

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

Thoroughbred Ventures, LLC,

Plaintiff,

v.

**Michael Dexter Disman, Chris
D’Addario; Naomi D’Addario; and NM
Explorations, LLC;**

Defendants.

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CASE NO. 4:18-cv-00318

ORDER

COMES NOW PLAINTIFF, THOROUGHbred VENTURES, LLC (“Thoroughbred”) and requests a Temporary Restraining Order against Defendants Michael Dexter Disman and Christopher D’Addario, and further requests the extraordinary remedy of a seizure of Plaintiff’s Gray Hewlett Packard Laptop, and has satisfied the requirements of 18 U.S.C. § 1836(b) as set forth below.

SEIZURE

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

a. Findings of Fact

1. Plaintiff was employed as a manager and partner of Plaintiff Thoroughbred since at least March of 2015.

2. Defendant Disman agreed the client lists, client information, information regarding investment opportunities, operating information, methods of investment,

creating investments, solicitation of investors, and potential investment opportunities were “trade secrets” by virtue of his agreement to the Employment and Confidentiality Agreements (Exhibits 1 & 2, Original Complaint).

3. Disman had an obligation to use the information obtained from Plaintiff only for Plaintiff’s benefit.

4. Plaintiff’s owner, Trent Davis, purchased a laptop, the Gray HP Laptop (“HP Laptop”) for Disman’s use in his role as Manager / Partner at Thoroughbred. Plaintiff has identified the Model Number and Partial Serial Number of the HP Laptop as *82G5P, Model # HP17-F113 DX.

5. Disman used the HP Laptop to the exclusion of other computers to conduct Plaintiff’s business.

6. Disman only had access to Thoroughbred’s client lists by virtue of his employment at Thoroughbred and the access provided to those clients by virtue of his employment.

7. Multiple emails between Disman and Defendant D’Addario show that Disman and D’Addario were attempting to put investment projects together that excluded Thoroughbred.

8. Disman’s and D’Addario’s actions were undertaken without the knowledge, permission or consent of Plaintiff.

9. The HP Laptop, by virtue of its connection to Plaintiff’s servers, the managing and partnership role that Disman held at Thoroughbred, and the access that was

provided to Disman's secure servers contains information stored therein that was only obtained by virtue of Disman's role as a manager/partner of Thoroughbred.

10. The HP Laptop contains Thoroughbred's trade secrets.

11. If seizure is not ordered, the Court finds that Disman would likely destroy, move, hide, or otherwise make the material contained on the HP Laptop inaccessible to the Court if notice were given prior to this application.

12. The applicant, Thoroughbred, has not publicized the seizure requested herein.

b. Conclusions of Law

13. Without seizure of Plaintiff's laptop in conjunction with the specific provisions of the Temporary Restraining Order ("TRO") and Preliminary Injunction ("PI") requested, *infra*, Defendant Disman would be free to continue to solicit Plaintiff's investors to propagate his real estate investment scheme in breach of his Employment and Confidentiality Agreement, and to Plaintiff's direct and immediate detriment, and further his efforts to harm Plaintiff beyond the THREE MILLION THREE HUNDRED THOUSAND DOLLARS (\$3,300,000.00) he and D'Addario have already secured using Plaintiff's trade secrets.

14. While a TRO and PI are requested, and the Court GRANTS the TRO as outlined below, those remedies are inadequate to prevent the immediate and irreparable harm Plaintiff would endure if Disman is allowed to maintain control and use of the HP Laptop.

15. Plaintiff has shown an extreme likelihood that Disman would either copy the contents of the HP Laptop to other media (to the extent not already done), provide the contents to his co-conspirator D'Addario, or destroy the HP Laptop, which could result in information lost that is the exclusive property of Plaintiff.

