to the extent such student data was not a trade secret. Plaintiff alleged that Foster, Bunch, True, Klug, Hallberg, and Klaus breached their fiduciary duty by wrongfully accessing, copying, and/or disseminating such documents and data for use in their new employment. Plaintiff alleged that Foster and Klug breached their fiduciary duty by making unauthorized access to the client list. Plaintiff alleged that defendants incorporated a competing dance studio business, Sole Unique, prior to their resignation while owing a fiduciary duty of loyalty to plaintiff. Plaintiff alleged that defendants breached their fiduciary duty of loyalty by advertising and promoting their competing dance studio to the public while still employed with plaintiff.

¶ 16 Klug, True, Foster, and Bunch worked with plaintiff until June 2015. Foster advised Davis and Miedel on April 27, 2015, that Sole Unique would be moving to another location. Davis and Miedel, in turn, told all of plaintiff's students and all of Sole Unique's students that they were leaving. And the remaining defendants gave notice soon after.

¶ 17 Plaintiff's counsel wrote to several defendants warning of their "using information and resources of [plaintiff to establish a competing enterprise and of plaintiff having] serious concerns regarding [this] activity." Plaintiff claimed that these letters informed defendants that they had "certain obligations *** to the company," explaining that they could not remove customer files or use them in competition. The letters written by plaintiff's counsel stated nothing about any materials the company wanted returned or removed from social media when defendants left the company.

¶ 18 Defendants were not asked to sit for an exit interview or to return any specific documents prior to their termination of employment. Klaus was requested to send a parting email to students and parents involved in iDance, and True was requested to provide guidance and copies of the materials she had used during the course of doing outreach for plaintiff.

¶ 19 After completing the last of their classes in the first few days of June, the record shows that most of defendants' only involvement with plaintiff was their voluntary participation in the end-of-the-year recital. The only instance of any marketing of their new business by defendants, prior to the conclusion of the recital, was an email which Foster sent on Monday, June 11, 2015 (after he was no longer working with plaintiff), to students who were customers of his company, Sole Unique.

¶ 20 Plaintiff filed the present action on July 7, 2015, seeking injunctive relief and damages from defendants. At the hearing on plaintiff's initial motion, and then by the filing of a motion to reconsider, plaintiff asked that Donner be disqualified because of an alleged conflict arising from Donner's prior representation of plaintiff's predecessor in a 2004 trademark dispute with MTV and Jennifer Lopez. The court denied the injunctive relief and the motion to disqualify.

¶ 21 Defendants note that discovery in the present action continued for over two years. The documents produced included dozens of communications from students and parents who learned of Sole Unique's opening a new studio only after plaintiff's recital and nothing was presented to show that anything was disclosed or advertised to students or their parents while defendants were still employed by plaintiff. The trial court granted summary judgment in favor of defendants on all counts.

¶ 22 Plaintiff timely appeals.

¶ 23 II. ANALYSIS

¶ 24 A. Motion to Disqualify Defendants' Attorney

¶ 25 On appeal, we first address plaintiff's argument that the trial court erred by failing to grant its motion to disqualify Donner.

¶ 26 When determining whether to grant or deny a motion to disqualify an attorney, a trial court must consider that "[a]ttorney disqualification is a drastic measure because it destroys the attorney-client relationship by prohibiting a party from representation by counsel of his or her choosing." *Schwartz v. Cortelloni*, 177 Ill. 2d 166, 178 (1997). Therefore, a trial court should grant a motion to disqualify an attorney only when absolutely necessary. *In re Estate of Klehm*, 363 Ill. App. 3d 373, 377 (2006). In addition, the party seeking disqualification carries a heavy burden to prove that his motion for disqualification is not being brought as a tactical weapon to gain undue advantage in the litigation. *In re Marriage of Stephenson*, 2011 IL App (2d) 101214, ¶ 19. A trial court's decision to grant a motion to disqualify an attorney will not be disturbed absent an abuse of discretion. *Schwartz*, 177 Ill. 2d at 176; *Macknin v. Macknin*, 404 Ill. App. 3d 520, 530 (2010). "An abuse of discretion occurs where no reasonable person would agree with the position adopted by the trial court." *Schwartz*, 177 Ill. 2d at 176.

