

IN THE CIRCUIT COURT OF THE
15th JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

SUNCOAST TITLE OF
WELLINGTON, INC. d/b/a
SUNCOAST TITLE,
a Florida Corporation,

CASE NO.:

50 2005 CA 003548XXXXM

Plaintiff,

vs.

JUDITH CARPENTER,
An Individual,
INTERNATIONAL TITLE SOLUTIONS, LLC,
A Florida limited liability company,

Defendant.

AG

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APR 15 2005

SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

MOTION FOR TEMPORARY INJUNCTIVE RELIEF

Plaintiff, SUNCOAST TITLE OF WELLINGTON, INC. d/b/a SUNCOAST
TITLE (hereinafter "SUNCOAST"), a Florida corporation, by and through its
undersigned counsel, hereby files this Motion for Temporary Injunctive Relief against
Defendant, JUDITH CARPENTER (hereinafter "CARPENTER"), an individual and
INTERNATIONAL TITLE SOLUTIONS, LLC (hereinafter "INTERNATIONAL"), a
Florida limited liability company, and as grounds thereof states as follows:

1. The underlying action is based on violations of a covenant not to compete contained within an employment agreement and tortious interference with a contractual relationship.
2. Plaintiff seeks temporary injunctive relief against CARPENTER for acting in violation of the covenant not to compete in her employment agreement with SUNCOAST and against CARPENTER and INTERNATIONAL for tortious interference

Graner Root & Heimovics, P.A.
2000 Glades Road, Suite 412, Boca Raton, Florida 33431 Tele: (561) 998-3232

4/15/05

with SUNCOAST's contractual relationship with its client, Tarragon South Development Corp. (hereinafter "Tarragon").

3. SUNCOAST is a full service title company operating in various areas around the State of Florida, including Palm Beach County and Broward County.

4. CARPENTER was an employee of SUNCOAST, serving as its Director of Operations, and signed an Employment Agreement with SUNCOAST on January 1, 2004 (hereinafter referred to as the "Agreement") (see Agreement attached hereto and incorporated herein as Exhibit "A").

5. The Agreement set forth the terms and understanding of CARPENTER's employment with SUNCOAST (see Exhibit "A").

6. Paragraph 1.5 of the Agreement contains a covenant addressing disclosure of information, which provides:

The Employee recognizes and acknowledges that she will have access to certain confidential information of the Employer and of entities affiliated with the Employer and that such information constitutes valuable, special, and unique property of the Employer, as well as other affiliated entities. The Employee will not, during the term of her employment, disclose any such confidential information to any person or firm, corporation, association, or entity for any reason or purpose whatsoever, except to authorized representatives of the Employer and its affiliated entities.

7. Paragraph 1.5(a) of the Agreement contains a covenant not to compete, which provides, in relevant part, as follows:

Employee shall not, during the course of her employment with the Corporation, not for a period of one (1) year thereafter, engage directly or indirectly or become an employee, employee of or consultant to, or otherwise become affiliated with any business within ten (10) miles of any office of the Corporation which deals with real estate and/or title business or substantially similar products, or otherwise furnishes services in connection with the brokering of such products, or which otherwise conducts business similar to the business conducted by or the products and

services provided by the Company ("competitive practices"), without the prior written consent of the Board. Further, employee shall not, directly or indirectly own an interest in, manage, operate, join, control, participate in or otherwise be connected with, as a partner, shareholder, consultant, or otherwise, any business that competes with, or conducts business which is similar to the business, conducted by the Corporation...

8. During the time CARPENTER was employed with SUNCOAST, SUNCOAST entered into an agreement with Tarragon to provide title insurance services for projects being developed by Tarragon (a copy of the Agreement between SUNCOAST and Tarragon is purposefully not being attached as an exhibit to the Complaint, as it contains a confidentiality provision limiting disclosure).

9. As an employee of SUNCOAST, CARPENTER worked on hundreds of transactions involving sales of Tarragon properties and established a relationship with many of the representatives of Tarragon.

10. As an employee of SUNCOAST, CARPENTER met a number of valuable referral sources and repeat clients.

11. As an employee of SUNCOAST, CARPENTER obtained valuable trade secret information of SUNCOAST, including terms of confidential business relationships it had with Tarragon and other individuals and entities, as well as customer and client names and information.

12. SUNCOAST's principal office is in Wellington, Florida.

13. To accommodate the volume of work it was providing, SUNCOAST opened offices around the State of Florida, including an office at 333 Las Olas Way, Ft. Lauderdale, Florida.

14. For several months and up until her departure from SUNCOAST, CARPENTER worked for SUNCOAST directly out of the Las Olas office.

15. After working as an employee for SUNCOAST for over a year, on or about March 18, 2005, CARPENTER resigned from her position as an employee of SUNCOAST.

16. On March 21, 2005, SUNCOAST provided notice to CARPENTER reminding her of her obligations pursuant to the Agreement, particularly the covenant not to compete in Paragraph 1.5(a) of the Agreement (see copy of the letter attached hereto and incorporated herein as Exhibit "B").

