

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

FIDELITY BURGLAR & FIRE ALARM CO., INC.,	:	June Term, 2000
Plaintiff	:	
	:	No. 3060
v.	:	
	:	Commerce Case Program
WILLIAM J. DEFAZIO,	:	
Defendant	:	Control No.: 00061410

**FINDINGS OF FACT, DISCUSSION AND CONCLUSIONS OF LAW IN SUPPORT OF
ORDER GRANTING IN PART PLAINTIFF-PETITIONER'S PETITION FOR
PRELIMINARY INJUNCTION**

Fidelity Burglar & Fire Alarm Co., Inc. has filed a Petition for Preliminary Injunction requiring that Defendant William DeFazio ("DeFazio") return to Fidelity a computer ("Computer") formerly owned by Digitech Security ("Digitech"). For the reasons set forth in the following findings of fact and conclusions of law, the Court has granted a Preliminary Injunction ordering the return of the Computer.

FINDINGS OF FACT

1. In October 1999, Digitech was owned by DeFazio. N.T. at 22. Around that time, Fidelity and DeFazio agreed that Fidelity would purchase the assets of Digitech ("Assets"). N.T.¹ at 26.
2. Included among the Assets were the Computer and the Telephone Numbers. N.T. at 12, 26-27. The Computer was brought into the Fidelity office, N.T. at 27-28, where it

¹ All references to Notes of Testimony ("N.T.") are to testimony taken on July 24, 2000 at a preliminary injunction hearing ("Hearing") in Courtroom 275, City Hall, before the Honorable John W. Herron.

was used by DeFazio and other Fidelity employees. N.T. at 55. The Computer is worth between \$500 and \$1000. N.T. at 20.

3. Following Fidelity's purchase of the Assets, DeFazio came to work at Fidelity as a sales representative. 7/24/2000 N.T. at 28.
4. In April 2000, DeFazio left his job with Fidelity in April 2000 and, without Fidelity's consent or authorization, took the Computer with him. N.T. at 28, 31. DeFazio also took a cellular phone ("Phone") and a beeper ("Beeper") owned by Fidelity. N.T. at 49-50.
5. Hillier asked DeFazio to return the Computer by eight o'clock the next morning, but DeFazio refused to do so. N.T. at 31.
6. The Computer contains all the Fidelity programming information and the ability to disarm the security systems, to change the alarm codes, to make the systems inactive and to control the functions of the alarm systems on the Computer. N.T. at 33. The Computer also contains some of DeFazio's personal information. N.T. at 45.
7. Even if all of the information on the Computer were erased, a person in possession of the Computer could still pose a threat to the security of certain Fidelity accounts. N.T. at 33.
8. The Parties have agreed that the Phone and the Beeper, as well as a modem, should be returned to Fidelity. N.T. at 12.

DISCUSSION

In order for a petitioner to be entitled to a preliminary injunction, as governed by Pennsylvania Rule of Civil Procedure 1531, a petitioner must satisfy a four-part test:

1. The petitioner has a clear right to relief;
2. The preliminary injunction is necessary to prevent immediate and irreparable harm that cannot be compensated by monetary damages;
3. A greater injury will result by refusing to issue the injunction; and
4. The injunction will restore the parties to the status quo as it existed prior to the wrongful conduct.

Valley Forge Hist. Soc. v. Washington Mem. Chapel, 426 A. 2d 1123, 1128 (Pa. 1981); Greco v. Hazleton City Auth., 721 A.2d 399, 401 (Pa. Commw. Ct. 1998). In addition, before any injunction issued becomes effective, a petitioner is required to file a bond or deposit a fixed amount of legal tender with the prothonotary. Pa. R.C.P. 1531(b) (“Rule 1531(b)”).

I. Clear Right to Relief

In determining the petitioner’s right to a preliminary injunction, it is essential that “the activity sought to be restrained is actionable, and that the injunction issued is reasonably suited to abate such activity. And unless the plaintiff’s right is clear and the wrong is manifest, a preliminary injunction will generally not be awarded.” All-Pak, Inc. v. Johnston, 694 A.2d 347, 350 (Pa. Super. Ct. 1997) (citing Singzon v. Dept. of Public Welfare, 496 Pa. 8, 11, 436 A.2d 125, 127 (1981)). However, in order to show a “clear right to relief,” the petitioner must show only that substantial legal questions must be resolved to determine the rights of the respective parties and need not prove the merits of the underlying claim. Chmura v. Deegan, 398 Pa.

