

THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

REGSCAN, INC.,	: NO. 02-01,152
Plaintiff	:
	:
vs.	:
	: CIVIL ACTION - EQUITY
RICHARD MARTIN and	:
CITATION PUBLISHING, INC.,	:
Defendants	: Motion for Summary Judgment

OPINION AND ORDER

Before the Court is Defendant Citation's Motion for Summary Judgment, filed August 23, 2005. Argument on the motion was heard September 26, 2005.

The Complaint in this matter asserts against Richard Martin, a former employee of RegScan who is now employed by Citation, breach of the covenants not to compete and against use of proprietary information contained in his employment contract with RegScan, and against Citation Publishing, claims of intentional interference with Martin's contract with RegScan, conspiracy (with Martin) to interfere with Martin's contract with RegScan, and a violation of the Unfair Trade Practices Act. The breach of the covenant not to compete claim has been eliminated by this Court's finding that the covenant is unenforceable, and the claim of violation of the Unfair Trade Practices Act was dismissed in response to preliminary objections thereto. In the instant motion, Citation seeks summary judgment on the two remaining claims against it, contending there is insufficient evidence to support them.

To establish a tortious interference with contract under Pennsylvania law, a plaintiff must prove the following elements: (1) the existence of a contractual, or prospective contractual relation between the plaintiff and a third party; (2) purposeful action on the part of the defendant, specifically intended to harm the existing relation, or to prevent a prospective relation from occurring; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual legal damage as a result of the defendant's conduct. *Remick v. Manfredy*, 238 F.3d 248 (3d. Cir. 2001). Citation argues that RegScan cannot establish the second and fourth elements of the claim, specifically, that RegScan has produced no evidence that Citation condoned, much less encouraged or participated in, Martin's alleged breach of contract, and further, that there is no evidence that RegScan's asserted damages, i.e., its declining customer base, have resulted from improper conduct on Citation's part rather than ordinary market forces. While the Court believes the alleged damages here would naturally flow from any improper conduct, given the nature of the allegations, thus eliminating the need for separate "proof" of causation, the Court agrees with Citation that the requisite level of proof is lacking.

RegScan's claim is based on its assertion that after he left his employment with RegScan, Richard Martin used the RegScan Goldmine database to identify and contact existing RegScan customers and solicit their business on behalf of Citation. The only evidence offered by RegScan in support of this claim is the testimony of RegScan officials and/or employees that beginning in the summer or fall of 2001,¹ RegScan salespeople found that a number of their existing clients were being contacted by Richard Martin about three months before the expiration of their subscription with RegScan, whereas prior to that time, such occurrence had been very haphazard.² While the Court agrees that circumstantial evidence can certainly be used to prove a claim, and that the evidence offered by RegScan does support a possible inference against Martin,³ such is simply not enough to support the claim against Citation, requiring, as it does, not only evidence of Martin's use of proprietary information, but Citation's knowledge of and participation in that use.

In response to Citation's motion, RegScan also points to alleged inconsistencies in the deposition testimony and documentation provided by Citation, arguing that a factfinder could find wrongdoing on Citation's part on this basis alone. For example, RegScan points to an alleged inconsistency in the deposition testimony of Bruce Regan, Citation's Executive Vice-President, regarding the circumstances of Martin's hiring by Citation, on pages 13 through 17 of its brief, filed September 19, 2005. The Court fails to see any inconsistency, however. Regan testified that prior to making an offer to Martin in 2001, he did not inquire as to the reasons Martin had left Citation's employ on a previous occasion. He also testified that just prior to a meeting between himself, Martin and Dean Brewer, Citation's General Manager, and before Martin arrived, Brewer had questioned his decision to re-hire Martin, opining that although Martin had been successful, he had also been a "pain in the ass", and that once Martin arrived, they began the conversation by talking a little bit about the history of Martin's relationship with Citation. RegScan points to this conversation as inconsistent with Regan's previous testimony that he did not ask about such history. RegScan's claim is puzzling as the latter testimony is not at all inconsistent with the former: Regan testified that in his discussion with Brewer just before the meeting, he did not ask about Martin's history as he didn't think it was an issue at that point. His testimony makes it clear that the subject was raised by Brewer. Contrary to RegScan's assertion, Regan's testimony appears perfectly consistent and does nothing to further RegScan's claim.

¹ Richard Martin left his employment with RegScan in March 2001.

² At argument, counsel indicated he would not be calling any representatives of the companies whose business has allegedly been lost to Citation, and no such evidence is offered by RegScan in opposition to the instant motion.

³ The Court does not mean by this statement to make a determination as to whether the evidence would be sufficient to take the claim against Martin to trial; Martin has not filed a motion for summary judgment. While Martin's counsel indicated at argument on the instant motion that he joined in Citation's motion, such does not put the issue before the Court, and at this point, any motion filed by Martin would be untimely as the deadline for dispositive motions was August 26, 2005.

RegScan also points to differences in certain entries in Citation's Goldmine database, as printed out from an electronic version and a paper version, to support its argument that a factfinder could infer wrongdoing based on the discovery provided in this matter. RegScan contends that Citation's explanation that entries are constantly being revised is so unbelievable that it deserves no further attention, but the Court fails to see how RegScan's suspicions translate into evidence to support the circumstantial evidence offered in this case. There is simply not enough on which to base a finding of purposeful action on Citation's part.

Rule 1035.2(2) allows the Court to enter summary judgment if, after the completion of discovery relevant to the motion, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.⁴ Pa.R.C.P. Rule 1035.2(2). As RegScan has failed to produce evidence of Citation's alleged interference with Martin's contract with RegScan, sufficient to require the issue to be submitted to a jury, summary judgment is appropriate.⁵

ORDER

AND NOW, this 6th day of October 2005, for the foregoing reasons, the Motion for Summary Judgment of Citation Publishing, Inc. is hereby GRANTED. Judgment is hereby entered against Plaintiff and in favor of Defendant Citation Publishing, Inc.

BY THE COURT,

Dudley N. Anderson, Judge

⁴ A substantial portion of RegScan's response to the Motion for Summary Judgment has been dedicated to asserting that Citation has failed to provide complete discovery. With respect to that claim the Court notes there has been no court intervention sought in obtaining more complete discovery, and the deadline for conducting discovery has passed. RegScan cannot at this point rely on such an assertion to prevent summary judgment.

⁵ Since the conspiracy claim is founded on the tortious interference claim, summary judgment on that claim follows without further consideration.