¶ 27 Plaintiff contends the trial court erred by applying an incorrect legal standard and notes that whether we review the order denying the motion to disqualify under an abuse of discretion or *de novo* standard is immaterial where the trial court applied the incorrect legal standard. We acknowledge that a trial court's application of the law is subject to *de novo* review (see *SK*

Handtool Corp. v. Dresser Industries, Inc., 246 Ill. App. 3d 979, 989 (1993) (courts of review determine issues involving solely questions of law independent of the trial court's judgment); *Skokie Gold Standard Liquors, Inc. v. Joseph E. Seagram & Sons, Inc.*, 116 Ill. App. 3d 1043, 1054 (1983) (reviewing court conducts an independent review of questions of law presented by the disqualification order)), whereas a trial court's factual determinations are reviewed under the deferential abuse of discretion standard. Here, it was necessary for the trial court to carefully examine the factual context of the scope of the substantial relationship between Donner's prior and present representation in order to determine whether disqualification was required. See *LaSalle National Bank v. County of Lake*, 703 F.2d 252, 256 (7th Cir. 1983). Because this involves the resolution of factual issues, the applicable standard of review is abuse of discretion, and we will not disturb the trial court's decision unless it is unsupported by the evidence in the record. See *Doe v. Chand*, 335 Ill. App. 3d 809, 814 (2002); *Franzoni v. Hart Schaffner Marx*, 312 Ill. App. 3d 394, 399 (2000).

¶ 28 Rule 1.9 of the Illinois Rules of Professional Conduct Rule 1.9, which defines the scope of an attorney's obligation to refrain from representing a person with interests that are materially adverse to the interest of a former client, provides:

> "(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent." Ill. S. Ct. Rs. Prof'l Conduct R. 1.9(a) (eff. Jan.1, 2010).

¶ 29 As stated, **i**n determining whether a substantial relationship exists between two representations, a careful assessment of the factual context of the judgment matters of both representations is essential in order to determine whether disqualification is required. See *Hannan v. Watt*, 147 Ill. App. 3d 456, 464 (1986). In *Schwartz*, our supreme court adopted the three-step analysis set forth in *LaSalle National Bank* for making such a determination. Under the *LaSalle* inquiry, first the court must make a factual reconstruction of the scope of the former representation. Next, it must determine whether it is reasonable to infer that the confidential information allegedly given would have been given to a lawyer representing a client on those matters. Last, the court must consider whether the information is relevant to the issues raised in the litigation pending against the former client. *Schwartz*, 177 Ill. 2d at 178 (citing *LaSalle*, 703 F.2d at 256).

¶ 30 Donner represented the predecessor to plaintiff in a 2006 trademark infringement case against Jennifer Lopez. In a trademark infringement case, Donner needed to know whether Moves I had registered its trademark in order to protect the goodwill of the mark. The present case involves, *inter alia*, defendants' misappropriation of plaintiff's alleged trade secrets and misappropriation of its student lists and prospective student lists contained in a data base In order to protect the rights of a trade mark, Donner did not have to learn anything about a single student. We find nothing about representing defendants for an alleged misappropriation of confidential trade secrets or client-based lists that has anything to do with protecting the goodwill of a trademark. There is no reasonable inference that the confidential information allegedly given would have been given to Donner during its representation of plaintiff's predecessor. Nor is the information relevant to the issues raised in the pending litigation. Because there is no direct connection between the legal work in the prior litigation and the present case, we cannot say that the trial court abused its discretion in denying the motion to disqualify.[1]

[1] We note that Donner provided the trial court with documents and an affidavit confirming the

¶ 31 B. Summary Judgment

¶ 32 We next address plaintiff's contention that the trial court erred in granting summary judgment to defendants on all counts. Summary judgment is proper only where the pleadings, depositions, admissions, and affidavits on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014). "Although summary judgment can aid in the expeditious disposition of a lawsuit, it remains a drastic means of disposing of litigation and, therefore, should be allowed only where the right of the moving party is clear and free from doubt." *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). In order to determine whether a genuine issue of material fact exists, the "court must construe the pleadings, depositions, and affidavits strictly against the movant and liberally in favor of the opponent. *Id*. The purpose of summary judgment is not to try an issue of fact but to determine whether a triable issue of fact exists. *Nunez v. Diaz*, 2017 IL App (1st) 170607, ¶ 29. Therefore, summary judgment is inappropriate when material facts are in dispute, material facts are not in dispute but reasonable persons could draw different inferences, or reasonable persons could give different weight to the relevant factors of a legal standard. *Seymour v. Collins*, 2015 IL 118432, ¶ 42. An appeal following a grant of summary judgment is subject to *de novo* review. *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 254 (2004).

¶ 33 1. Count I—Misappropriation of Trade Secrets

---

scope of the firm's involvement in the trademark litigation, which had run its course approximately 10 years before. It also provided the court with a detailed summary of every other matter handled by the firm for Moves I between then and the date of the hearing on the motion to disqualify.

