

No. _____

ABCD SERVICES, INC.

Plaintiff,

vs.

JOHN SMITH

Defendant.

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IN THE DISTRICT COURT

COLLIN COUNTY, TEXAS

_____ **JUDICIAL DISTRICT**

**PLAINTIFF'S ORIGINAL PETITION
AND APPLICATION FOR TEMPORARY
RESTRAINING ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW ABCD Services, Inc. (“ABCD”) and files this its Original Petition and Application for Temporary Restraining Order complaining of John Smith (“Smith”), and would show the Court the following:

A. Discovery Control Plan

1. Plaintiffs affirmatively plead that they seek monetary relief aggregating more than \$50,000. Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.

B. Parties

2. Plaintiff ABCD is a Texas corporation that conducts business in Collin County, Texas.

3. Defendant Smith is an individual residing at 1234 56th Street, Plano, Collin County, Texas 75000. Smith may be served with process at his home address, 1234 56th Street, Plano, Collin County, Texas 75000.

C. Jurisdiction and Venue

4. The Court has jurisdiction over the Defendant because Defendant is a Texas resident and all or part of the causes of action alleged in this Original Petition arose in Texas. The Court has jurisdiction over the controversy because the damages are within the jurisdictional limits of this Court.

5. Pursuant to Tex. Civ. Prac. & Rem. Code §§ 15.001 and 15.061, venue is proper in Collin County, Texas because the Defendant resides in Collin County, Texas and all or a substantial part of the causes of action alleged in this Original Petition arose in Collin County, Texas.

D. Facts

6. In 1998, ABCD acquired all the assets and certain liabilities of Smithserv, a sole proprietorship then owned by Smith. At the time of the acquisition, Smith disposed of all his interest in and control over Smithserv. On or about September 3, 1998,

Smith executed a Certificate of Withdrawal that was filed with the State of Texas. In this certificate, Smith signed and acknowledged the following statement:

the undersigned has this day withdrawn from or disposed of his interest in the above mentioned business and is no longer connected with the same, and will not be responsible for debts contracted by said business after the filing of this Withdrawal Notice as prescribed by law.

A copy of this Certificate of Withdrawal is attached as Exhibit A to the Declaration of Joe Jones filed contemporaneously herewith. After the acquisition, Landscape Lighting Services became a d/b/a for Lighting Innovations, Inc. A copy of the Assumed Name Certificate for Landscape Lighting Services is attached as Exhibit B to the Declaration of Joe D. Jones filed contemporaneously herewith.

7. ABCD later hired Smith as an at-will employee of ABCD to work in a sales and design capacity. Smith's employment relationship with ABCD was terminated for cause on or about January 18, 2000. Smith no longer has any connection with or authority to act on behalf of ABCD.

8. After his termination as an at-will employee of ABCD, Smith has attempted to divert current and prospective business opportunities from ABCD. Among other things Smith has, without any authority, contacted The Phone Company and instructed them to forward telephone calls directed to ABCD to a telephone number under Smith's control.

9. Upon information and belief, Smith has also contacted current and prospective customers of ABCD and asked them to end their business relationships with ABCD and become customers of a business or businesses controlled by Smith.

10. After his termination, Smith removed more than one hundred corporate files from the business premises of ABCD without authorization. These files contain information regarding current and prospective customers, including proposals for prospective jobs, information regarding projects for which ABCD has been retained but has not yet commenced work, and work in progress. See Declaration of Joe D. Jones filed contemporaneously herewith.

11. Upon information and belief, Smith has also taken lists of customers and business prospects of ABCD from the premises. These files and the information contained therein, the customer lists, and other documents that Smith has taken without authorization are the property of ABCD. These files contain proprietary information and trade secrets that are property of the ABCD that Smith has converted to his own use.

12. Upon information and belief, since his termination as an employee of ABCD, Smith has used the name ABCD in connection with the operation of an other business. Upon information and belief, Smith has transacted business and/or attempted to transact business using ABCD accounts, has collected or attempted to collect fees and/or payments from ABCD customers. Upon information and belief, Smith has collected or attempted to collect mail or packages deliverable to ABCD.