17. At or around the time that CARPENTER resigned, SUNCOAST became suspicious that she was acting in contravention of her rights under the Agreement.

18. In early April 2005, SUNCOAST became aware that CARPENTER started her own title company, Defendant, INTERNATIONAL.

19. CARPENTER formed INTERNATIONAL on January 31, 2005, which is during CARPENTER's employment with SUNCOAST.

20. INTERNATIONAL has an office at 2425 E. Commercial Boulevard, Fort Lauderdale, Florida. It is less than ten (10) miles from SUNCOAST's office at 333 Las Olas Way.

21. On April 14, 2005, SUNCOAST discovered that CARPENTER, through INTERNATIONAL, was providing title insurance services to Tarragon for a least one property located at a Tarragon development that SUNCOAST had providing title insurance (see Settlement Statement attached hereto and incorporated herein as Exhibit "C").

22. On April 14, 2005, SUNCOAST placed CARPENTER on notice, both in her individual capacity and as the managing director of INTERNATIONAL, that INTERNATIONAL's office was within ten (10) miles from SUNCOAST's 333 Las Olas Way office and, therefore, CARPENTER was in breach of the Agreement (see copy of the Letter attached hereto and incorporated herein as Exhibit "C").

23. In the same April 14, 2005 letter, SUNCOAST also placed CARPENTER on notice that her providing title insurance services to Tarragon was a direct violation of the Agreement (see Exhibit "C").

24. In the April 14, 2005 letter, SUNCOAST demanded CARPENTER "immediately cease and desist the operation of International Title Solutions, LLC or any other entity which provides any real estate and/or title services or substantially similar products or services" (see Exhibit "C").

25. Despite said demands, upon information and belief, CARPENTER continues to operate INTERNATIONAL in violation of the Agreement.

VIOLATION OF COVENANT NOT TO COMPETE - CARPENTER

26. In the Agreement, CARPENTER acknowledges that she would have access to confidential information that constituted valuable, special and unique property of SUNCOAST.

27. The covenant not to compete contained within the Agreement is both valid and reasonable.

28. CARPENTER is in breach of the Agreement by virtue of her operating a competing title company less than ten (10) miles from the location of one of SUNCOAST's offices.

29. CARPENTER also is in breach of the Agreement by engaging in business that is in direct competition with SUNCOAST and is providing title insurance services to SUNCOAST's current client, Tarragon.

30. The covenant not to compete contained in the Agreement are supported by one or more of the following legitimate business interests:

A. Trade secrets or valuable confidential business or professional information that does not otherwise qualify as trade secrets: Plaintiff has a legitimate business interest in protecting information relating to Plaintiff, which includes, but is not limited to, customers, customer lists, clients, internal procedures, marketing initiatives, etc.

i. Through CARPENTER's employment with Plaintiff, she was provided with and has used information relating to Plaintiff that has independent economic value, both actual and potential.

ii. The information is not generally known or readily ascertainable by proper means, and, in fact, was not known or possessed by CARPENTER prior to her employment with SUNCOAST.

iii. Reasonable efforts have been taken to maintain the secrecy of information.

B. Substantial relationships with specific prospective existing customers, clients and/or referral sources. SUNCOAST has a legitimate business interest in protecting its relationships with its specific existing and prospective customers, clients and/or referral sources, particularly its relationship with Tarragon.

31. The covenant not to compete in the Agreement is reasonably necessary to protect SUNCOAST's legitimate business interests as more particularly state above.

32. Pursuant to Section 542.355 of the Florida Statutes, SUNCOAST has a clear legal right to the relief sought.

33. The covenant not to compete contained in the Agreement is reasonable in time, geographical area and scope of work.

34. CARPENTER's violation of the covenant not to compete contained in the Agreement, as more particularly state above, creates a presumption of irreparable injury.

35. SUNCOAST will continue to suffer irreparable injury if CARPENTER is allowed to compete against SUNCOAST through INTERNATIONAL or any other company, within a ten (10) mile radius of any of SUNCOAST's offices, including the one located at 333 Las Olas Way, Fort Lauderdale for a period of one year.

36. As a result of CARPENTER's actions, SUNCOAST has been placed in an unfair disadvantage by CARPENTER and INTERNATIONAL in ways unlikely to be quantifiable or measurable in terms of monetary damages. Accordingly, SUNCOAST has no adequate remedy at law to measure or rectify the ongoing harm caused in the way of protecting its ongoing business relationship with existing and prospective clients, maintaining its customer and client referral base and retaining its valuable confidential business and professional information.

37. SUNCOAST has a substantial likelihood of success on the merits of these claims.

38. The granting of an injunction ordering CARPENTER to abide by the covenant not to compete in the Agreement will serve the public interests of enforcing

valid contracts and their provisions and to provide businesses with the security of knowing that its employees will be held to valid and reasonable restrictive covenants so that businesses may succeed and keep our economy healthy.