¶ 34 Plaintiff argues that the trial court erred by granting summary judgment to defendants on count I of its claim for misappropriation of trade secrets. Plaintiff's first count is based on its client lists maintained on the JRD data base, "iDance" budget, and "iDance" student data base, and the allegations that these are confidential and proprietary business information under the Trade Secrets Act (Act) (765 ILCS 1065/4 (West 2014)).

¶ 35 The Act allows a plaintiff to recover damages for the misappropriation of trade secrets. 765 ILCS 1065/4 (West 2014). A "trade secret" is defined as information, including a program, process, or list of actual or potential customers, that (1) is sufficiently secret to derive economic value from not being generally known to other persons who can obtain economic value from its disclosure and (2) is the subject of reasonable efforts to maintain its secrecy or confidentiality. 765 ILCS 1065/2 (West 2014). To qualify as a trade secret under the Act, the information must be sufficiently secret to give the plaintiff a competitive advantage and must be the subject of some affirmative measures to prevent others from acquiring or using it. *System Development Services, Inc. v. Haarmann*, 389 Ill. App. 3d 561, 571 (2009). The determination of whether the measures taken by a trade secret owner are sufficient is ordinarily a question of fact for the jury. In some circumstances, however, it may be readily apparent that such measures to maintain confidentiality simply were not taken. *CMBB v. Lockwood Manufacturing*, 628 F. Supp. 2d 881, 884 (N.D. Ill. 2009).

¶ 36 Tenisha Miedel, plaintiff's assistant general manager, testified that the JRD data base program was accessible to most if not all of the employees and that the data base could be accessed by anyone with an internet connection. Thus, the JRD was never **really** secured. The client lists and student class information were published in programs that were passed out at recitals and plaintiff printed all the names of students on the back of t-shirts. Indeed, Miedel admitted that the t-shirt information was not confidential.

¶ 37 Plaintiff argues that it is the personal preferences of the students that is not publicly available and gives it a competitive advantage. However, the evidence showed that the only way to accurately tell what classes a student should be assigned was for the class instructor to have some familiarity with that student's abilities, either through experience or from watching the student try out specific steps. The recital programs identify what classes the students were in and there was nothing else about their history that would be at all useful to teachers who had worked with them over the years. As to the "iDance" budget and other "iDance materials," Miedel averred that these were trade secrets. However, everything about "iDance" was distributed to the students and their parents. Miedel herself routinely disclosed the names and contact information for all the "iDance" students to parents and others. Moreover, plaintiff did not restrict access to student and parent information on Facebook. Thus, the same information which was published by plaintiff was the same information which plaintiff claims defendants had an obligation to keep secret. In addition, the evidence shows that a dance competition company budget for a group like "iDance" is not complicated since it is organized with publicly available information, such as the price of pizza and gifts for the kids, the price of costumes, and the admission charges for dance competitions. Further, the actual iDance budget was never presented to the trial court.

¶ 38 Miedel stated that she never gave any of the employees a statement as to what specific materials they should turn in when they left other than "confidential information." However, the employee Handbook, upon which plaintiff heavily relied in its allegations, is unclear in defining what confidential information means. The manual provides:

> "You must treat all information received from or concerning students and all proprietary business information of the Company (collectively the 'Confidential Information') as confidential and not use Confidential Information for any purpose other than to serve our students, in furtherance of the Company's business, or as otherwise authorized by applicable law. You must return all such information to Tenisha or Carol when you leave the employ of the company and not make or keep any copies of any confidential information."

¶ 39 Under the heading "Social Media Policy," "trade secrets" are treated differently than "confidential information," and it specifically does not include client lists or other information "from or concerning students." It provides:

> "[Employees should] maintain the confidentiality of the company trade secrets and private or confidential information. Trade secrets may include information regarding the development of systems, processes, products, know-how and technology. Do not post internal reports, policies, procedures or other internal business-related confidential communications."

¶ 40 In order to be enforceable, agreements as between an employer and its employees must at least be clear regarding what is at issue. *Eichmann v. National Hospital & Health Care* Services, 308 Ill. App. 3d 337, 339 (1999). See also *Denis v. P & L Campbell*, 348 Ill. App. 3d 391, 397 (2004) ("[W]e cannot find that the language was sufficiently clear [and therefore] we find that the employee manual at issue was not a contract between [the employer and employee]").

