

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	Chapter 11
)	
INTEGRATED HEALTH SERVICES, INC., et al.,)	Case Nos. 00-389 (MFW) through 00-825 (MFW)
)	
Debtors.)	(Jointly Administered Under Case No. 00-389 (MFW))
_____)	
)	
ROTECH MEDICAL CORPORATION, et al.,)	
)	
Plaintiffs,)	
)	Adversary No. A-00-1145 (MFW)
v.)	
)	
BLOUNT MEMORIAL HOSPITAL, et al.,)	
)	
Defendants.)	

MEMORANDUM OPINION¹

Before the Court is the Motion of Defendant Blount Memorial Hospital, Inc. ("Blount") to Dissolve Preliminary Injunction entered in the above adversary proceeding brought against Blount by RoTech Medical Corp. including Eastern Tennessee Infusion and Respiratory, Inc., doing business as Fox Home Medical ("Fox" and collectively "RoTech"). For the reasons set forth below, we deny Blount's Motion.

¹ This Opinion Constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

I. BACKGROUND

On February 2, 2000, Integrated Health Services, Inc. ("IHS") and certain of its direct and indirect subsidiaries, including RoTech, filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. RoTech is in the home respiratory services business, providing home respiratory care, home infusion therapy and durable medical equipment to patients in rural areas. The plan of reorganization filed by RoTech and certain of its subsidiaries was confirmed on February 13, 2002.

On September 15, 2000, RoTech filed a Complaint against Blount and others alleging, inter alia, interference with contract rights, conversion, and alleged misappropriation of confidential trade secrets. RoTech also filed a motion for a preliminary injunction seeking, inter alia, to enjoin Blount and former employees of RoTech from unfairly competing with it. A Temporary Restraining Order was issued, expedited discovery was undertaken and a hearing on the preliminary injunction was conducted on September 26, 2000. By Decision and Order dated November 9, 2000 ("the November 9 Order"), we found that Blount had improperly received Fox's customer list, as well as financial and other business information about Fox. We concluded that an injunction was necessary to prevent Blount from using that information and additionally enjoined Blount from hiring certain employees of RoTech. By Order dated January 5, 2001 ("the

January 5 Order") we clarified our earlier Order and enjoined Blount from directly contacting or soliciting any person who was a customer of Fox prior to the date of filing of the adversary proceeding for any service which Fox was providing or could have provided.

On January 11, 2001, Blount filed a Motion for Partial Summary Judgment seeking to dismiss all claims for monetary damages against it on the grounds of governmental immunity pursuant to the Tennessee Governmental Tort Liability Act ("TGTLA"). By Decision and Order dated April 5, 2002, we granted the motion.

On November 7, 2001, Blount filed the Motion to dissolve the Orders dated November 9, 2000, and January 5, 2001, which granted the preliminary injunction ("the Injunction Orders"). On November 28, 2001, RoTech filed a Response in Opposition to Blount's Motion. On December 4, 2001, Blount filed a Reply in Support of its Motion.

Since the entry of the Injunction Orders, RoTech has continued to operate its durable medical equipment (DME) supply business in the Maryville, Tennessee area. (Blount Brief at Exhibit 3). Blount also opened a DME facility in the Maryville area on or about October 2000. In addition to the DME facilities of Blount and RoTech, a third DME facility has opened in the Maryville area since the commencement of this adversary

proceeding. (Blount Brief at p. 5). Based on the foregoing Blount asks us to dissolve our Injunction Orders.

II. JURISDICTION

This Court has jurisdiction over this matter, which is a core proceeding, pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(A), (E), and (O).

III. DISCUSSION

It is well established that a court has the authority to modify an injunction when changed circumstances make an injunction unnecessary or inappropriate. See Milk Wagon Drivers Union of Chicago v. Meadowmoor Dairies, Inc., 312 U.S. 287, 298 (1941) ("familiar equity procedure assures opportunity for modifying or vacating an injunction when its continuance is no longer warranted"); Favia v. Indiana Univ. of Penn., 7 F.3d 332, 337 (3d Cir. 1993) (modification of injunction proper where changed circumstances makes continuance of injunction inequitable); U.S. Office Products Co. v. Allied Office Supply, Inc., 2001 WL 1820022 (Bankr. D. Del. Jul. 10, 2001). To vacate or modify the Injunction Orders, we must assess whether Blount has made a showing that changed circumstances warrant their discontinuation. See, e.g., Franklin Twp. Sewerage v. Middlesex Cty. Utilities, 787 F.2d 117, 121 (3d Cir. 1986).

In U.S. Office Products, former employees of the debtor who were enjoined from competing with the debtor sought to dissolve a preliminary injunction. The Court dissolved the injunction because the debtor had sold the business to a third party and there was no evidence that the injunction continued to benefit the debtor. No sale has occurred in this case; RoTech continues to operate the business in, inter alia, the Maryville, Tennessee, area. RoTech asserts and we agree that the purpose of the Injunction Orders was to allow competition without giving Blount the benefit of its ill-gotten information. The injunction has and continues to protect RoTech from Blount's wrongful actions.

Blount alleges that due to the passage of time since the issuance of the Injunction Orders, the actual or potential harm which supported them has dissipated. Specifically, Blount alleges that the customer lists and financial data which they returned in September 2000 to RoTech is no longer useful since customers have changed dramatically since then. If that were true, Blount would have no need to seek dissolution of the Injunction Orders. Further, the potential harm to RoTech remains palpable to the extent anyone on that list remains its customer.

Blount alleges that the injunction hinders the development of Blount in its own newly opened DME business. However, since Blount is a hospital, and the largest referral source in the county, its own customer base is continuously growing. The

Injunction Orders merely prevent Blount from utilizing RoTech's customer lists, not from otherwise legal competitive behavior. Furthermore, the opening of the DME business by Blount was contemplated when Blount misappropriated the information from RoTech. After all, that was apparently why they wanted the customer lists.

With respect to the prohibition on hiring RoTech's employees contained in the Injunction Orders, Blount alleges that the prohibition serves no purpose and should be dissolved. Blount further alleges that it has not hired any of RoTech's employees and does not have any positions available. Based on that assertion, however, we cannot find any prejudice to Blount by continuing the Injunction Orders. In contrast, allowing Blount to hire any of RoTech's employees would irreparably harm RoTech since the customers are likely to follow the employees to Blount. Balancing the potential irreparable harm to RoTech against the lack of prejudice to Blount convinces us the Injunction Orders should remain.


IV. CONCLUSION

For the reasons set forth above, we deny Blount's Motion to Dissolve Preliminary Injunction.

An appropriate order is attached.

BY THE COURT:

Dated: April 12, 2002



Mary F. Walrath
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

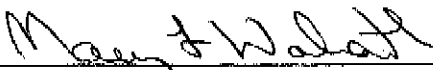
IN RE:) Chapter 11
)
INTEGRATED HEALTH SERVICES,) Case Nos. 00-389 (MFW)
INC., et al.,) through 00-825 (MFW)
)
Debtors.) (Jointly Administered
_____) Under Case No. 00-389 (MFW))
)
ROTECH MEDICAL CORPORATION,)
et al.,)
)
Plaintiffs,)
) Adversary No. A-00-1145 (MFW)
v.)
)
BLOUNT MEMORIAL HOSPITAL, et)
al.,)
)
Defendants.)

O R D E R

AND NOW, this 12TH day of APRIL, 2002, upon consideration of the Motion of Blount Memorial Hospital, Inc., to Dissolve Preliminary Injunction and the Response of the Debtors thereto, for the reasons set forth in the accompanying Memorandum Opinion, it is hereby

ORDERED that the Motion is **DENIED**.

BY THE COURT:



Mary F. Walrath
United States Bankruptcy Judge

cc: See attached

SERVICE LIST

Robert S. Brady, Esquire
Maureen D. Luke, Esquire
YOUNG CONAWAY STARGATT & TAYLOR, LLP
The Brandywine Building, 17th Floor
1000 West Street
P.O. Box 391
Wilmington, DE 19801
Counsel for Debtors

Michael J. Crames, Esquire
Arthur Steinberg, Esquire
Marc D. Rosenberg, Esquire
KAYE SCHOLER FIERMAN HAYS & HANDLER, LLP
425 Park Avenue
New York, NY 10022
Counsel for Debtors

Joanne B. Wills, Esquire
Steven K. Kortanek, Esquire
KLEHR HARRISON HARVEY BRANZBURG & ELLERS LLP
919 Market Street
Suite 1000
Wilmington, DE 19801
Counsel for the Official Committee
of Unsecured Creditors

Glenn Rice, Esquire
William Silverman, Esquire
OTTERBOURG STEINDLER HOUSTON & ROSEN, PC
230 Park Avenue
New York, NY 10169
Counsel for the Official Committee
of Unsecured Creditors

Michael DeBaecke, Esquire
BLANK ROME COMISKY & MCCAULEY
1201 Market Street
Suite 2100
Wilmington, DE 19801-4226
Counsel for Blount Memorial Hospital

John A. Walker, Jr., Esquire
WALKER & WALKER, P.C.
507 South Gay Street
Suite 910
P.O. Box 2774
Knoxville, TN 37901
Counsel for Blount Memorial Hospital

OFFICE OF THE UNITED STATES TRUSTEE
J. Caleb Boggs Federal Building
844 King Street
Lockbox 35
Suite 2313
Wilmington, DE 19801