13. Since his termination as an employee of ABCD, Smith and his wife, Mary Smith, have entered and attempted to enter the premises of ABCD without authorization. On at least one occasion, after he was terminated, Smith entered the premises in an attempt to take additional files belonging to ABCD, which resulted in an altercation with Joe Jones. Smith has used abusive and offensive language in his communications with Joe Jones and/or employees of ABCD. The police have been called to the premises of ABCD several times since Smith's termination as a result of Smith's repeated attempts to take additional files, documents and property belonging to ABCD. See Declaration of Joe D. Jones filed contemporaneously herewith.

14. Because of Smith's actions as set forth above, ABCD was required to hire the undersigned counsel to represent it in this action and on any appeals, and has agreed to pay a reasonable fee therefor.

Count I
DECLARATORY JUDGMENT

15. ABCD repeats and re-alleges the allegations set forth in the preceding paragraphs as if more fully set forth below.

16. As set out in greater detail above, Smith disposed of all his interest and control of Smithserv when it was acquired by ABCD in September of 1998. Smith acknowledged these facts when he signed the Certificate of Withdrawal filed with the State of Texas. Despite having no further interest in ABCD and no longer being employed by

ABCD, Smith continues to take actions based on his assumption that he is authorized to act on behalf of ABCD or still retains some interest in or control over ABCD.

17. Pursuant to Tex. Civ. Prac. & Rem. Code § 37.001 et seq., ABCD P.C. requests a declaration that Smith disposed of all his interest and control of Smithserv in or about September of 1998 when it was acquired by ABCD and that Smith has no remaining interest in ABCD or claim against ABCD. Pursuant to Tex. Civ. Prac. & Rem. Code § 37.009, ABCD also requests an award of its costs and reasonable and necessary attorney's fees as are equitable and just.

Count II
CONVERSION

18. ABCD repeats and re-alleges the allegations set forth in the preceding paragraphs as if more fully set forth below.

19. Upon information and belief, Smith has diverted specific, identifiable payments and fees belonging to ABCD to himself. Smith has also converted other property belonging to ABCD to himself, such as customer lists and corporate files, including design plans and information on work in progress. By letter dated January 20, 2000, ABCD gave notice to Smith that it did not recognize Smith's claims to any interest in accounts receivable or fees belonging to ABCD and did not recognize Smith's claims to customer list, corporate files, or any other property belonging to ABCD, and demanded the immediate return of any property or sums belonging to ABCD..

20. ABCD has converted these specific, identifiable sums by wrongfully exercising dominion and control over specific and identifiable sums of money that are the property of ABCD in denial of and inconsistent with ABCD's rights. ABCD is the owner of these sums of money. Smith's actions manifest a clear repudiation of ABCD's rights to the money, and the money was converted without the consent of ABCD. Smith's conversion of this property of ABCD was knowing and willful.

21. ABCD is entitled to recover the value of the sums converted by Smith, in addition to damages resulting from the loss of use of the money, as well as any other damages, including actual, nominal, and exemplary damages.

Count III
TORTIOUS INTERFERENCE WITH CONTRACTS

22. ABCD repeats and re-alleges the allegations set forth in the preceding paragraphs as if more fully set forth below.

23. During 1998, 1999, and January of 2000, ABCD had contractual relationships with a number of its customers to perform services for those customers in exchange for payment of fees.

24. Upon information and belief, Smith willfully and intentionally interfered with those contracts by contacting current customers of ABCD and attempting to persuade them to remove their ongoing business from ABCD and transfer it to a business or businesses controlled by Smith. In furtherance of this activity, Smith contacted The Phone Company,

purporting to act on behalf of ABCD, and persuaded The Phone Company to forward telephone calls intended for ABCD to a telephone controlled by Smith. Smith willfully and intentionally interfered with ongoing contractual relationships by soliciting current ABCD customers and securing commitments from those customers to transfer their ongoing projects from ABCD to a business or businesses controlled by Smith, resulting in damage to ABCD. This interference proximately caused damage to ABCD by diverting ongoing work of customers from ABCD. ABCD is entitled to recover its damages, actual, nominal, and exemplary, from Smith based on his knowing interference with ABCD's contract rights.

