

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

TCC SPORTS, LLC, et al.,

Plaintiffs/Petitioners

v.

CL 47397

SPORTS GROUP, LTD., et. al.

Defendants/Respondents

MEMORANDUM OPINION

Petitioners seek temporary injunctive relief to prohibit defendants from taking, among other things, any action contrary to the non-competition and confidentiality provisions of the licensing agreement between Gameday Properties LLC and Sports Group, Ltd. Michael Morisi, one of the named defendants, signed the agreement as President of Sports Group, Ltd. The agreement specifically provides that the non-competition provisions of the licensing agreement are binding upon, "...Licensee, and its affiliates, officers, shareholders, owners, members, directors, agents and employees..." for the period specified.

Affidavits have been submitted in support of and in opposition to the petition. Defendants contend, among other things, that the petitioners first breached the agreement between the parties; that the agreement is only binding upon Sports Group, Ltd.; and that the covenant is an unreasonable restraint upon the business of the defendants. These are significant issues of fact that remain for a hearing on the merits.

In ruling upon whether to grant or deny temporary injunctive relief, the Court must be “satisfied of the plaintiffs’ equity”. Va. Code Ann. §8.01-628. The Court is guided in this situation by the four factors set forth in *Blackwelder Furniture Co. v. Selig Mfg. Co.* 550 F.2d 189 (4th Cir. 1977). Those factors are, the likelihood of irreparable harm to the plaintiff in the event the preliminary injunction is denied; the likelihood of harm to the defendant if the request is granted; the likelihood the petitioner will succeed on the merits, and the public interest.

In the instant case, the relative harm/benefit to the parties in the event of the granting or denial of relief is in equipoise as to those provisions that limit the ability of the defendants from competing with the petitioners for the time periods specified in the agreement, “in the Commonwealth of Virginia or in any other State of the United States, or in any country in the world where Licensor engages in business, or proposes to engage in business on the date of the termination of the Agreement.” Should the Court grant the injunction and prohibit publication of the magazine, it will put the defendants out of business. If the Court does not, it may affect the ability of the petitioners to pursue marketing of its product.

Where the benefit and harm analysis shows the equities of the parties to be substantially equal, then the petitioners are required to demonstrate a clear showing of a likelihood of success. On the scant record available upon a hearing for temporary relief, the Court cannot make that finding with respect to the enforcement by temporary injunction of the non-competition provisions of the licensing agreement.

However, that does not end the inquiry. The non-competition provisions also provide that:

[d]uring the Term of the Agreement and for a period of two (2) years after termination thereof for any reason, or for no reason at all, Licensee shall not, without the express written consent of the Licensor, individually or on behalf of any other person, corporation, firm or other entity, solicit or encourage any employee, agent or contractor or Licensor or its affiliates, solicit the business of any client, customer or other licensee of Licensor, or solicit or encourage any client, customer, licensee or vendor to terminate his, her or its relationship or affiliation with the Company.

With respect to this provision, the hardships weigh in favor of granting relief to the petitioners. Accordingly, a lesser showing of success on the merits is required.

Moreover, a casual reading of the publications would suggest clients, customers or other licensors of "Gameday" Magazine might reasonably expect to be confused with a contact from "Inside Sport" Magazine.

Accordingly, the Court will deny in part and grant in part the injunctive relief sought by the petitioners. Relief with respect to the provisions of paragraph (d) above will be granted upon the posting of a bond in the amount of \$25,000.00, with surety acceptable to the Court. The Court will deny any relief under paragraphs (b) and (c) of the agreement. Any other relief is denied.

Mr. Plofchan may draw an Order consistent with this opinion, to which counsel may note their exception.

Entered this 5th day of November 2007

Thomas D. Horne, Judge