

SCANNED ON 10/27/2008

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Jane S. Solomon
Justice

PART 55-

West 16th Street Sports Chiropractic

INDEX NO.

602559/08

Dr. Louis Paterson

MOTION DATE

MOTION SEQ. NO.

01

MOTION CAL. NO.

The following papers, numbered 1 to 15 were read on this motion to/for preliminary injunction.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits

Replying Affidavits

PAPERS NUMBERED

1-4

5-10

11-15

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed Decision and order.

FILED

OCT 27 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 10/24/08

Jane S. Solomon
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

FOR THE FOLLOWING REASON(S):

NO REASON IS NECESSARILY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
WEST 16TH SPORTS CHIROPRACTIC P.C.,
Plaintiff,

INDEX NO. 602559/08

-against-

DR. LOUIS PETERSON,
Defendant.

-----X
JANE S. SOLOMON, J.:

Plaintiff moves for a preliminary injunction enjoining the Defendant from, inter alia, practicing at a Manhattan chiropractic office at 80 Fifth Avenue at or near 13th Street in violation of a covenant not to compete.

To succeed on this motion Plaintiff must demonstrate: (1) likelihood of success on the merits; (2) irreparable injury; and (3) a balancing of the equities in its favor. Winzelberg v. 1319 50th Realty Corp., 52 A.D.3d 700, 701 (2nd Dept. 2008). If the injunction is granted, an undertaking is required. CPLR 6312(b); Id. at 702.

Plaintiff has shown a likelihood of success on the merits, irreparable injury, and a balance of equities in its favor. Plaintiff produced an executed employment agreement (the "Contract") containing a covenant not to compete that restricts the Defendant from practicing for two years after leaving Plaintiff's employ as follows:

[Defendant agrees] not to engage in or accept employment from or become affiliated with, or connected with, directly or indirectly, in any way in any chiropractic business operating within and including a twenty (20) block radius north and south of West 16th Sports Chiropractic and as far west as the Westside Highway and east to 3rd Avenue.

Plaintiff's office is on West 16th Street between 7th and 8th Avenues. In his sworn testimony, Defendant stated that he did not sign the Contract, even though the signature on his Affirmation in Opposition dated September 22, 2008 appears to be the same as the signature on the Contract. While staunchly denying that he signed the Contract he admitted that he did agree, in another writing, to a more narrow restrictive covenant which was limited to ten blocks and one year.¹ He also testified that, in his mind, each east-west block is equivalent to four or five north-south blocks so that Fifth Avenue becomes more than ten blocks away from Plaintiff's office. Clearly, east-west blocks are longer than north-south blocks. Nevertheless, Defendant's exaggeration is fanciful.

Significantly, Defendant did not produce a copy of the contract containing the more limited covenant, and claims that it is unavailable. Plaintiff has shown that Defendant is practicing at an office that is not only within the geographic range of the covenant in the Contract, but also within the narrower area that

¹ At the hearing these terms were incorporated in a modified TRO that remains pending this decision.

between 26th Street to the North and Third Street to the South and as far west as the Westside Highway and east to 3rd Avenue; and (b) soliciting, contacting, or offering services to any patients of West 16th Street Sports Chiropractic either directly or indirectly; and it is further

ORDERED that Plaintiff shall post an undertaking of \$1,000 within ten days of service of a copy hereof with notice of entry failing which: (a) the Temporary Restraining Order, in effect until that time period has elapsed, will be deemed vacated; and (b) the Preliminary Injunction herein granted shall become moot.

Dated: October 24, 2008

FILED
OCT 27 2008
COUNTY CLERK'S OFFICE
NEW YORK
ENTER:



J.S.C.

JANE S. SOLOMON