

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: March 29, 2016)

MEDICINE AND LONG TERM CARE :  
ASSOCIATES, LLC. :  
Plaintiff, :

v. :

C.A. No. PC-2015-0458

SHAHZAD KHURSHID :  
Defendant. :

DECISION

SILVERSTEIN, J. The Plaintiff, Medicine and Long Term Care Associates, LLC. (MLTC), is a Rhode Island limited liability company; its principal place of business is in Cranston, Rhode Island. The Defendant, Doctor Shahzad Khurshid (Khurshid), is a resident of North Kingstown, Rhode Island. This Court has jurisdiction over the subject matter of the instant dispute pursuant to G.L. 1956 § § 8-2-13, 8-2-14, and 9-30-1.

I

**Facts and Travel**

MLTC was organized for the purpose of providing health care services and has been providing health care services—primarily to geriatric patients in nursing homes—since its date of incorporation. In May of 2009, MLTC and Khurshid entered into an Association Agreement (Agreement) whereby Khurshid agreed to provide “services for the benefit of the patients of MLTC on a mutually agreed upon schedule.” Agreement, 1. The Agreement guaranteed Khurshid compensation in exchange for his services, but also contained an “Exclusivity and Non-Competition” clause. Id. at 3. Under the Exclusivity and Non-Competition clause, Khurshid was prohibited from soliciting or attempting to solicit MLTC employees, agents,

contractors, referral sources, or patients for two years after termination or expiration of the Agreement. Additionally, under the Exclusivity and Non-Competition clause, and for two years after termination or expiration of the Agreement, Khurshid was prohibited from causing or inducing any employee, agent, supplier, vendor, contractor, referral source, or patient of MLTC to terminate or suspend its business with MLTC. Finally, under the Exclusivity and Non-Competition clause, and for two years after termination or expiration of the Agreement, Khurshid was prohibited from maintaining an office practice within nine miles of MLTC's principal place of business.

In addition to the above-described Exclusivity and Non-Competition clause, the Agreement contained the following acknowledgement: "Khurshid[] acknowledges that irreparable harm will result to MLTC's Private Practice upon breach of the covenants contained in the Confidentiality and Non-Solicitation sections of this Agreement. In addition to all other available remedies, MLTC may obtain injunctive relief to enforce the specific covenants contained herein." Id.

Khurshid remained associated with MLTC until at least December of 2014. As an associate, Khurshid was assigned patients in nursing home facilities, and Khurshid provided care to those patients.

On December 28, 2014, Khurshid sent a letter to MLTC informing them of his intent to terminate the Agreement. On or about January 1, 2015, MLTC received notice from the John Clarke Retirement Center of its intent to terminate its contract with MLTC.<sup>1</sup> On or about January 7, 2015, MLTC sent a letter to Khurshid informing him that it had "come to the attention of MLTC that [Khurshid] may have engaged in some activity which is in direct violation of the

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<sup>1</sup> In its Complaint, MLTC alleges that "[u]pon information and belief the [John Clarke Retirement Center] has retained [Khurshid]." Compl. ¶ 17.

Exclusivity and Non-Competition clause in the [ ] Agreement.” Letter from Atty. Gianfrancesco to Khurshid dated Jan. 7, 2015. The letter went on to state that Khurshid was “directed to cease and desist in any such activity,” and that Khurshid’s “failure to do so will result in MLTC taking further appropriate action pursuant to the [ ] Agreement.” Id.

On February 3, 2015, MLTC filed a Complaint in Superior Court, wherein it named Khurshid as Defendant and alleged the following: Unfair Competition (Count I), Breach of Fiduciary Duty (Count II), Tortious Interference with Advantageous Relations (Count III), and Tortious Interference with Prospective Contractual Relations (Count IV). In addition to compensatory damages, attorney’s fees, interests, and costs, MLTC, in its Complaint, prayed for the following relief: a declaratory judgment stating that Khurshid (1) engaged in unfair competition, (2) breached his fiduciary duties, (3) tortiously interfered with advantageous business relations, and (4) tortiously interfered with prospective contractual relations; injunctive relief prohibiting Khurshid from using business relationships established—and confidential information developed—while he was associated with MLTC; an award of punitive damages; and an award of exemplary damages pursuant to G.L. 1956 § 6-41-4. On July 22, 2015, Khurshid filed an Answer in response to MLTC’s Complaint. Khurshid’s Answer denies Counts I-IV, raises eleven separate affirmative defenses, and includes multiple counterclaims.

This Decision will address only MLTC’s above-mentioned prayer for injunctive relief. Although the Court finds that MLTC has alleged facts and presented evidence which otherwise might entitle it to injunctive relief, for the reasons set forth below, the Court denies MLTC’s prayer.

