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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL PART 27

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LEGG MASON, INC., & BRANDYWINE ASSET
MANAGEMENT, INC.,

Plaintiff,

-against-

MICHAEL D. JAMISON & REYNDERS GRAY PRINCE &
GOTTLIEB, P.C.,

Defendant.

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INDEX NUMBER 604023/00

60 Centre Street
New York, N.Y.
November 14, 2000

B E F O R E:

HONORABLE IRA GAMMERMAN, Justice

A P P E A R A N C E S:

WILKIE FARR & GALLAGHER, ESQ.
Attorneys for Plaintiff
787 Seventh Avenue
New York, NY 10019
BY: PHILIPPE M. SALOMON, ESQ.

THELEN REID & PRIEST, LLP
Attorneys for Defendant
40 West 57th Street
New York, NY 10022
BY: JEFFREY WEINTRAUB, ESQ.

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MILLICENT J. ANGIULLI
Official Court Reporter

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4 THE COURT: This case is 16250. That number should
5 appear on all papers or communications.

6 This is a motion by the plaintiff seeking a
7 preliminary injunction that will enjoin the defendant,
8 Michael B. Jamison, for a period of a year subsequent to his
9 termination of employment with the plaintiffs, from
10 disclosing any confidential information of the plaintiffs,
11 and providing any investment advisory services, competing
12 with the plaintiffs and interfering with the plaintiff's
13 business relationships with any broker or client, inducing
14 any employees of the plaintiff to leave plaintiffs employ,
15 diminishing the value of plaintiff's businesses or using the
16 plaintiff's records or proprietary information or its trade
17 secrets.

18 The movant sites two agreements between the
19 plaintiffs and Jamison. The plaintiffs also seek to enjoin
20 the defendant Reynders, Gray, Prince and Gottlieb from
21 interfering with the plaintiff's business relationships with
22 any broker or client, inducing any employees of the
23 plaintiff to leave its employ, diminishing the value of the
24 plaintiff's businesses or using any of the plaintiff's
25 business records proprietary information or trade secrets.

1 The plaintiff, I will refer to as Brandywine,
2 provides investment advisory services for clients. The
3 defendant Jamison worked for Brandywine until September 14
4 of this year. He was one of Brandywine's principal
5 shareholders who sold their stock in Brandywine to Legg
6 Mason in January of 1998 for stock in Legg Mason.

7 Legg Mason provides investment money management,
8 financial advice to institution and other high net worth
9 individuals, and the defendant Reynders Gray also provides
10 the same services.

11 The action arises out of Mr. Jamison's potential
12 employment or his potential partnership with the other
13 defendant following his resignation in September. In the
14 agreement plan of reorganization, dated in December of
15 1997, the acquisition agreement, he agreed not to compete
16 against Legg Mason for a period of one year following his
17 termination of employment. At the same time he signed a
18 five year employment agreement that contained several
19 restrictions on future employment and activities after
20 leaving Legg Mason.

21 In Exchange for his shares in Brandywine, he
22 received stock in Legg Mason worth about 20 million
23 dollars.

24 In September of this year, he apparently became
25 associated with the other defendant, believing that

1 Mr. Jamison might compete with Legg Mason or use information
2 acquired as an employee of Brandywine, the plaintiffs
3 started this action, and I granted a TRO at the end of
4 September.

5 The first cause of action is against Jamison only,
6 and it is for breach of the acquisition agreement and the
7 employment agreement. The second cause of action is for
8 breach of the fiduciary duty. The third cause of action is
9 against the other defendant, and alleges tortious
10 interferes with contract. The fourth cause of action
11 against Jamison over all seeks specific performance of the
12 covenants contained both in the employment agreement and the
13 acquisition agreement.

14 The fifth cause of action is against both
15 defendants and is based on alleged unfair competition; and
16 the sixth cause of action is the one seeking an injunction.

17 A preliminary injunction could be granted where
18 the movant seeking the injunction demonstrates a likelihood
19 of success on the merits, or prospect of irreparable injury
20 if the relief is not granted, and a balancing of the
21 equities.