¶ 41 Plaintiff argues that the evidence shows that, as a condition of employment, plaintiff required each employee to sign an acknowledgment confirming that they read and understood the terms of the Handbook and agreed to maintain the confidentiality of its proprietary information, and that each of defendants signed a written acknowledgement confirming that they understood these provisions. However, there simply is no evidence that the information plaintiff wished to keep confidential was, in fact, kept secret by plaintiff and there is no evidence that defendants were ever put on notice that plaintiff saw this information as confidential. The trial judge, in fact, noted that she "was struck by the inability of the deponents on the plaintiff's side to articulate exactly what was considered to be a trade secret." Accordingly, the trial court correctly found that plaintiff could not establish that it had taken reasonable measures to protect any "trade secrets" or confidential information, and the court properly granted summary judgment on count I.

¶ 42 2. Count II—Breach of Fiduciary Duty

¶ 43 Plaintiff next contends that it presented evidence sufficient to withstand summary judgment on its claim of breach of fiduciary duty. An employee breaches the fiduciary duty owed to his or her employer by taking the employer's confidential business information for use in his or her new employment. *Destiny Health, Inc. v. Connecticut General Life Insurance Co.*, 2015 IL App (1st) 142530, ¶ 28.

¶ 44 Count II states a cause of action for breach of fiduciary duty arising from two kinds of alleged conduct by defendants. The first involved claims related to those allegations set forth in count I, which are dependent on the existence of confidential information. To the extent that plaintiff's fiduciary duty claims were dependent on the existence of trade secret and confidential information that were not actionable under the Act in count I, then the trial court properly granted summary judgment on count II for the same reasons. See *Hecny Transportation v. Chu*, 430 F.3d 402, 405 (7th Cir. 2005) (The Act preempts claims for breaches of fiduciary duty except those which "are not dependent upon the existence of competitively significant secret information").

¶ 45 The second type of conduct referenced involved allegations of wrongful solicitation, allegedly undertaken by defendants before they left plaintiff's employment. A few of those claims were abandoned during the course of the litigation. The remaining claims are referenced in plaintiff's appellate brief, which we address below.

¶ 46 a. Defendants Foster and Klug

¶ 47 As to the wrongful solicitation, plaintiff alleged that on November 17, 2014, Foster wrongfully accessed plaintiff's client list for purposes of advancing his own competing business interests. Plaintiff alleged that Foster, during his employment with plaintiff, used the JRD data base to run multiple "Enrollment Detail" and "Enrollment History" search queries to obtain confidential student information and made similar unauthorized access, which coincided with the time period of the purchase of plaintiff's dance studio business and during the time when defendants were asked to sign employment agreements containing non-compete provisions (which they never signed). Plaintiff also alleged that four days after defendants incorporated their competing dance studio, and prior to her resignation from plaintiff, Klug accessed the JRD data base to generate a record of complete contact information for each student on plaintiff's client list. Plaintiff argues that the reasonable inference from this evidence is that defendants became concerned that their access to the JRD data base might be curtailed or terminated, prompting them to make unauthorized access in order to use the data base to start their new business.

¶ 48 Defendants point out that merely because defendants were making plans to open a new dance studio while still employed by plaintiff is insufficient, standing alone, to support an inference with regard to whether some of their use of the data base was in furtherance of that effort, and plaintiff has never produced any actual evidence on the subject, despite having access to activity logs which tracked the system. See *Hussung v. Patel*, 369 Ill. App. 3d 924, 933 (2007) (a temporal association alone does not suffice to show a causal link because a mere temporal coincidence between two events does not necessarily entail a substantial causal relation between them). Bryan Miedel testified that he did not understand the JRD data base codes even though he was plaintiff's "IT guy," and he testified that it was Foster and Klug that had taken information from the JRD data base system. He testified specifically that he had compiled reports of what he said looked "suspicious." Additionally, it appears that there has never been any evidence to support the claim that Foster's or Klug's access was unauthorized. Rather, the Farrahs had specifically asked Foster to pull reports that required him to access the data base. Therefore, there was no evidence to support the claim that Foster's or Klug's access was unauthorized.

¶ 49 As to the allegation regarding improper solicitation through marketing, plaintiff's brief notes that any marketing of their new business by defendants, prior to the conclusion of the recital was an email which Foster sent on Monday, June 11, 2015, after Foster was no longer working with plaintiff, to students who were customers of his company, Sole Unique. Both the language of the email and the testimony plaintiff references in its brief (although not before the trial court) shows that Foster was no longer working with plaintiff at the time and that the people he contacted were all clients of Sole Unique. Foster's note states:

> "It has recently come to our attention that we (Anthony & Tori), no longer have access to our former host studio now that the official Moves session is over.

