

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

REPORTING SERVICES, INC. and	:	June Term 2003
LEE GOLDSTEIN,	:	
	:	
Plaintiffs,	:	No.: 110235
	:	
v.	:	
VERITEXT, L.L.C., VERITEXT PA/RSA,	:	Commerce Program
L.L.C. and MICHAEL SANDLER,	:	
	:	
Defendants.	:	Control Number 110235

ORDER

AND NOW, this 7th day of January, 2004 upon consideration of Defendants Veritext, L.L.C., Veritext/Pa. Reporting Company, L.L.C. and Michael F. Sandler's Application for an Injunction Pending Appeal, Plaintiffs response in opposition, the respective memoranda, all matters of record, and in accordance with the Memorandum Opinion being contemporaneously filed with this Order, it is hereby **ORDERED** and **DECREED** that Defendants' Application for an injunction pending appeal is **DENIED**.

BY THE COURT:

C. DARNELL JONES II, J.

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REPORTING SERVICES, INC. and	:	June Term 2003
LEE GOLDSTEIN,	:	
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Plaintiffs,	:	No.: 110235
vi.	:	
VERITEXT, L.L.C., VERITEXT PA/RSA,	:	Commerce Program
L.L.C. and MICHAEL SANDLER,	:	
Defendants.	:	Control Number 110235

MEMORANDUM OPINION

JONES, J......January 7, 2004

Presently before the court is the application of defendants’ Vertext, L.L.C., Veritext Pa/RSA L.L.C. and Michael Sandler (hereinafter referred to as “Veritext” or “Defendants”) for an injunction pending appeal of this court’s order dated September 10, 2003, granting in part and denying in part Plaintiffs’ Motion for Injunctive Relief. For the reasons discussed below, the court denies defendants’ application.

BACKGROUND

Plaintiffs, Reporting Services Associates, Inc. and Lee Goldstein (hereinafter referred to as “Plaintiffs”), filed a petition for preliminary injunction as a result of Goldsteins’ request to be relieved from restrictions imposed by a covenant not to compete which was entered into after the sale of his court reporting business to Veritext, L.L.C. The court heard testimony and argument on the petition. On September 10, 2003, this court issued Findings of Fact and Conclusions of Law granting in part and denying in part the petition for Preliminary Injunction. This court found that the duration of the restrictive covenant was unreasonable under the circumstances and modified the restrictive covenant not to compete to a period of one year commencing May 19, 2003. Defendants’ appealed the court’s order and plaintiffs crossed appealed. Thereafter,

defendants filed the instant application requesting a stay of this court's September 10, 2003 order pending appeal.

DISCUSSION

In Pennsylvania Public Utility Com'n v. Process Gas Consumers Group, 502 Pa. 545, 467 A.2d 805 (Pa. 1983), the Supreme Court announced the standard governing relief in the nature of a stay pending petition for review under Pa. R. A. P. 1781. Under Process Gas, the applicant must establish: 1) a likelihood of success on the merits of the appeal; 2) irreparable injury if a stay is denied; 3) issuance of a stay will not substantially harm other interested parties; and 4) issuance of a stay will not adversely affect the public interest. Tri-State Asphalt Corp. v. Com.Dept. of Transp., 135 Pa. Cmwlt. 410, 582 A.2d 55 (Pa. Cmwlt. 1990)(quoting Process Gas, 502 Pa. at 552-53, 467 A.2d at 808-09).

An applicant for a stay must establish the existence of each criterion set forth above, and this court must as a corollary evaluate the applicant's likelihood of success on appeal and consider the equities as they relate to the parties and the public. Temple Ass'n of University Professionals, American Federation of Teachers Local 4531 AFL-CIO v. Temple University of Com. System of Higher Educ., 135 Pa. Cmwlt. 426, 582 A.2d 63, 64 (Pa. Cmwlt. 1990).

Additionally, a party requesting relief in the nature of an injunction pending review must also satisfy the stringent requirements for a preliminary injunction, particularly that greater injury would result by refusing the injunction than by granting it and that the plaintiff's right to relief is clear. Tri-State Asphalt Corp.v. Com. Dept. of

Trans., supra. at 421. Relief in the nature of an injunction pending review is highly extraordinary and an applicant for such relief bears a heavy burden of proof. Id.

Veritext argues that it satisfies the standard to obtain a preliminary injunction pending appeal of this matter. Veritext claims it will suffer immediate and irreparable harm, that greater injury will result from refusing the injunction than from granting it, that the injunction will satisfy the status quo, that the wrong is actionable and the right to relief is clear, that an injunction is reasonably suited to abate the wrong and that the public interest will not be harmed. (Veritext Brief pp. 5-8).

This court finds that Veritext fails to satisfy the Process Gas standard as well as the standard necessary to obtain a preliminary injunction. Veritext argues that the enforcement of a restrictive covenant in the sale of a business is necessary to prevent immediate and irreparable harm. The court in its order dated September 10, 2003 determined that the restrictive covenant at issue is enforceable but found the duration of the covenant unreasonable. As a result, the court modified the restrictive covenant to restrict Goldstein from competing with Veritext for a period of one year, from May 19, 2003 to May 19, 2004. At the present time, Goldstein is restricted from competing with Veritext and no harm is being suffered by it. Since Goldstien is restricted from competing with Vertitext at the present time and no harm is being suffered by Veritext, immediate and irreparable harm does not exist.

In view of Vertext's failure to satisfy the requirement of immediate and irreparable harm, the court need not scrutinize compliance with the remaining three criteria of Process Gas. Accordingly, Vertitext's application is Denied.

CONCLUSION

For the forgoing reasons, the court denies Veritext's application for preliminary injunction pending appeal. A contemporaneous Order will be filed along with this Opinion.

BY THE COURT:

C. DARNELL JONES, II, J.