16. The harm to Plaintiff far outweighs the harm to Disman through a seizure, because the laptop was purchased and provided to Disman by Plaintiff for the sole purpose of conducting Plaintiff's business. Disman has already engaged in harmful conduct by breaching his contracts with Plaintiff, and attempting to form investment offerings to Plaintiff's detriment without Plaintiff's knowledge, permission, or consent, and would continue to do so if Plaintiff's property is not seized and withheld from Disman. Additionally, no third parties would be harmed, because they are free to contact Plaintiff and the illegal scheme plotted by Disman and D'Addario may be stopped in time to prevent further damage to Plaintiff and the investors (the latter through investment in a scheme that is illegal and in violation of Federal and Texas law).

17. Plaintiff has clearly shown from the specific facts of the Verified Original Complaint that the information on the HP Laptop consists of protected trade secrets by virtue of the fact that Disman only uses the HP Laptop to communicate with Plaintiff's clients, and has agreed on two separate occasions that Plaintiff's client information, as well as information regarding existing and potential investments is considered by Plaintiff to be trade secrets.

18. As Disman is no longer an employee of Plaintiff, his possession of the HP Laptop constitutes misappropriation of Plaintiff's trade secrets based at least on his illegal

use of his information, and the material change in Disman's position from managing partner of Plaintiff to former employee.

19. Disman has apparently maintained possession of the HP Laptop despite Plaintiff's requests to return it to Plaintiff, and Plaintiff's owner, Trent Davis, has known the HP Laptop to be in Disman's possession since Plaintiff purchased the HP Laptop upon Disman's hiring by Plaintiff.

20. The Court's Order is narrowly tailored. The only item to be seized at this time is the HP Laptop, which was purchased by Plaintiff's owner Trent Davis in 2015.

21. This application has been filed under seal pursuant to the Federal and Local Rules of Civil Procedure, pursuant to 18 U.S.C. § 1836(b)(2)(A)(ii)(VIII). Plaintiff applicant for this seizure has not publicized the requested seizure, and has purposefully filed the Application for TRO and PI, *infra*, in the same sealed document to prevent any spoliation of evidence from such publication. The application satisfies the requirements of 18 U.S.C. § 1836.

SEIZURE ORDER

Based on the foregoing, the Court hereby ORDERS the following actions to be taken pursuant to 18 U.S.C. § 1836:

22. This order is to be maintained under seal until the HP Laptop is in the possession of the U.S. Marshals Service and/or other available federal or local law enforcement obtain possession of seized property;

23. The property to be seized is ONLY the HP Laptop as described in this Order, bearing Partial Serial Number *82G5P, and Model # HP17-F113 DX, and may only be seized

from 216 Yorkshire Drive, Rockwall, TX 75032 or from the person of Michael Dexter Disman;

24. Upon seizure, the HP Laptop shall not be accessible by Plaintiff/Applicant or by Disman or any Defendant for any purpose, including copies, in whole or in part, of the HP Laptop or its storage media;

25. The seizing authorities shall maintain the safety of the HP Laptop pursuant to the additional instructions below using reasonable and accepted practices for securing seized electronic property;

26. The seizure may only be executed between 8:00am and 7:00pm, Monday – Friday;

27. No force may be used to access locked areas, unless an individual 18 years or older at 216 Yorkshire Drive, Rockwall Texas 75032 denies the assigned law enforcement authorities access to the property located at that address, or Disman denies access to his personal motor vehicle in the presence of the assigned law enforcement authorities carrying out the seizure;

28. A hearing shall be set for Tuesday, May 8, 2018, at 9:00 a.m. for Disman to respond to the seizure;

29. The Court orders Plaintiff to surrender a \$500.00 security to the Clerk of the Court as security for the payment of damages in the event the Court determines that the seizure was wrongful or excessive;

30. After seizure, the Northern District of Texas U.S. Marshals Service shall surrender the HP Laptop to the U.S. Marshals Service for the Eastern District of Texas, 200 N. Travis Street, Sherman, Texas 75090, via Federal Express. Additionally, upon seizure and until further ordered by the Court, no physical or electronic access to the HP Laptop shall be allowed;

31. The HP Laptop shall not be connected to a network or the Internet without the consent of both parties and/or until the hearing set forth in ¶ 7 is held.