> Unfortunately, we were unable to have our end-of-session training as planned and we deeply apologize for the last minute update.
>
> ***
>
> [T]here are a couple places you can find us for some one-off workshops. Please [visit] our Facebook Page for more info after the recital."

¶ 50 Foster also wrote to the Steps Dance studio that same day, in part, stating:

> "We're unsure of the quantity of dancers that will be registering for classes/intensives, but just wanted to let you be aware that you may be expecting a few (or more), Soleunique kids coming your way in our absence this summer."

¶ 51 These were customers of Sole Unique that Foster was entitled to write even prior to his leaving plaintiff's employment. Furthermore, as correctly pointed out by the trial court, the client lists were accessible to many people in plaintiff's organization and indeed were created or added in part by defendants and "were not of any value that would constitute a trade secret." Thus, as the court properly concluded, "any access to those computer programs does not constitute a breach of fiduciary duty."

¶ 52 b. Defendant True

¶ 53 Tenisha Meidel averred that True falsely stated to her that the list of prospective new students tendered to her was the current and only record of prospective new students. However, Meidel admitted later, that her statement was speculative and that she was, in the end, confusing two kinds of information: (1) information about schools, which is available from public sources, and (2) prospective student names, which were maintained in the JRD data base, and not maintained by True. Thus, plaintiff is speculating when it claims that True "made off" with the names of any prospective students.

¶ 54 c. Defendants Unlawfully Copied and Removed a Student List

¶ 55 Plaintiff claims that defendants "unlawfully copied and removed" a "student list" from plaintiff for use in their new employment. Plaintiff submitted a redacted version of a document that it claimed defendants copied. Plaintiff further points out in its appellate brief that the document is marked with a Bates prefix "SUDC" Bates Stamp, "indicating it was produced by Defendants and therefore in the possession of Defendants after the termination of their employment." The document to which plaintiff refers was not properly before the trial court, as it was redacted and unsupported by any foundational testimony or affidavit. Additionally, even if it were, it does not show what plaintiff claims. This document appears to be from a 2011 annual recital program, which seems to have nothing to do with this case.

¶ 56 In sum, plaintiff has failed to present any evidence to show that a single student was wrongfully solicited by defendants while they still were employed by plaintiff or through the wrongful use of "confidential information" after they left. Accordingly, the trial court correctly granted summary judgment in favor of defendants on this count.

¶ 57 3. Counts III—Constructive Fraud, IV—Conspiracy, and V—Accounting

¶ 58 We find the trial court likewise properly granted summary judgment on counts III, IV and V. The claims for constructive fraud were duplicative to those for fiduciary duty and therefore, summary judgment was appropriate as to the claims set forth in count III. See *Duffy v. Orlan Brook Condominium Owners' Ass'n*, 2012 IL App (1st) 113577, ¶ 33. ("[B]reach of fiduciary duty is a form of constructive fraud. *** '[W]here there is a breach of a legal or equitable duty arising out of a fiduciary relationship, a presumption of fraud arises. This type of fraud is called "constructive fraud." [Citation.]' We therefore conclude plaintiff has not pled a separate claim for constructive fraud in addition to her breach of fiduciary duty claims").

¶ 59 Plaintiff could not establish an actionable claim for conspiracy either. The elements of a civil conspiracy include "an agreement *** to participate in an unlawful act, or a lawful act in an unlawful manner" with "injury caused by an unlawful over act performed by one of the parties *** in furtherance of the common scheme." *Canel and Hale v. Tobin*, 304 Ill. App. 3d 906, 920 (1999). Plaintiff claimed that defendants took unlawful, "overt action in furtherance of the conspiracy" by resigning their employment, meeting to discuss their new business, reaching agreement with respect to how revenues would be allocated, developing marketing flyers, using personal email addresses to communicate with each other, and incorporating Sole Unique. However, there was nothing to prevent defendants from lawfully forming a company of their own while they were still working for plaintiff and therefore, such conduct cannot be construed as tortious. Summary judgment was thus properly granted on count IV.

¶ 60 As for count V, a plaintiff in an action for an accounting "must show that he has no adequate legal remedy and allege some special and substantial ground of equity jurisdiction such as the existence of a fiduciary relationship as exists between partners in a partnership." *Kennedy v. Miller*, 221 Ill. App. 3d 513, 520 (1991). Here, there was no other special or substantial ground for equity jurisdiction and summary judgment was properly granted on all the prior counts. Therefore, summary judgment was likewise properly granted on count V.

¶ 61 III. CONCLUSION

¶ 62 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 63 Affirmed.