Super. 532, 535, 581 A.2d 592, 593 (1990). Specifically, “unlike a party seeking a permanent injunction, a party seeking a preliminary injunction is not required to establish his or her claim absolutely.” Boyle by Boyle v. Pennsylvania Interscholastic Athletic Ass’n, Inc., 676 A.2d 695, 699 (Pa. Commw. Ct. 1996) (citation omitted).

At the Hearing, Fidelity established that the Computer was among the assets sold by Digitech to Fidelity and that DeFazio removed the Computer from Fidelity’s office without Fidelity’s consent. This leads the Court to conclude that Fidelity has a clear right to relief.

II. Immediate and Irreparable Harm

In order to establish immediate and irreparable harm, a plaintiff has the burden of showing that the harm cannot be remedied by damages, Schaeffer v. Frey, 589 A.2d 752, 755, 403 Pa. Super. 560, 565, (1991), Churchill Corp. v. Third Century, Inc., 578 A.2d 532, 539, 396 Pa. Super. 314, 328 (1990), and that damages “can be estimated only by conjecture and not by an accurate pecuniary standard.” West Penn Specialty MSO, Inc. v. Nolan, 737 A.2d 295, 299, (Pa. Super. Ct. 1999). In determining whether the harm in question can be remedied by damages, courts are to look not at past damage, but rather to “the unbridled threat of the continuation of the violation.” Id. In addition, the harm in question must be “great” and irreparable. Kimmel v. Lower Paxton Twp., 633 A.2d 1271, 1274, 159 Pa. Commw. 475, 481 (1993).

Based the facts brought stated at the Hearing, in the absence of a preliminary injunction, Fidelity will suffer immediate and irreparable harm: DeFazio could use the information on the Computer to disrupt Fidelity’s alarm network and threaten the integrity of Fidelity’s systems. In

addition, DeFazio may divert clients from Fidelity using the business information on the Computer, leading to a loss of business for Fidelity.

III. Restoration of Status Quo

In granting a preliminary injunction, a court is required to “preserve the status quo, as it exists or previously existed before the acts complained of.” Smotkin v. Manhattan-Ward, Inc., 526 A.2d 1223, 1225, 363 Pa. Super. 597, 601 (1987). More specifically, the status quo to be preserved is “the last actual, peaceable and lawful noncontested status which preceded the pending controversy.” Valley Forge, 426 A. 2d at 1129, 493 Pa. at 501.

Here, the last noncontested status was prior to DeFazio’s departure from Fidelity with the Computer. As a result, a return to the status quo would require the return of the Computer to Fidelity’s control.

IV. Greater Injury in Refusal

The fourth requirement for a court to grant a preliminary injunction is that the Plaintiff must show that there would be greater injury resulting from failing to grant the injunction than from granting the injunction. DiLucente Corp. v. Pennsylvania Roofing Co., Inc., 655 A.2d 1035, 1037, 440 Pa. Super. 450, 456 (1995). In considering any injuries, “there should be no balancing of convenience, but it should be clear that greater injury would be done by refusing it than in granting it.” Pennsylvania R. Co. v. Driscoll, 198 A. 130, 133, 330 Pa. 97, 101 (1938).

If the Court structures the injunction so as to allow DeFazio access to his personal information still on the Computer, the harm he will suffer is minimal. In contrast, as outlined supra, the injury to Fidelity by not granting an injunction would be substantial.

V. Amount of Bond

Under Rule 1531(b), an order granting a preliminary injunction must require the petitioner to file a bond with the prothonotary, Berger By and Through Berger v. West Jefferson Hill School Dist., 669 A.2d 1084, 1085-86 (Pa. Commw. Ct. 1995), although a trial court may cure an injunction that fails to include a bond requirement. Downs v. Smythe, 701 A.2d 591, 594 (Pa. Super. Ct. 1997). In determining the amount of the bond, the trial court is to balance the equities involved and “require a bond which would cover damages that are reasonably foreseeable.” Greene Cty. Citizens United by Cumpston v. Greene Cty. Solid Waste Auth., 161 Pa. Commw. 330, 337, 636 A.2d 1278, 1281 (1994).

