

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI
ASSOCIATE DIVISION

FILED

JUL 05 2017

CIRC [REDACTED] LOUIS-COUNTY

LIVE BETTER NOW, INC.,)
d/b/a SYNERGY HOMECARE OF)
ST. LOUIS COUNTY,)
)
)
Plaintiff,)
)
v.)
)
MB,)
)
)
MA, and)
BETTER LIVING HOME CARE, LLC)
d/b/a LONGEVITY HOME CARE,)
)
)
Defendants.)

Case No.

Division No. 34

ORDER

On June 13, 2017 Plaintiff Live Better Now, Inc. d/b/a Synergy Homecare of St. Louis County (hereinafter "Synergy") appeared by president, MK and by counsel, JM and DH. Defendants MB and MA appear in person and by counsel, BC. Better Living Home Care, LLC d/b/a Longevity Home Care (hereinafter "Longevity") appeared by owner, JA and by counsel, AB. Evidence was presented and testimony heard. The Court took the matter under advisement.

BACKGROUND

The Plaintiff, Synergy filed a nine (9) count petition in this matter. However, Count I's request for injunctive relief is the only Count relevant to this Order. Synergy seeks to enjoin Defendants (a) from contacting, soliciting, accepting referrals from Synergy's referral sources, client lists, prospect lists and business; (b) from using and disclosing Synergy materials, including, but not limited to, proprietary referral sources and contact information; and to have an order from the court (c) ordering Defendants to return all of Synergy materials, including, but not limited to, proprietary referral sources and contact information. Synergy alleges in its petition that it will suffer immediate and irreparable injury, loss and damage. Further, Synergy alleges that it has no adequate remedy at law. At the hearing, Defendants presented testimony denying that they took Synergy's referral sources. Longevity by and through the testimony of JA testified that it utilized a marketing plan prepared for its company to obtain customers and referral sources.

ANALYSIS

In deciding whether to grant a preliminary injunction the court will consider four factors 1) the probability of success on the merits, 2) the threat of irreparable harm to the movant absent the injunction, 3) the balance between this harm and the injury the injunction's issuance will inflict on the other interested parties, and 4) the public interest. State ex rel. Director of Revenue, State of Mo. v. Gabbert, 925 S.W.2d 838, 839 (Mo. 1996). Synergy has not persuaded the court that it is entitled to injunctive relief. While Synergy presented evidence that Synergy and Longevity have some referral sources in common, that evidence, alone, is insufficient to convince the court that it will be successful on the merits. Further, there exists a real dispute

between the parties as to whether MB, MA and Longevity took Synergy's referral sources as opposed to following a marketing plan that led it to some of the same referral sources.

There was insufficient evidence presented to persuade the court on the remaining factors necessary for the granting of a preliminary injunction. In that vein, the testimony of MK suggested that monetary damages could be ascertained with some amount of research of his company's records. For that reason the court is not convinced that there is no adequate remedy at law. In Walker v. Hanke, 992 S.W.2d 925, 933 (Mo. App. W.D. 1999) the court stated that "an injunction is an extraordinary and harsh remedy and should not be granted when there is an adequate remedy at law."

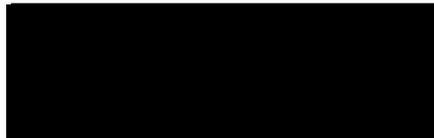
CONCLUSION

Courts have held that an injunction is a harsh remedy that should be used sparingly and only in clear cases. Community Title Co. v. Roosevelt Federal Savings & Loan Association, 670 S.W. 2d 895, 900 (Mo. App. E. D. 1984). This court finds that this case is not a clear case. Recognizing that additional evidence may come out at trial, this court has only the evidence presented to it at the hearing to persuade it that a preliminary injunction is warranted. At this juncture, the court is not so persuaded.

Accordingly, the court having considered the pleadings, evidence, the arguments of counsel and the applicable law, the court hereby **DENIES** the Motion for Preliminary Injunction.

IT IS SO ORDERED

Date: July 5, 2017

A large black rectangular redaction box covers the signature of the judge.

Honorable Renee Hardin-Tammons