## II

### Analysis

MLTC prays for injunctive relief as a remedy to the harm resulting from Khurshid's alleged violation of the above-described Exclusivity and Non-Competition clause. "A decision to grant or deny . . . injunctive relief is addressed to the sound discretion of the trial justice. . ." Hagenberg v. Avedisian, 879 A.2d 436, 441 (R.I. 2005). However, a trial justice may not grant injunctive relief unless the party seeking such relief demonstrates that "it stands to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position." Fund for Cmty. Progress v. United Way of Se. New England, 695 A.2d 517, 521 (R.I. 1997). A demonstration of irreparable harm is to be made "at the conclusion of all the evidence," R. I. Tpk. & Bridge Auth. v. Cohen, 433 A.2d 179, 183 (R.I. 1981), and is to be based upon the totality of the circumstances, Sch. Comm. of Pawtucket v. Pawtucket Teachers' Alliance Local No. 930, 117 R.I. 203, 208, 365 A.2d 499, 502 (1976), rather than an individual fact or contractual provision.

A party seeking injunctive relief must "show that it has a reasonable likelihood of succeeding on the merits of its claim" by making out a prima facie case related to the claim. Fund for Cmty. Progress, 695 A.2d at 521. If the party seeking injunctive relief is able to show that it stands to suffer irreparable harm for which no adequate legal remedy exists, "the trial justice should next consider the equities of the case by examining the hardship to the moving party if the injunction is denied, the hardship to the opposing party if the injunction is granted and the public interest in denying or granting the requested relief." Id. A party seeking an injunction must demonstrate "that the public-interest equities weigh in favor of the injunction." Nat'l Lumber & Bldg. Materials Co. v. Langevin, 798 A.2d 429, 434 (R.I. 2002).

A court may deny a claim for injunctive relief where granting injunctive relief would impose an undue hardship on the party enjoined or would injure members of the public. Allen v. Creative Servs., Inc., C.A. No. 92-0726, 1992 WL 813643, at \*3 (R.I. Super. July 6, 1992) (citing Restatement (Second) Contracts 188 (1979)). In Block v. Vetcor of Warwick, LLC, No. KC99-0970, 2000 WL 1634784 (R.I. Super. May 19, 2000), the court enforced a non-competition clause against veterinarians after finding that enforcement would not impose “an undue hardship on the pets of Rhode Island.” Block, 2000 WL 1634784, at \*6.

Whereas animals, as the Block court noted, “are such agreeable friends—they ask no question, they pass no criticisms,” id. at \*3, people are encouraged to confide in their health care providers, and thus have an “imperative need for confidence and trust” with respect to physicians. State v. Almonte, 644 A.2d 295, 306 (R.I. 1994); see also § 9-17-24 (privileging communications between a patient and his or her physician). In Massachusetts, state law prohibits the enforcement of restrictive covenants against physicians, Mass. Gen. Laws Ann. ch. 112, § 12X (West), and courts in that jurisdiction have held that “[t]he statute favors ‘[t]he strong public interest in allowing [patients] to [consult the physician] of their choice.’” Falmouth Ob-Gyn Assocs., v. Abisla, 417 Mass. 176, 182, 629 N.E.2d 291, 294 (1994) (quoting Meehan v. Shaughnessy, 404 Mass. 419, 431, 535 N.E.2d 1255 (1989)).

### III

#### Conclusion

Even in the absence of a Rhode Island statute similar to the above-mentioned Massachusetts law, this Court believes that the strong public interest in allowing individuals to retain health care service providers of their choice “outweighs any professional benefits derived from a restrictive covenant.” Meehan, 404 Mass. at 431, 535 N.E.2d at 1262. On this basis, the

Court denies MLTC's request for injunctive relief. The Court notes, however, MLTC's statement that "[i]t will lose tens of thousands of dollars in revenue as a result of Defendant's wrongful conduct," Compl. ¶ 23, and leaves it to seek legal redress for its injuries.

The prevailing party shall present an order consistent herewith, and the parties are directed to confer with the Court with respect to scheduling further proceedings.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** **Medicine and Long Term Care Associates, LLC. v. Khurshid**

**CASE NO:** **PC-2015-0458**

**COURT:** **Providence County Superior Court**

**DATE DECISION FILED:** **March 29, 2016**

**JUSTICE/MAGISTRATE:** **Silverstein, J.**

**ATTORNEYS:**

**For Plaintiff:** **Anthony J. Gianfrancesco, Esq.**

**For Defendant:** **Kathleen M. Hagerty, Esq.**