

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WAY SERVICES, INC.

V.

C.A. NO. 06-2109

ADECCO USA, INC.,  
ADECCO NORTH AMERICA, LLC.

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ADECCO USA, INC.

V.

TRAFFIC CONTROL SERVICES, LLC  
and MICHAEL P. DONER

MEMORANDUM OPINION AND ORDER

RUFE, J.

SEPTEMBER 6, 2006

On August 30, 1993, Plaintiff entered into a Franchise Agreement (the "Agreement") with Defendants' predecessor, Adia Services, Inc. ("Adia"), for the operation of a temporary staffing business. Plaintiff has operated this business pursuant to prior franchise agreements with Adia's

predecessor-in-interest for approximately 35 years. On March 29, 2006, Defendants gave Plaintiff a list of ten "action items" that Plaintiff was to perform in order to demonstrate its allegiance to Defendants. On May 12, 2006, Defendant sent Plaintiff a Notice of Termination in which it detailed a number of purported breaches by Plaintiff of the Agreement and stating that it would seize the business as of May 21, 2006. Defendants sent Plaintiff a second Notice of Termination on June 1, 2006.

On May 19, 2006, Plaintiff filed this action, seeking a temporary restraining order ("TRO") and preliminary injunction enjoining Defendants from terminating the Agreement and seizing Plaintiff's assets. The Complaint asserted counts for breach of contract, fraud, and tortious interference with a contract.<sup>1</sup> Following oral argument, the Court granted

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1. Paragraph 22 of the Agreement contains the following arbitration clause:

22.1 Except for ADIA's right to obtain injunctive relief for a breach by Franchisee of the covenants and agreements under Sections 3,4 and 10, any dispute or disagreement between the parties arising out of or in relation to this Agreement, including, without limitation, any dispute relating to compliance by ADIA with any law, rules or regulations respecting the offer or sale of  
(continued...)

the motion for a temporary restraining order on May 19, 2006. The TRO, inter alia, prohibited "all Defendants, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them, who receive actual notice of the Order by personal service or otherwise from terminating the Franchise Agreement and seizing Plaintiff's business and assets."<sup>2</sup> The Court scheduled

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1. (...continued)

franchises, shall be settled by arbitration under the rules then obtaining of the American Arbitration Association in San Francisco, California, and any judgment upon the award may be entered in any court having jurisdiction thereof.

Plaintiff filed a motion to compel arbitration of its breach of contract claim which the Court granted as unopposed at the beginning of the preliminary injunction hearing on June 20, 2006. See N.T., June 20, 2006 at 10-14. Although the parties agreed that only Plaintiff's breach of contract claim was subject to arbitration, the Court notes that all of Plaintiff's claims arise out of the contractual relations between the parties and the Plaintiff's performance of that contract. As a result the Court will stay resolution of Plaintiff's other claims (as well as the Defendants' Counterclaims) until Plaintiff's breach of contract claim is resolved by arbitration.

2. In issuing the TRO, the Court found that Plaintiff has satisfactorily shown that it has no adequate remedy at law since the business, once seized, could not be restored to Plaintiff. That Plaintiff would be irreparably harmed if the TRO was not issued in that Plaintiff's business reputation with its customers would be damaged, that the Defendants could not demonstrate any harm they would suffer if the TRO was issued and that Plaintiff had shown there was a substantial likelihood of success on the merits as demonstrated by the allegations in the verified complaint.

a preliminary injunction hearing within 10 days of the date of the Order.<sup>3</sup>

Essentially, Defendants contend that under section 8.1.5 of the Agreement, Plaintiff was required to devote its full time to the development and operation of the Franchised Business. Defendants contend Plaintiff materially breached this provision by permitting its General Manager, Michael Doner, to operate a competing business, Traffic Control Services, LLC,<sup>4</sup> out of Plaintiff's franchise offices and using Plaintiff's employees and resources. Defendants claim that this alleged breach (among others) allows Defendants to terminate the franchise and seize the business, assets and employees. Plaintiff contends that it did not breach the Agreement in any material respect and that it was Defen-

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3. On May 25, 2006, the Court scheduled the hearing on the application for a preliminary injunction at which time the Court engaged in a lengthy on-the-record colloquy concerning the parties' respective positions. Counsel and the parties also engaged in settlement discussions. The parties were ultimately unsuccessful in resolving this matter and the Court reconvened the hearing on the application for a preliminary injunction on June 20, 2006.