39. As a result of CARPENTER's violations of the covenant not to compete contained in the Agreement, SUNCOAST has retained the undersigned law firm to pursue this action and has agreed to pay it a reasonable fee.

40. Pursuant to the language in the Agreement, SUNCOAST is entitled to reimbursement of its reasonable attorney's fees and costs incurred in this matter.

TORTIOUS INTERFERENCE – CARPENTER & INTERNATIONAL

41. SUNCOAST has an agreement with Tarragon to be its title agent for projects developed by Tarragon.

42. The agreement between SUNCOAST and Tarragon is a valid agreement that provides SUNCOAST certain legal and contractual rights.

43. CARPENTER and INTERNATIONAL are fully aware of the agreement between SUNCOAST and Tarragon and have personal knowledge of the contents of SUNCOAST's agreement with Tarragon.

44. As an employee of SUNCOAST, CARPENTER benefited from SUNCOAST's agreement with Tarragon to be its title agent for projects developed by Tarragon.

45. Upon information and belief, prior to her resignation from SUNCOAST, CARPENTER was scheming to leave SUNCOAST and begin a separate relationship with Tarragon once she resigned from SUNCOAST.

46. As part of her scheme, CARPENTER formed INTERNATIONAL on January 31, 2005, which is approximately six weeks prior to her resignation.

47. As part of her scheme, upon information and belief, CARPENTER made derogatory comments to Tarragon about SUNCOAST and its principles in an attempt to manipulate SUNCOAST's relationship with Tarragon.

48. As part of her scheme, upon information and belief, at the same time that CARPENTER was manipulating SUNCOAST's relationship with Tarragon, CARPENTER was making arrangements with representatives of Tarragon to provide title insurance services with a separate entity upon her resignation from SUNCOAST.

49. SUNCOAST has discovered that CARPENTER, through INTERNATIONAL, has begun providing title insurance services for Tarragon on at least one of its projects (see Exhibit "C").

50. Following CARPENTER's resignation, Tarragon approached SUNCOAST to discuss altering their current arrangement and relationship.

51. SUNCOAST has no doubt that Tarragon's interest in changing their current arrangement and relationship is the direct result of interference caused by CARPENTER and INTERNATIONAL.

52. CARPENTER and INTERNATIONAL, acting without legal justification and in an intentional, malicious and reckless manner knowingly acted to cause, and/or knowingly acted such that their actions were likely to cause, damages to SUNCOAST by virtue of their tortuous interference with SUNCOAST's contractual relationship with Tarragon.

53. CARPENTER's and INTERNATIONAL's tortious interference is ongoing and is causing SUNCOAST to suffer irreparable injury.

54. SUNCOAST will continue to suffer irreparable injury if CARPENTER and INTERNATIONAL are permitted to continue issuing title to Tarragon.

55. As a result of CARPENTER's and INTERNATIONAL's tortious interference with SUNCOAST's contractual relationship with Tarragon, SUNCOAST has been placed in an unfair disadvantage by CARPENTER and INTERNATIONAL in ways unlikely to be quantifiable or measurable in terms of monetary damages.

56. Accordingly, SUNCOAST has no adequate remedy at law to measure or rectify the ongoing harm caused in the way of protecting its ongoing contractual relationship with Tarragon.

57. SUNCOAST has a substantial likelihood of success on the merits of these claims.

58. The granting of an injunction ordering CARPENTER and INTERNATIONAL to refrain from providing title insurance services to Tarragon will serve the public interests of permitting businesses to engage in contractual relationships without undue interference from former employees who seek to manipulate the contractual relationship to the detriment of the business.

AS TO BOTH GROUNDS

59. SUNCOAST stands ready to post a proper bond pursuant to Section 542.335(1)(j) of the Florida Statutes and Rule 1.610 of the Florida Rules of Civil Procedure, respectively.

WHEREFORE, Plaintiff, SUNCOAST, requests that this Court enter a temporary injunction against Defendants, CARPENTER and INTERNATIONAL, and specifically requests this Honorable Court to:

A. Enter a temporary and then permanent injunction against CARPENTER pursuant to Section 542.335 of the Florida Statutes, ordering CARPENTER to abide by the covenant not to compete in the Agreement and, specifically:

1. For a period of one (1) year from termination, not conducting any work with a title company within ten (10) miles from any location where SUNCOAST has an office;

2. For a period of one (1) year from termination, not conducting any work with a title company issuing title to any of SUNCOAST's past, current or prospective clients with the ten (10) mile radius where SUNCOAST has an office;

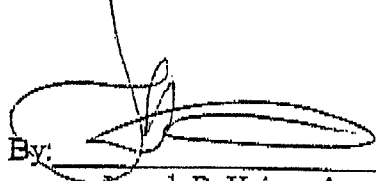
B. Enter a temporary injunction against CARPENTER and INTERNATIONAL precluding CARPENTER and INTERNATIONAL, and any other company in which CARPENTER is associated, from conducting any type of title work for Tarragon.