22 According to the plaintiffs, the acquisition
23 agreement and the employment agreement clearly prevent
24 Jamison from working for or with the other defendant.
25 Defendants argue in opposition that the restrictions in the

1 agreements are overly broad, and that money damages are
2 sufficient, and that the plaintiffs really failed to object
3 to Jamison's new employment when he left there employ.

4 A restrictive covenant against former employees is
5 to be enforced only if reasonably limited both by time and
6 the geography, and only to the extent necessary to protect
7 the employer from unfair competition that may stem from the
8 former employees use or disclosure of trade secrets or
9 confidential information.

10 The parties present conflicting views on the scope
11 of the agreements, conflicting views as to whether or not
12 Mr. Jamison violated the agreements and whether or not the
13 agreements are overly broad.

14 The plaintiffs note that the covenant not to
15 compete was really part of the sale of Brandywine to Legg
16 Mason, not merely solely the type of restrictive covenant
17 that may usually be contained in an employment agreement,
18 and thus under those circumstances, the former employer have
19 heavier burden in overcoming the covenant if the covenant
20 was only part of an ordinary employment agreement.

21 Indeed courts are more likely to enforce
22 non-compete covenants in case where the agreement is made in
23 connection with the sale of the business and accompanying
24 goodwill. Nevertheless it required, of course, that the
25 covenant be reasonable in its scope, and that still is a

1 requirement and remains an important part of the analysis.

2 I conclude that the covenant here is clearly
3 related to the sale of Brandywine, and it seems to me that
4 the covenant should be analyzed against that background.

5 In sum a covenant not to compete rises out of an
6 express agreement involving the sale of a business. A
7 covenant really to refrain from competing with the purchaser
8 will be enforced if it is reasonable, both with respect to
9 geography, and time. It is contended by the plaintiff that
10 the covenant is not unreasonably broad as to geographic
11 location, because an investment advisory business can serve
12 anyone irrespective of geographic location. I think they
13 are right and I don't think the covenant is unreasonably
14 broad with respect to geography.

15 Mr. Jamison contends that the covenant effectively
16 prevents him from engaging in his profession. Paragraph
17 8.1(g) of the acquisition agreement refers to section 5.7
18 of exhibit D(2) which allegedly is the employment
19 agreement.

20 And paragraph five of the employment agreement
21 states that Mr. Jamison agreed to the restrictions contained
22 as an inducement for the acquisition, that is, inducement to
23 Legg Mason and Brandywine to enter into the merger
24 agreement, and in consideration of the shares which
25 apparently have a substantial value.

1 Section 5.7 of the employment agreement provides
2 that Mr. Jamison agrees not to provide investment advisory
3 services for this one year period, in consideration of the
4 issuance of these shares to him. Under the merger
5 agreement, that same section defines investment and advisory
6 services as services of the type that would require
7 registration under the Investment Advisers Act of 1940, as
8 amended, or any similar law of any state.

9 In anticipation of the section possibly being
10 declared as overbroad, the section contains the saving
11 clause limiting the restriction to the maximum extent
12 permitted by law. It is contended by plaintiffs that
13 proprietary and confidential information described in
14 section 5.1 includes information about the plaintiffs'
15 brokers, and prevents Jamison from using those brokers.

16 The covenant restrictions obviously raise concerns
17 about anti-competitive effects on the public, but the
18 defendants have not supplied any evidence that the covenant
19 would impact at the ability of any customer to attain
20 investment service or have an impact on the cost of those
21 services.

22 Defendants have agreed not to compete with
23 plaintiff for the same aspect of a client's portfolio.
24 Mr. Jamison consents to a preliminary injunction to the
25 extent that he agrees not to solicit clients he obtained

1 while working for plaintiffs, and agrees not to disclose any
2 confidential information.

3 In light of those concessions, it seems to me I
4 have to decide whether Jamison can provide investment
5 advisory services that competes with the plaintiffs, or
6 induce employees to leave the plaintiffs employ.