Count IV
TORTIOUS INTERFERENCE WITH
EXISTING BUSINESS RELATIONSHIPS

25. ABCD repeats and re-alleges the allegations set forth in the preceding paragraphs as if more fully set forth below.

26. During 1998, 1999, and January of 2000, ABCD had ongoing business relationships with a number of its customers to perform services for those customers in exchange for payment of fees.

27. Upon information and belief, Smith willfully and intentionally interfered with those ongoing business relationships, without legal right or justifiable excuse, by contacting current customers of ABCD and attempting to persuade them to become customers of a business or businesses controlled by Smith. In furtherance of this activity, Smith contacted The Phone Company, purporting to act on behalf of ABCD, and persuaded

The Phone Company to forward telephone calls intended for ABCD to a telephone controlled by Smith. Smith willfully and intentionally interfered with ongoing business relationships by soliciting current ABCD customers and securing commitments from those customers to end their business relationships with ABCD and become customers of a business or businesses controlled by Smith, resulting in damage to ABCD. This interference proximately caused damage to ABCD by severing business relationships with customers and diverting work of customers from ABCD. ABCD is entitled to recover its damages, actual, nominal, and exemplary, from Smith based on his knowing interference with ABCD's business relationships.

Count V
TORTIOUS INTERFERENCE WITH
PROSPECTIVE BUSINESS RELATIONSHIPS

28. ABCD repeats and re-alleges the allegations set forth in the preceding paragraphs as if more fully set forth below.

29. As discussed in more detail above, since his termination, Smith has solicited potential customers of ABCD to become customers of a business or businesses controlled by Smith. Smith solicited customers for specific work as well as for possible ongoing business relationships. In furtherance of this activity, Smith contacted The Phone Company, purporting to act on behalf of ABCD, and persuaded The Phone Company to forward telephone calls intended for ABCD to a telephone controlled by Smith.

30. With respect to each identifiable prospective business relationship, there was a reasonable probability that ABCD would have entered into a business relationship with the prospective customer; Smith acted maliciously by intentionally preventing the relationship from occurring with the purpose of harming ABCD and benefitting himself; Smith was not privileged or justified in his actions in any bona fide exercise of his own rights; and ABCD has suffered actual harm or damage as a result of Smith's actions. ABCD is entitled to recover its damages, actual, nominal, and exemplary, from Smith based on his knowing interference with ABCD's prospective business relationships.

Count VI
MISAPPROPRIATION OF TRADE SECRETS

31. ABCD repeats and re-alleges the allegations set forth in the preceding paragraphs as if more fully set forth below.

32. After his termination, Smith removed more than one hundred corporate files from the business premises of ABCD without authorization. These files contain information regarding current and prospective customers, including proposals for prospective jobs, information regarding projects for which ABCD has been retained but has not yet commenced work, and work in progress. Smith has also taken lists of customers, design plans, and information regarding business prospects of ABCD from the premises. These files and the information contained therein, the customer lists, and other documents that Smith has taken without authorization are the property of ABCD. These files contain proprietary

information and trade secrets that are property of the ABCD that Smith has converted to his own use.

33. Upon information and belief, Smith has made use of these trade secrets and proprietary information, resulting in damage to ABCD.

34. As a direct and proximate result of Smith's conduct as above described, ABCD has suffered damages, including lost opportunities, the full-extent of which will be determined at trial.

35. The conduct of Smith was extreme and outrageous, willful and wanton, and in reckless disregard of ABCD's rights.

36. ABCD is entitled to compensatory and punitive damages and because of the inadequacy of this remedy, ABCD is also entitled to an injunction prohibiting the use of the information taken without authorization by Smith and presently being used by Smith.

37. ABCD is entitled to recover its damages, actual, nominal, and exemplary, from Defendants based on their misappropriation of trade secrets.

E. Jury Demand

38. ABCD makes a demand for jury trial more than 30 days before the date this case is set for trial, in accordance with Tex. R. Civ. P. 216.

39. ABCD tenders the fee of \$10.00 for district court, as required by Tex. R. Civ. P. 216.

F. Application for Temporary Restraining Order

40. ABCD seeks issuance of an order restraining Smith from continuing to use the proprietary information and trade secrets of ABCD and compelling Smith to return all documents, files, keys, and other property of ABCD that may be in Smith's possession or under his control.