C. Award SUNCOAST its attorney's fees and costs against CARPENTER pursuant to the Agreement;

D. Award any further relief this Court deems just and appropriate.

Dated: 4/15/2005

GRANER ROOT & HEIMOVICS, P.A.

By: 

Joseph B. Heimovics, Esq.
Florida Bar No.: 052159
2000 Glades Road, Suite 412
Boca Raton, FL 33431
Telephone (561) 998-3232
Facsimile (561) 998-0475

EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into on this 1st day of January, 2004, and effective as of that date, by and between Suncoast Title of Wellington, Inc., a Florida corporation (hereinafter referred to as "Employer" or "Corporation"), and Judith Carpenter (hereinafter referred to as "Employee").

WITNESSETH:

WHEREAS, the Employee and the Corporation desire to enter into an Employment Agreement (hereinafter referred to as "Agreement") to fully recognize the contributions of the Employee to the Corporation and to assure continuous and harmonious management of the affairs of the Corporation;

WHEREAS, Employee desires to be employed by Corporation and Corporation desires to employ Employee in the below described capacity;

NOW, THEREFORE, in consideration of the foregoing premises, the sufficiency of which is hereby acknowledged, and the mutual covenants and agreements contained herein, it is mutually covenanted by and between the parties hereto as follows:

1.1. Employment

Corporation employs Employee on the terms and conditions stated below to perform as its Director of Operations. Employee agrees to perform said services for the Corporation on the terms and conditions stated in this Agreement. Those duties shall include, but are not limited to, the management of all aspects of the title company.

1.2. Term of Employment

The term of employment under this Agreement shall be a period of one (1) year. The Employee is subject to termination for cause, which shall be defined as unacceptable work performance, intoxication on the job, being disloyal to employer or engaging in any job related activity



which has a reasonable possibility of being determined to be illegal behavior (other than driving misdemeanors) and for disclosure of any such confidential information of the Employer to any person or firm, corporation, association or entity without the prior approval of Employer. Additionally, this Agreement may be terminated by either party, without cause, by the terminating party by providing a written thirty (30) day notice to the other party. Should the Employee terminate this Agreement, without cause, then Paragraph 1.5(a) of this Agreement would apply.

1.3. Regular Compensation

For services rendered by Employee, Corporation shall pay Employee an annual salary in the amount of \$65,000.00, payable bi-weekly. If at any time Employee shall cease being an employee of the Corporation, Employee shall be entitled to no further compensation, except such compensation that may have accrued up to and including the last day of employment.

1.3(a) Other Compensation

In addition to regular compensation Employee shall be entitled to additional compensation as follows:

Employee shall also be entitled to Five (5%) percent of the gross profits of the Corporation on a monthly basis after all start-up costs have been repaid to the Shareholders of the Corporation. The Shareholders anticipate that approximately \$40,000.00 will be expended on start-up and overhead costs and anticipate a breakeven point to be reached in 3 to 4 months.

1.3(b) Health Insurance

Employee shall be entitled to health insurance benefits to be paid by Employer.

1.3(c) Expenses

- a. Employee shall be provided with and Employer shall pay for use of a cellular phone.

- b. Employer shall reimburse Employee for gasoline and toll expenses as it relates to travel associated with the affairs of the Corporation.
- c. Corporation promotions shall be reimbursed and Employee shall obtain prior approval before such expenditure is made.

1.4. Extent of Services

The Employee shall devote her entire time, attention, and energies to the business of the Employer and, shall not during the term of this Agreement, be engaged in any other business activity, whether or not such business is pursued for gain, profit, or other pecuniary advantage, without the prior written consent of the Employer. This provision shall not be construed as preventing the Employee from investing, when such investment will not interfere with the Employee's full-time employment by the Employer.

1.5. Disclosure of Information

The Employee recognizes and acknowledges that she will have access to certain confidential information of the Employer and of entities affiliated with the Employer and that such information constitutes valuable, special, and unique property of the Employer, as well as other affiliated entities. The Employee will not, during the term of her employment, disclose any such confidential information to any person or firm, corporation, association or entity for any reason or purpose whatsoever, except to authorized representatives of the Employer and its affiliated entities.

1.5(a) Covenant Not to Compete

Employee shall not, during the course of her employment with the Corporation, nor for a period of one (1) year thereafter, engage, directly or indirectly, or become an employee of, Employee of, or consultant to, or otherwise become affiliated with, any business within ten (10) miles of any office of the Corporation which deals with real estate and/or title business or substantially similar Products, or

otherwise furnishes services in connection with the brokering of such Products, or which otherwise conducts business similar to the business conducted by, or the products and services provided by the Company ("competitive practices"), without the prior written consent of the Board. Further, Employee shall not, directly or indirectly, own an interest in, manage, operate, join, control, participate in or otherwise be connected with, as a partner, stockholder, consultant, or otherwise, any business that competes with, or conducts business, which is similar to the business, conducted by the Corporation. Additionally, Employee shall not, during the course of her employment with the Company, nor for a period of one (1) year thereafter, directly or indirectly, solicit for employment any employee or other Agent of the Company.