7 The agreement may prevent Mr. Jamison from working
8 for companies other than the plaintiff in his chosen field,
9 but I don't think the covenant is disproportionate to the
10 bargain he received when Brandywine was sold or with respect
11 to his continued employment after that acquisition.

12 I think the one-year restriction is not
13 impermissibly broad. In addition a description of Jamison
14 that temporarily appeared at the web site of the other
15 defendant was quite similar to Brandywine's description of
16 Jamison's employment, and demonstrated, at least to me, that
17 Jamison would be acting in a capacity very similar to the
18 capacity of Brandywine.

19 Whether the plaintiffs consented to Jamison's
20 employment with the co-defendant before he left Brandywine
21 is an issue of fact, the resolution of which it doesn't seem
22 to me to preclude the plaintiff from seeking to enforce the
23 covenant.

24 Restrictions on Mr. Jamison's is activities that
25 directly compete for plaintiff's customers or employees are

1 more obviously reasonable, and Mr. Jamison presents no
2 serious arguments against those aspects of the injunction.
3 Thus, it seems to me that the plaintiffs are likely to
4 succeed on the cause of action for breach of the covenant
5 and enjoining Jamison from interfering with the plaintiff's
6 business relationships, and inducing employees to leave the
7 plaintiff.

8 Because the plaintiff has a legitimate interest in
9 preventing defendant from using such confidential
10 information or pursuing clients or employees, it seems to me
11 that it's appropriate to enforce the covenants to protect
12 those interests.

13 The second aspect that the Court has to consider
14 in determining whether or not to grant a preliminary
15 injunction is the issue related to irreparable injury. The
16 plaintiffs have requested money damages in their first,
17 second, third and fifth causes of action, and specific
18 performance with respect to the fourth cause of action. And
19 as I indicated previously, an injunction in the sixth cause
20 of action.

21 It is contended by defendants that the plaintiffs
22 cannot show irreparable harm. Even though money damages has
23 been requested, damages are not the only relief requested,
24 nor does it appear that those damages can really compensate
25 the plaintiff completely.

1 When a claim for injunctive relief is based on the
2 sale of a business and a company's good will, it seems to me
3 irreparable injury could be established without showing loss
4 of customers or business.

5 Because the plaintiff's have alleged that the
6 Jamison's involvement, the co-defendant, would result in
7 loss of customers, among others things, at this time seems
8 to me irreparable injury has been established.

9 Thus, I don't have to address whether or not the
10 parties recitation in the agreement that irreparable injury
11 will result in violation of the covenant not to compete, has
12 to be accepted without a question.

13 In light of the discussion that I just placed on
14 the record, I can conclude that the balance of equities
15 weighs in favor of issuing the injunction. Mr. Jamison
16 signed the agreement sought to be enforced, and as I
17 indicated before, the non-compete compete covenant is
18 related to the sale of the business. He contends that the
19 restriction on his employment in the investment advisory
20 business will prevent him from remaining current in his area
21 of expertise, but I don't see why he cannot keep current in
22 his career without actually working as an investment
23 advisor.

24 It seems to me thus the plaintiffs have met there
25 burden of entitlement to preliminary injunction. The

1 plaintiffs do not present any argument, however, that they
2 are like likely to succeed against the co-defendant or that
3 they are entitled to injunction against the co-defendant.

4 It seems to me that since I'm granting injunction
5 with respect to Jamison, it's unnecessary to grant an
6 injunction with respect to the other defendant. An
7 injunction against the other defendant would not prevent it
8 from doing anything, except with respect to Jamison, and
9 therefore the motion is granted only with respect to the
10 defendant Jamison.

11 Who is the plaintiff's attorney.

12 MR. SALOMON: I am, Your Honor.


13 THE COURT: Settle an order, and come up and
14 let's-- we have to do discovery, but I think since we have
15 preliminary injunction we ought to have an early trial
16 date. Come up.

17 (Discussion at the bench off the record).

18 (whereupon the matter concluded).

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20 I hereby certify that the foregoing is a true and accurate
21 transcription of the original stenographic notes.

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MILlicent J. ANGIULLI
Official Court Reporter