41. ABCD seeks issuance of an order restraining Smith from continuing to solicit business from current and prospective customers of ABCD and interfering with ongoing business relationships between ABCD and its customers, including compelling Smith to rescind his instruction to The Phone Company to forward ABCD telephone calls to a telephone controlled by Smith.

42. ABCD seeks issuance of an order restraining Smith from entering or attempting to enter its business premises. Due to the verbal and physical abuse Smith has perpetrated against Joe Jones, president of ABCD, ABCD seeks issuance of an order restraining Smith from coming within 500 feet of Mr. Jones or using abusive or threatening language in any written or verbal communication with Mr. Jones.

43. It is probable that ABCD will recover from Smith because Smith has taken confidential and proprietary information of ABCD, solicited current and prospective customers of ABCD, sought to divert business from ABCD to businesses under his control by, *inter alia*, diverting telephone calls intended for ABCD to a telephone under his control.

44. If ABCD's application is not granted, harm is imminent because Smith has been and continues to use confidential information and trade secrets of ABCD in his

business operations, continues to divert telephone calls intended for ABCD to a telephone under his control, continues to contact current and prospective customers of ABCD in an attempt to sever business relationships between those customers and ABCD, causing ABCD to sustain damage to its business reputation and creating confusion in the relevant marketplace, leading to a loss of present and future business opportunities as well as other damage. In addition, Smith's continued attempts to enter the premises and accost Mr. Jones will result in the loss of additional property by ABCD and may result in physical harm or threat of harm to Mr. Jones.

45. The harm that will result if the temporary restraining order is not issued is irreparable because ABCD's business reputation will be permanently tarnished by Smith's activities, and the damages sustained by ABCD will be unpredictable and unending.

46. ABCD has no adequate remedy at law because the ongoing damage to ABCD's business reputation is substantial and incalculable, and the damages sustained by ABCD will be unpredictable and unending.

47. ABCD is willing to post bond if the Court deems it appropriate.

G. Request for Temporary Injunction and Permanent Injunction

48. ABCD asks the Court to set its application for Temporary Restraining Order for hearing, and after hearing the application, issue temporary injunction against Smith. ABCD further asks the Court to set its application for injunctive relief for a full trial

on the issues in ABCD's application, and after the hearing, issue a permanent injunction against Smith.

H. Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff ABCD, Inc. asks that Defendant John Smith be cited to appear and answer, and that Plaintiff have judgment against Defendant for:

1. A Declaration that John Smith disposed of all his interest and control in Smithserv when it was acquired by ABCD, Inc. and that Smith has no interest in or control over Smithserv;
2. Imposition of a constructive trust on all fees collected by Smith from former customers of ABCD who were solicited by Smith using confidential and proprietary information of ABCD or by diverting telephone calls and other communications intended for ABCD to Smith;
3. a temporary and permanent injunction issue restraining Smith, and all those acting in concert with him or under his control
 - a. from using any information or property obtained from ABCD without authorization;
 - b. from diverting or attempting to divert current or prospective customers of ABCD from doing business with ABCD;
 - c. from contacting or attempting to contact any current customers of ABCD

- d. from transacting any business on ABCD accounts;
 - e. from collecting any fees payable to ABCD from ABCD's customers;
 - f. from collecting any mail or other packages deliverable to ABCD;
 - g. from using the name Smithserv in connection with the operation of any business in competition with ABCD;
 - h. from diverting telephone calls or other communications intended for ABCD;
 - i. from coming within 500 feet of Joe Jones or using abusive or threatening language toward Mr. Jones;
4. Smith be ordered to surrender to ABCD all files, documents, keys, and other property obtained from ABCD;
5. the Court grant such other injunctive relief as the Court may deem just and proper;
6. ABCD have judgment against Smith for:
- a. Actual Damages;
 - b. Nominal Damages;
 - c. Exemplary Damages;
 - d. Reasonable and necessary attorney's fees;
 - e. Pre-judgment and post-judgment interest as allowed by law;
 - f. Costs of suit; and

- g. Such other and further relief, both in law and in equity, as the court deems appropriate.