This provision shall be of no force or effect if Employee is terminated, without cause. The Employer recognizes that the title insurance/real estate industry is the Employee's expertise and should Employer choose to terminate Employee's employment, without cause, limiting Employee's ability to obtain gainful employment within her field would be an undue hardship to Employee.

1.6. Law to Govern Contract

This Agreement shall be governed by the laws of the State of Florida and jurisdiction and venue lies in Palm Beach County, Florida.

1.7. Attorney's Fees

In the event attorney's fees are incurred in connection with the enforcement of this Agreement, the prevailing party shall be entitled to its costs and reasonable attorney's fees through appeal to be paid by the losing party.

1.8. Severability

If any part of this Agreement shall be deemed void or unenforceable, it shall not act to void the entire Agreement. Rather, the Agreement shall remain, to every extent possible, enforceable without consideration to said void provision.

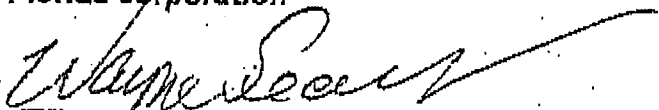
1.9. Entire Agreement

This Agreement contemplates and incorporates the entire understanding of the parties including all oral representations and negotiations of the parties. This Agreement may be modified only with the prior written consent of the parties hereto.

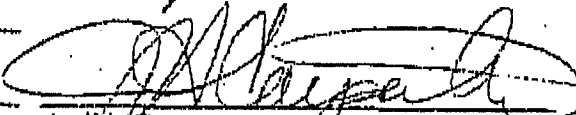
IN WITNESS WHEREOF, the parties have executed this Agreement in Boca Raton, Florida on January 1, 2004.

Witnesses:

Suncoast Title of Wellington, Inc.
a Florida corporation



By: Wayne Searson, President



Judy Carpenter, Employee

THOMAS U. GRANER, ESQUIRE

JONATHAN S. ROOT, ESQUIRE
Board Certified in Marital & Family Law

JOSEPH B. HEIMOVICS, ESQUIRE
Also licensed in Georgia



Graner Root & Heimovics, P.A.
ATTORNEYS AT LAW

2000 GLADES ROAD, SUITE 412
BOCA RATON, FLORIDA 33431

TELEPHONE (561) 998-3332
FACSIMILE (561) 998-0475
www.granerandroot.com

March 21, 2005

Via Certified Return Receipt
& U.S. Mail

Ms. Judy Carpenter
6582 NW 1st Street
Margate, FL 33063

RE: Suncoast Title/Judith Carpenter

Dear Ms. Carpenter:

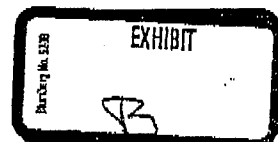
On behalf of Suncoast Title I would like to thank you for your service and wish you success in the future. I have also been requested to remind you of your Employment Agreement and the Covenant Not To Compete as set forth in paragraph 1.5(a) of said Agreement. Inasmuch as you resigned your position from Suncoast Title, this Agreement is applicable for a period of 1 year after March 18, 2005. In that regard, be advised that Suncoast Title will assert any and all rights and remedies pursuant to the terms of this Agreement should it deem appropriate to do so. I have enclosed a copy of the Agreement for your review. As you can see, the language is quite broad so as to properly protect Suncoast Title's interests.

Again, thank you for all your efforts and we wish you nothing but success in your future endeavors.

Sincerely,


Thomas U. Graner

TUG:ead
cc: Mr. Wayne Searson
Enclosure



THOMAS U. GRANER, ESQUIRE

JONATHAN S. ROOT, ESQUIRE
Board Certified in Marital & Family Law

JOSEPH B. HEIMOVICS, ESQUIRE
Also licensed in Georgia



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TELEPHONE (561) 998-3232
FACSIMILE (561) 998-0475
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April 14, 2005

 **COPY**

Via Facsimile &
Regular & Certified Mail

Ms. Judith Carpenter
6582 NW 1st Street
Margate, FL 33063

Via Facsimile &
Regular & Certified Mail

Ms. Judith Carpenter
Managing Director
International Title Services, LLC
2425 E. Commercial Blvd., Suite 100
Ft. Lauderdale, FL 33308

Re: Judith Carpenter as Registered Agent for
International Title Solutions, LLC

Dear Ms. Carpenter:

An inquiry into the Division of Corporations indicates that you have formed International Title Services, LLC, which entity was formed during your employment at Suncoast Title. While not a breach of your Agreement, it certainly suggests your intent in connection with your future plans. Therefore, when you were asked by the representatives of Suncoast Title what you plan to do, rather than give a true and honest answer.