4. Defendants have filed a 15-count counterclaim against Doner and Traffic Control Services.

dants who actually breached the Agreement by unilaterally seeking to terminate Plaintiff's franchise.

The Third Circuit has held that a district court has the authority to grant injunctive relief in a dispute that the parties agree must ultimately be decided by arbitration, provided that the court consider the following four factors in ascertaining whether to issue the preliminary injunction: (1) whether the movant has demonstrated reasonable probability of eventual success in the litigation; (2) whether the movant has demonstrated that it will be irreparably injured pendente lite if relief is not granted to prevent a change in the status quo; (3) the possibility of harm to other interested persons from the grant or denial of the injunction, and (4) the public interest.<sup>5</sup>

The Third Circuit specifically noted that the district court must focus on the preservation of the integrity of the arbitration process:

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5. Ortho Pharmaceutical Corp. V. Amgen, Inc., 882 F.2d 806, 812-13 (3d Cir. 1989).

Moreover, because the district court must focus on the preservation of the arbitration process, the relief granted need not be limited to restoring the parties precisely to their pre-litigating position without regard to the irreparable injury that movant faces. If the existing “status quo” is currently causing one of the parties irreparable injury and thereby threatens to nullify the arbitration process, then it is necessary to alter the situation to prevent the injury.<sup>6</sup>

Here, the parties contracted for arbitration as the only means for resolving disputes between them. Indeed, Plaintiff has already initiated arbitration proceedings with the American Arbitration Association. If a preliminary injunction is not issued, Defendants have already stated that they will immediately seize the Plaintiff’s franchise without having to pay for it. Were this to happen, the parties’ arbitration remedy would be effectively nullified. The Court did not hear any evidence during the three days of testimony that there is a way to compensate Plaintiff with monetary damages in the event Defendants were permitted to seize Plaintiff’s franchise. The public interest mandates that the Plaintiff’s

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6. Id. at 814.

business should not be allowed to be unilaterally seized in a situation where it cannot be restored, prior to the parties having their dispute resolved by contractually agreed upon arbitration.

In addition, Plaintiff's President, John Way, testified that if Defendants seized the franchise, a number of Plaintiff's internal staff people who work for various divisions would need to be terminated, since they would not have enough work to do. He also testified that a number of personal relationships that have been developed with clients over the years would be destroyed. He also testified that some of the full-time employees who worked for Plaintiff for over 20 years would be terminated and could not be replaced.

The Court notes that it a very close question whether Plaintiff will eventually succeed in this litigation. The Court heard three days of testimony from many witnesses, Both sides made a compelling case for their respective positions. Defendants presented testimony that Plaintiff was not devoting its full time to the franchised business by

allowing TCS and Doner to operate a rogue business, using Defendants' employees and resources. Plaintiff, on the other hand, presented testimony that it immediately terminated its relationship with TCS and Doner when Defendants demanded that Plaintiff demonstrate its allegiance to Defendants and that it complied with as many points in Defendants' March 29, 2006 "action list" as it could and that Defendants were intent on terminating the franchise no matter what. Although the Court cannot predict with certainty whether the Plaintiff will ultimately prevail, the Court believes the question is close enough that the status quo needs to be preserved so that the matter can be resolved by arbitration.

The Court is confident that other franchisees will not, as Defendants argue, construe this decision as an invitation to violate their franchise agreements with these Defendants. The Court is not deciding the merits of this action, but is only maintaining the status quo until the merits can be decided by the proper tribunal. The Court is also

confident that Plaintiff will operate within the parameters of the Agreement until the arbitration occurs and that there will be no damage to the integrity and goodwill of Defendants' franchise system. On the other hand, the integrity of the franchise system would be damaged were Defendants allowed to seize Plaintiff's business without first having the parties' dispute heard by the arbitration panel.

For the foregoing reasons, the Court grants the application for a preliminary injunction. The Court will stay this action pending completion of the arbitration of Plaintiff's breach of contract claim.

An appropriate order follows.

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ORDER

The application of the Plaintiff for a preliminary injunction is GRANTED.

All defendants, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them, who receive actual notice of the Order by personal service or otherwise, are preliminary

enjoined from terminating the Franchise Agreement, and from seizing Plaintiff's business and assets until Plaintiff's breach of contract claims are resolved by the American Arbitration Association.

All further proceedings in this action are STAYED pending the completion of the arbitration before the American Arbitration Association.

IT IS SO ORDERED.

SEPTEMBER 6, 2006

BY THE COURT:

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CYNTHIA M. RUFÉ, J.