

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

KRETCH ASSOCIATES, INC., et al.)	CASE NO: CV 08 668278
)	
Plaintiffs,)	JUDGE JOHN P. O'DONNELL
)	
vs)	
)	
STEVEN GALA, et al.)	<u>JOURNAL ENTRY</u>
)	
Defendants.)	

John P. O'Donnell, J.:

The plaintiffs filed this lawsuit on August 20, 2008, alleging that defendant Steven Gala violated a non-compete and non-disclosure agreement. The lawsuit was resolved by an agreed journal entry filed on July 17, 2009. That entry provides, in pertinent part:

The parties have settled all claims between them. They have further agreed to this Court's entry of the following Order:

2. For the period of April 30, 2009 through February 15, 2010, Defendants Steven Gala and Elemental Engineering, LLC are hereby enjoined and restrained as follows:
 - a. From accepting employment in, working in, practicing in, offering counseling in, or engaging in any engineering practice with the clients identified on the 'Amended Client List,' in the sealed possession of the Court. Defendant shall not do any work (including, without limitation, drafting, design or engineering) for or with the persons/entities on the Amended Client List, and shall cease all such activity immediately. Any and all fees or payments earned by or payable to Defendants for work performed for or with any client on the Amended Client List shall be paid by Defendants to Plaintiffs as damages for breach of the parties' agreement and this Injunction.

3. William Grabo, P.E., is the Independent Monitor charged with supervision of the enforcement of this Order. Every 90 days from the date of journalization of this Entry, until this Injunction expires, Defendants shall provide Mr. Grabo with sufficient information for Mr. Grabo to determine if Defendants have breached this order.

5. If any action is brought to enforce this Order, the prevailing party is entitled to its reasonable attorney's fees and costs of litigation in connection with such action.

LS Architects is included as a prohibited client on the "Amended Client List." William Grabo, P.E., is not on the list.

On February 11, 2010, the plaintiffs filed a motion to show cause asking that Gala be found in contempt of court for violating the agreed injunction. A hearing was held on April 8 and 9. This entry follows.

Evidence at the hearing showed that Steven Gala is a mechanical engineer, William Grabo is a professional engineer, and Leon Sampat is an architect doing business as LS Architects. Sampat is typically hired by a property owner to design a new building or to plan the rehabilitation of an existing structure. Sampat will then contract with one or more engineers to be sure the building's systems are correctly designed.

Grabo testified that Sampat contracted with him to provide engineering services for projects involving the Fulton Road Sav-a-Lot and the office of Dr. Harnett. In turn, Grabo sub-contracted with Gala to provide mechanical engineering services for both projects.

For the Sav-a-Lot project, Gala performed a site visit between April 30, 2009 and February 15, 2010. Grabo paid him \$1,000.00 for that work. For the Harnett office project, Gala did all the mechanical engineering work during the relevant time period and Grabo paid him \$3,000.00.

Gala eventually also did the final drawings for the Sav-a-Lot and was paid \$5,000.00, but the evidence did not show that these services were provided during the time period of the prohibition in the agreed journal entry.

Gala testified that “his client” on each job was William Grabo but he was aware that Grabo was working for LS Architects and that he probably communicated with Sampat at some point during the Sav-a-Lot site visit.

The plaintiffs argue that Gala did work on these two projects “for or with” LS Architects and that he has therefore violated the stipulated injunction. The court agrees. Although the defendant was hired by Grabo, he was working for LS Architects since it was LS that received the benefit of Gala’s performance of part of Grabo’s contractual obligation to LS. This is true even in the absence of any contract – or even communication – between Gala and LS. The injunction prohibits Gala from working “for” the prohibited clients, not just from doing work pursuant to a contract between Gala and a prohibited client.

The court having found that the defendant Gala violated the injunction, an appropriate sanction must be entered. The plaintiffs argue that Gala should be held in contempt. However, a finding of contempt is not necessary because the parties have already agreed by the stipulated injunction to the penalty for a violation: disgorgement of fees earned in violation of the order and payment of the plaintiffs’ expenses, including attorney’s fees, incurred in enforcing the agreement.

The total fees for prohibited work are \$4,000.00. A judgment in that amount is hereby entered in favor of the plaintiffs and against defendant Steven Gala, with interest at the statutory rate from the date of this entry.

The parties are encouraged to agree to an appropriate award of the plaintiffs' attorney's fees and other expenses. If they cannot, an evidentiary hearing will be held on that subject at the plaintiffs' request.

IT IS SO ORDERED:

Judge John P. O'Donnell

Date: _____

SERVICE

A copy of this Journal Entry was sent by e-mail, this _____ day of June, 2010, to the following:

David I. Pomerantz, Esq.
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Judge John P. O'Donnell