Please be advised that inasmuch as your current offices, located at 2425 E. Commercial Boulevard are within ten (10) miles of Suncoast's office maintained at 333 Las Olas Way, Ft. Lauderdale, Florida, you are in breach of your Employment Agreement with Suncoast Title. Further, and more critical, we have documentary evidence that you are doing business with Tarragon South in direct violation of your non-compete agreement. Therefore, demand is hereby made to immediately cease and desist the operation of International Title Solutions, LLC or any other entity which provides any real estate and/or title services or substantially similar products or services. Your failure to do so will result in the filing of a lawsuit seeking, among other things, monetary damages and temporary injunctive relief.



Ms. Judith Carpenter
April 14, 2005
Page 2

Please confirm, in writing, that your tortuous activities have ceased not later than 5:00 p.m. today to avoid the filing of a legal action against you and your company.

Please govern yourself accordingly.

Sincerely,
 **COPY**

Joseph B. Heimovics

JBH:ead

Graner Root & Heimovics, P.A.
ATTORNEYS AT LAW

2000 GLADES ROAD, SUITE 412, BOCA RATON, FLORIDA 33431

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIRCUIT DIVISION

SUNCOAST TITLE OF WELLINGTON d/b/a
SUNCOAST TITLE, a Florida Corporation,

Plaintiff,

vs.

Case No. 2005 CA 003548 AG

JUDY CARPENTER, an individual,
and INTERNATIONAL TITLE SOLUTIONS,
LLC

Defendant.

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MAY 05 2005

SHARON R. BOCK
CLERK & COMPTROLLER

**DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S
MOTION FOR TEMPORARY INJUNCTION**

Defendants, Judy Carpenter ("Carpenter") and International Title Solutions, LLC ("ITS"), file their Memorandum of Law in Opposition to Plaintiff, Suncoast Title of Wellington's ("Suncoast") Motion for Temporary Injunction ("Motion") and state:

I. INTRODUCTION

Plaintiff's Motion should be denied because Plaintiff breached the agreement at issue, rendering the restrictive covenants contained in the agreement unenforceable. Also, the restrictive covenants are unenforceable on their face because the agreement at issue was terminated for cause. Finally, even if the restrictive covenants were enforceable, they are inapplicable to the conduct of the Defendants because their business is not within a 10 mile radius, Ms. Carpenter did not compete during her employment, and the Defendants have not solicited Plaintiff's employees.

II. STATEMENT OF THE FACTS¹

Carpenter has been in the title insurance business for the past twenty years. Carpenter became employed by Suncoast on or about January 1, 2004. As a condition of her employment at Suncoast, Carpenter, executed a document entitled "Employment Agreement" (the "Agreement"). A copy of the Agreement is attached hereto as Exhibit "B." The Agreement contains a provision providing for compensation of \$65,000 annual salary paid bi-weekly and "5% gross profits of the corporation on a monthly basis after all start up costs have been repaid to the shareholders of the corporation." See Agreement at ¶1.3 and ¶1.3(a). The Agreement required that Suncoast provide Carpenter health insurance at its sole cost. See Agreement at ¶1.3(b). The Agreement also contained the purported restrictive covenants at issue in this litigation (the "Restrictive Covenants"). See Agreement at ¶1.5(a).

In July 2004, Suncoast began paying Carpenter a portion of the five percent (5%) gross profit. However, on December 16, 2004, Suncoast demanded Carpenter enter into an addendum to the Employment Agreement (the "Addendum"), which modified the commission due to be paid to Carpenter from 5% gross profits on all customers to "five (5%) percent of the gross revenues for all title services performed for Tarragon South Development or any related entities", changing the commission pay out from all customers of the business to the customers Carpenter developed herself. Carpenter was told if she did not sign the addendum she would not be paid any of the commission then owed. The Addendum is attached hereto as Exhibit "C". All other terms of the Agreement remained unchanged.

¹ The facts set forth in this section are supported by the declaration of Judy Carpenter attached hereto as Exhibit "A".

Then, in early 2005, Suncoast anticipatorily repudiated the Agreement and Addendum by changing Carpenter's compensation by unilaterally deciding to reduce her commission from 5% to 3%. Carpenter did not agree to the change. Thereafter, Suncoast breached the Agreement and Addendum by failing to pay the contracted five percent (5%) commission.

In addition, Suncoast further breached the Agreement by arbitrarily deducting \$950 from Carpenter's pay for allegedly charging too little for one of the closings and deducting the cost of insurance from her pay check during December 2004, and January and February 2005.

As a result of Suncoast's breaches, Carpenter resigned her employment on March 17, 2005. See Resignation letter attached hereto as Exhibit D.