32. The Court shall appoint a special master who agrees to be bound by a non-disclosure agreement approved by the Court to maintain and obtain the trade secrets to be secured on the HP Laptop. Not later than two (2) days prior to the hearing Plaintiff shall file with the court a list of items to be searched on the HP Laptop, including filenames (if known), types of information, and the identify of Trade Secrets contained on the HP Laptop that the Special master shall search. The cost of the search by the Special Master shall be borne by Plaintiff, and shall be treated as a “cost” under all applicable Federal Statutes, Rules, and Local Rules for apportionment at final adjudication;

33. The seizure described herein shall be carried out by a Federal law enforcement officer of the U.S. Marshals Service, and shall report directly to the Court regarding the status of the seizure efforts.

TEMPORARY RESTRAINING ORDER

34. Defendants Disman and Chris D’Addario have already agreed that Plaintiffs have no adequate remedy at law for his breach of the Confidentiality Agreement. As to the Defendants’ other wrongful actions, Plaintiffs have no adequate remedy at law because their damages cannot be calculated.

35. Plaintiff will suffer immediate and irreparable harm, loss, and damage directly and proximately resulting from the Defendants' Disman, D'Addario, Mier, and NM Exploration's wrongful acts unless a temporary restraining order is issued enjoining Defendants to refrain from taking any of the following actions (collectively, the "Enjoined Actions"):

- a. Contacting Plaintiff's clients for the purpose of soliciting investments;
- b. Republishing the statements contained on the Website in any other medium or any other website;
- c. Publishing any PCI in any medium;
- d. Copying or otherwise transferring or storing Plaintiff's client lists, or PCI in any medium; or
- e. Contacting the Plaintiffs' other commercial or operational partners to sell the Defendants' partnership interests, solicit Plaintiff's clients, partners, or operators in an attempt to create new investment opportunities to Plaintiff's detriment using Plaintiff's client list or PCI;
- f. To publish disparaging statements regarding Plaintiff's investments, investment practices, investment history, reporting practices, or reporting history in any public forum or to Plaintiff's existing clients privately for the purpose of harming Plaintiff's business interests

The Enjoined Actions of Paragraph 34 are hereby ORDERED.

36. On Tuesday, May 8, 2018, at 9:00 a.m. the Court will entertain Plaintiff's request for Preliminary Injunction to restrain and enjoin Defendants from performing, directly or indirectly, or causing to be performed, any of the Enjoined Actions. Defendants' actions underscore the urgency of this matter, and the need for injunctive relief to preserve the status quo and protect the rights of the parties.

37. Additionally, pursuant to the equitable powers of the Court pursuant to Fed. R. Civ. P. 65, Defendants are ORDERED to surrender to Plaintiff all information, including client lists, PCI, and any other information defined as secret, confidential, or trade secret pursuant to Disman's Employment and Confidentiality Agreements and/or D'Addario's Stack Agreement immediately upon receipt of any TRO or PI issued pursuant to this Application for Seizure, TRO, and PI. Plaintiff further requests that a Special Master be appointed to forensically examine all phones, tablets, computers, thumb drives, external hard drives, or other storage media to determine if Defendants have complied with any Order issued pursuant to this Application for Seizure, TRO, and PI.

38. Plaintiff's bond/security request based on the Employment and Confidentiality agreement between Disman and Plaintiff that quantifies the appropriate bond amount is persuasive. It is therefore ORDERED that Plaintiff shall remit to the Clerk of the Court the sum of FIVE HUNDRED DOLLARS (\$500.00) for the issuance of the Temporary Restraining Order, and that such sum shall be sufficient for all of the granted under this ORDER, including the Seizure outlined above.

SO ORDERED.

SIGNED this 1st day of May, 2018.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE