

283 A.D.2d 423, 723 N.Y.S.2d 871, 2001 N.Y. Slip Op. 04137
(Cite as: 283 A.D.2d 423, 723 N.Y.S.2d 871)

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Supreme Court, Appellate Division,
Second Department, New York.

WILLIAM M. BLAKE AGENCY, INC., respondent,
v.

Karen LEON, appellant, et al., defendants.
May 7, 2001.

Moritt, Hock, Hamroff & Horowitz, LLP, Garden City, N.Y. (Robert M. Tils and Terese L. Arenth of counsel), for appellant.

Pruzansky & Besunder, LLP, Islandia, N.Y. (Harvey B. Besunder and Alison J. Besunder of counsel), for respondent.

*423 In an action, *inter alia*, to permanently enjoin the defendant Karen Leon from divulging and using confidential information obtained while in the employ of the plaintiff, the defendant Karen Leon appeals from an order of the Supreme Court, Suffolk *424 County (Molia, J.), dated April 12, 2000, which granted the plaintiff's motion for a preliminary injunction.

ORDERED that the order is reversed, on the law, with costs, and the motion is denied.

On a motion for a preliminary injunction, the burden of proof is on the movant to show that success on the merits is likely in the action, that irreparable injury will occur unless the injunction is granted, and that the balance of equities is in the movant's favor (*see, Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860, 552 N.Y.S.2d 918, 552 N.E.2d 166; *Grant Co. v. Srogi*, 52 N.Y.2d 496, 438 N.Y.S.2d 761, 420 N.E.2d 953; *NCN Co. v. Cavanagh*, 215 A.D.2d 737, 627 N.Y.S.2d 446). Moreover, "preliminary injunctive relief is a drastic remedy which will not be granted 'unless a clear right thereto is established under the law and the undisputed facts upon

the moving papers, and the burden of showing an undisputed right rests upon the movant' " (*Peterson v. Corbin*, 275 A.D.2d 35, 36, 713 N.Y.S.2d 361, quoting *First Natl. Bank v. Highland Hardwoods*, 98 A.D.2d 924, 471 N.Y.S.2d 360; *see, Nalitt v. City of New York*, 138 A.D.2d 580, 581, 526 N.Y.S.2d 162).

Applying these principles to the instant case, the plaintiff did not meet its burden of demonstrating a likelihood of success on the merits or that it would suffer irreparable harm in the absence of a preliminary injunction. In particular, the plaintiff did not show that the activities of the appellant, Karen Leon, its former employee, were undisputedly in violation of the "noncompetition and nondisclosure" provisions of the parties' employment agreement. Accordingly, the plaintiff was not entitled to a preliminary injunction (*see, **872Columbia Ribbon Carbon Mfg. Co. v. A-I-A Corp.*, 42 N.Y.2d 496, 499, 398 N.Y.S.2d 1004, 369 N.E.2d 4; *Reed, Roberts Assoc. v. Strauman*, 40 N.Y.2d 303, 386 N.Y.S.2d 677, 353 N.E.2d 590; *H & R Recruiters v. Kirkpatrick*, 243 A.D.2d 680, 663 N.Y.S.2d 865; *Arthur Gallagher & Co. of New York, Inc. v. Klymenko*, 248 A.D.2d 497, 669 N.Y.S.2d 886).

In light of our determination, it is unnecessary to reach the appellant's remaining contention.

SANTUCCI, J.P., LUCIANO, FEUERSTEIN and ADAMS, JJ., concur.

N.Y.A.D. 2 Dept. 2001.

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