Carpenter still has not been paid and is owed:

- 1) The commission difference between 5% and 3% for December 2004 through February 2005 (approximately \$4000 for February alone);
- 2) Commissions for March 1 through March 17, 2005 of 5%;
- 3) Salary compensation for March 14 through March 17 (approx. \$1200). See Exhibit "E" calculation of February commission reduced from 5% to 3% (hand written note contained on document was made by Suncoast's representative)
- 4) Improper withholdings consisting of \$950 (closing costs) and more than \$1041.95 (insurance deductions); and
- 5) Additional commissions Suncoast has failed to pay (an accounting is required to know the full extent of the breach).

Carpenter demanded payment of these amounts but Suncoast refused to pay. See Demand Letter attached hereto as Exhibit "F". On April 15, 2005, Suncoast, despite its breaches

of the Agreement and Addendum, filed its Motion for Temporary Injunction seeking to enforce the Agreement.

III. ARGUMENT

A. Suncoast has a heavy burden in attempting to demonstrate a legal basis for the issuance of a temporary injunction.

A temporary injunction is an “extraordinary remedy” that should be sparingly granted and that is properly entered “only in certain well-defined circumstances.” See Tom v. Russ, 752 So. 2d 1250, 1251 (Fla. 1st DCA 2000). A party seeking the entry of a preliminary injunction carries the burden of persuasion and must demonstrate: (1) irreparable harm; (2) a substantial likelihood of success stemming from a demonstrably clear legal right; (3) an inadequate remedy at law; and (4) in some cases consideration of the public interest. See Id.; Anich Indus., Inc. v. Raney, 751 So. 2d 767, 770 (Fla. 5th DCA 2000). Further, “clear, definite, and unequivocally sufficient factual findings” must support each of the elements necessary to justify entry of a preliminary injunction. See Tom v. Russ, 752 So. 2d at 1251.

B. Suncoast is not entitled to a temporary injunction against Carpenter because Suncoast cannot demonstrate a substantial likelihood of success on the merits stemming from a clear legal right.

1. Suncoast Breached the Agreement

The Restrictive Covenants are not enforceable because Suncoast materially breached the Employment Agreement and Addendum as set forth above. It is well established that a plaintiff may not enjoin a breach of contract, unless the plaintiff has performed under the contract as much as possible; if the plaintiff is in default or has given cause for nonperformance by the defendant, the plaintiff has no standing in equity to seek the injunction. See Seaboard Oil Co. v. Donovan, 128 So. 821, 824-825 (Fla. 1930); Northern Trust Investments v. Domino, 2005 WL 475385 (Fla. 4th DCA March 2, 2005); Lee v. Pinsky, 895 So. 2d. 1187 (Fla. 4th DCA 2005).

Under section 542.335(1)(g)(3), Florida Statutes, a court must consider all “pertinent legal and equitable defenses” in order to determine whether the plaintiff has a clear legal right to the requested relief. See Benemerito & Flores v. Roche, 751 So. 2d 91, 92 (Fla. 4th DCA 1999).

In Lee, the Fourth District Court of Appeal, reversed a temporary injunction on the grounds that the “[Employer] did not demonstrate a substantial likelihood of its success on the merits where there is substantial evidence that [employer] materially breached the contract prior to [the employee] leaving [employer’s] employ”. 895 So. 2d at 1189. In Lee, like here, the employer failed to pay the agreed upon percentage of revenue, precluding enforcement of the restrictive covenant. Id.

Likewise, in Benemerito & Flores v. Roche and Northern Trust Investments v. Domino, the Fourth District Court of Appeal upheld the trial court’s denial of a temporary injunction on the grounds that the employer breached the employment agreement between the parties by failing to pay monies owed. See Benemerito, 751 So. 2d at 92; See also Northern Trust Investments v. Domino, 2005 WL 475385 (Fla. 4th DCA March 2, 2005).

In sum, an employer who has refused to pay an employee earned income is barred from enforcing restrictive covenants, even if the restrictive covenants are otherwise enforceable. This established Florida doctrine is dictated by public policy and consistent with the longstanding principle that a party cannot enforce an agreement that it has breached. Northern Trust Investments, 2005 WL 475385 (Fla. 4th DCA March 2, 2005); Lee, 895 So. 2d at 1187; Benemerito, 751 So. 2d at 92;

If Florida courts were willing to ignore unpaid compensation and enforce restrictive covenants, an employer could eliminate or reduce promised salary after execution of a valid

restrictive covenant without consequence, because the employee's only option would be to seek employment in a different industry.

The entry of a temporary injunction in situations in which the employer has failed to compensate the employee as promised is "contrary to equity and, if allowed to stand, would result in inverse peonage." Troup v. Heacock, 367 So. 2d 691, 692 (Fla. 1st DCA 1979). The Troup court reversed the entry of an injunction enjoining the employee from competing in the insurance industry because the employer breached the employment agreement by reducing the employee's salary prior to termination of the employee's employment. Id. at 692.

Here, this Court should deny Suncoast's Motion because the Restrictive Covenants are not enforceable as a result of its prior material breaches.