In this matter, the Computer itself is said to be worth between \$500 and \$1000. Because any reasonably foreseeable damages are unlikely to exceed this amount, the Court has set the 1531(b) bond at \$501.00.

CONCLUSIONS OF LAW

1. Based on the evidence before the Court, Fidelity has a clear right to relief.
2. Unless the Court issues a preliminary injunction, Fidelity will suffer immediate and irreparable harm that cannot be compensated by monetary damages.
3. The harm Fidelity will suffer if the Court refuses to issue a preliminary injunction is greater than the harm DeFazio will suffer if the Court issues an injunction.

4. An injunction will restore the status quo as it existed prior to DeFazio's wrongful conduct.
5. These conclusions require that the Court grant Fidelity's Petition for Preliminary Injunction. The Court's Order requires DeFazio to return the Computer, the Phone and the Beeper to Fidelity. In addition, the Order instructs Fidelity to copy all of DeFazio's personal information on the Computer onto a disk to be turned over to him and states that the provisions of the Court's June 30, 2000 Order restraining DeFazio from certain activities are to remain in effect.

On the basis of the record, the Court has entered an Order ruling on Fidelity's Petition for Preliminary Injunction. The effectiveness of Paragraphs One and Two are conditioned on Fidelity's filing a bond or depositing legal tender with the Prothonotary in the amount of \$501.00.

BY THE COURT:

JOHN W. HERRON, J.

Dated: August 4, 2000

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

FIDELITY BURGLAR & FIRE ALARM CO., INC.,	:	June Term, 2000
Plaintiff	:	
	:	No. 3060
v.	:	
	:	Commerce Case Program
WILLIAM J. DEFAZIO,	:	
Defendant	:	Control No.: 00061410

ORDER

AND NOW, to wit, this 26th day of July, 2000, upon consideration of Plaintiff Fidelity Burglar & Fire Alarm Co., Inc.'s Motion for a Preliminary Injunction, Defendant William J. DeFazio's response and the hearing held on July 24, it is hereby ORDERED and DECREED as follows:

1. Within one day following the entry of this Order, the Defendant's attorneys, Bochetto & Lentz, shall turn over and deliver to the Plaintiff the phone, beeper and modem, as well as the computer, the original contents contained on the hard drive of the computer and any copies made of that hard drive or portions thereof;

In support of this Order with respect to the computer, the Court finds as a fact that the computer constituted an asset purchased by Plaintiff from Defendant, that the computer was used by other employees in the Plaintiff's business, and that Plaintiff never authorized or consented to Defendant's removal of the computer, which at all times contained confidential and proprietary information belonging to Plaintiff;

2. Within the fifteen-day period following the entry of this Order, the Plaintiff shall hire an independent computer specialist who shall, at the Plaintiff's cost, within such period, remove all of the information that comprises the personal individual affairs of the Defendant and that does not relate to or involve in any way the business or customers of Fidelity and/or Digitech ("Personal Information"), and copy the Personal Information onto a 3-1/2" floppy disk for the Defendant's sole and exclusive use; and

3. The provisions of the Court's Order of June 30, 2000 restraining the Defendant from interfering with the Plaintiff's business and from transferring the Assets shall remain in full force and effect pending further Order of the Court.

An Opinion in support of this Order detailing Findings of Fact and Conclusions of Law will be issued shortly.

BY THE COURT:

JOHN W. HERRON, J.

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v.	:	
	:	Commerce Case Program
WILLIAM J. DEFAZIO,	:	
Defendant	:	Control No.: 00061410

ORDER

AND NOW, to wit, this day of , 2000, it is hereby ORDERED and
DECREED that the Court's Order of July 26, 2000 is AMENDED to add the following Paragraph
Four:

4. Paragraphs One and Two of this Order shall become effective upon Fidelity filing a
bond or depositing legal tender with the Prothonotary in the amount of \$501.00 in accordance with Pa.
R.C.P. 1531(b).

BY THE COURT:

JOHN W. HERRON, J.