Moreover, the Agreement itself does not permit the Restrictive Covenants to be enforceable if, as here, Carpenter terminated the Agreement for cause. See Agreement at Paragraph 1.2 (providing that the Restrictive Covenant provision 1.5(a) survives the termination of the employment only if the Employee terminates the Agreement "without cause.") Here, Suncoast's breaches provided Carpenter cause to terminate the agreement.

Further, absent an enforceable contract against Carpenter, no injunction is proper against Defendant ITS or Carpenter on the grounds of tortious interference. See Jay v. Mobley, 783 So. 2d 297 (Fla. 4th DCA 2001) ("Florida recognizes competition between competitors, and if there is an interference with a non-exclusive right this is privileged interference"); Wackenhut v. Maimono, 389 So.2d 656, 658(Fla. 4th DCA1980) (reversing jury verdict finding tortious interference on the grounds that the trial court should have granted directed verdict where contract was terminable with 30 days notice, solicitation was privileged and did not constitute

tortious interference). As such, Suncoast's Motion for temporary injunction should be denied in its entirety.

2. Suncoast Cannot Demonstrate a Breach of the Agreement

Suncoast's motion should be denied because it cannot demonstrate a breach of the Restrictive Covenants. The Restrictive Covenants are contained in paragraph 1.5 of the Agreement and consist of three clauses, none of which have been breached. The first clause provides:

Employee shall not during the course of her employment with the Corporation, nor for a period one (1) year thereafter, engage, directly or indirectly, or become an employee of, Employee of or consultant to, or otherwise become affiliated with, any business within ten (10) miles of any office of the Corporation which deals with the real estate and/or title business or substantially similar Products, or otherwise furnishes services in connection with the brokering of such Products, or which otherwise conducts business similar to the business conducted by, or products and services provided by the Company ("competitive practice"), without the prior written consent of the Board.

Carpenter has not breached this clause of the Agreement because her new office is not within any 10 mile radius of any Suncoast office. Suncoast's claim that it has an office on Las Olas is, at best, an embellishment. For some period of time, Suncoast performed closings in one of the vacant residential units at that location, it is not, however, an "office of the corporation".

The Second clause of the Restrictive Covenant provides:

Further, Employee shall not, directly or indirectly own an interest in, manage, operate, join, control, participate in or otherwise be connected with, as a partner, stockholder, consultant, or otherwise, any business that competes with, or conducts business, which is similar to the business conducted by the Corporation.

This clause does not contain any restriction *post-employment*, it prohibits competitive activity only during employment. Because any restrictive covenant must be construed strictly, Suncoast cannot enforce this provision post employment. See Zimmer v. Pony Express Courier

Corp of Florida, 408 So. 2d 595 (Fla. 2d DCA 1982) (“contract prohibiting an employee from engaging in a competing business, being in the nature of a contract in restraint of trade and personal liberty, will not be construed to extend beyond their proper import or further than the language of the contract absolutely requires”). Carpenter did not compete during her employment with Suncoast and as such did not breach this clause.

The third clause provides:

Additionally, Employee shall not, during the course of her employment with the Company, nor for a period of one (1) year thereafter, directly or indirectly, solicit for employment any employee or other agent of the Company.

Carpenter has not breached the third clause; she has not solicited any of Suncoast’s employees or agents.

Suncoast’s Motion should, therefore, be denied because the Restrictive Covenants are not enforceable, and even if the Restrictive Covenants were enforceable, Suncoast cannot demonstrate any breach of the Agreement by Carpenter.

IV. CONCLUSION

For the foregoing reasons, Suncoast is not entitled to entry of a temporary injunction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to
by Federal Express on this 4th day of May 2005 to:

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Of Counsel

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA.
CIVIL DIVISION
CASE NO: 2005 CA 3548 AG

SUNCOAST TITLE OF WELLINGTON, d/b/a
SUNCOAST TITLE, a Florida Corporation

Plaintiff

vs.

JUDY CARPENTER, an individual
and INTERNATIONAL TITLE SOLUTIONS,
LLC.,

Defendants

ORDER DENYING PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION

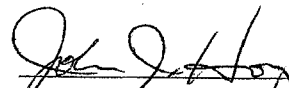
THIS CASE was heard May 6, 2005, on the Plaintiff's Motion for Temporary Injunction. The Court heard arguments of counsel and the testimony of Wayne Searson, president of the Plaintiff Corporation. Upon the evidence and arguments, it is,

ORDERED AND ADJUDGED

6. The Motion for Temporary Injunction based upon violation of the covenant not to compete in the employment contract is denied on the authority of Sanz vs. R.T. Aerospace Corporation, 650 S.2d 1057 (3rd District 1995).

7. The Motion is denied based upon the claim of interference with an advantageous business relationship because the Plaintiff failed to satisfy the requirements for injunctive relief.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this
9 day of May, 2005.



JOHN J. HOY
CIRCUIT JUDGE

Copies furnished: (See Attached)

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