

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

GDI, LLC,)	
)	
Plaintiff,)	Case No. 10 cv 4946
)	
v.)	
)	Judge Milton I. Shadur
GALLAGHER SECURITY (U.S.A.), INC. and)	
GALLAGHER GROUP LTD.,)	
Defendants.)	
)	
)	

FOURTH AMENDED COMPLAINT

Plaintiff (“GDI”) by and through its attorneys, Gold & Coulson, a partnership of professional and limited liability companies, and Ronald L. Boorstein, for its complaint against defendants Gallagher Security (U.S.A.) Inc. and Gallagher Group Limited of New Zealand, (herein collectively referred to as “Gallagher”) alleges as follows:

THE PARTIES

1. GDI, LLC is a Delaware limited liability company. As of the date of this Complaint, GDI, LLC has the following members: Andrew J. Gilmour, a citizen of the State of Illinois; Stunfence, Inc., an Illinois corporation with its principal place of business in Illinois; Montana Street Holdings, LLC, the sole member of which is Brian B. Boorstein, a citizen of the State of Illinois; Perimeter Defense Distribution LLC, the sole member of which is Andrew J. Gilmour, a citizen of the State of Illinois; CAC, LLC, the sole member of which is Rodney Dammeyer, a citizen of the State of California; DRD Family Limited Partnership, an Illinois limited partnership, all of the

interests in which are owned by Rodney Dammeyer and Diane Dammeyer, both citizens of the State of California.

2. Gallagher Security (U.S.A.) Inc., which does business as Gallagher Security Management Systems, is a Florida corporation with its principal place of business in Sanford, Florida.

3. Gallagher Group Ltd. is a foreign corporation, with its principal place of business in Hamilton, New Zealand. Gallagher Group Ltd. is the parent company of Gallagher Security (U.S.A.) Inc.

4. GDI has been engaged in the business of supplying, installing and maintaining outdoor, perimeter, electrical, non-lethal security fencing systems (hereafter, referred to as “Non-Lethal Security Fencing Systems”).

5. GDI has provided, installed and serviced Non-Lethal Security Fencing Systems for bureaus of prisons in states across the United States, the United States Federal Bureau of Prisons and for prisons and a limited number of other facilities in several countries around the world that require a high degree of security.

6. For a number of years GDI was recognized as the leading provider, installer and servicer of Non-Lethal Security Fencing Systems in the United States.

7. In the United States customers for Non-Lethal Security Fencing Systems are limited almost exclusively to the 50 state prison bureaus and the federal prison system.

8. Gallagher is also engaged in the Non-Lethal Electrical Security Fencing Systems business and at all times relevant hereto has been the only competitor of GDI conducting that business in the United States.

9. Through the year 2009 GDI and Gallagher were the only two firms engaged in the Non-Lethal Electrical Security Fencing Systems in the United States.

JURISDICTION AND VENUE

10. There is complete diversity of citizenship between the Plaintiff GDI, LLC and Defendants Gallagher Security (U.S.A.), Inc. and Gallagher Group Ltd. Plaintiff GDI, LLC and all of its members are citizens of either the State of Illinois or the State of California, Gallagher Security (U.S.A.), Inc. is a citizen of the State of Florida and Gallagher Group Ltd. is a citizen of the country of New Zealand. The amount in controversy exceeds \$75,000.

11. Therefore, this Court has jurisdiction of this cause pursuant to 28 USC § 1332. This Court also has Jurisdiction under 18 U.S.C. § 1030, the Federal Computer Fraud and Abuse Act and § 7 of the Clayton Act, 15 U.S.C.A. § 18, and §§ 1 and 2 of the Sherman Act, (15 U.S.C.A §§ 1, 2).

12. Venue is proper in this Court since both Defendants conduct business within the Northern District of Illinois and certain acts complained of herein took place in the Northern District of Illinois. There is no single venue other than the Northern District of Illinois where more acts complained of herein took place than took place in the Northern District of Illinois.

FACT BACKGROUND OF PREVIOUS LITIGATION

13. On or about June 18, 2007 Elliot Rose (“Rose”) entered into a written employment agreement with GDI (the “Rose Employment Agreement”) pursuant to which Rose became employed as a salesman by GDI.

14. In the Rose Employment Agreement Rose acknowledged that during his employment by GDI he would be furnished data collected by GDI, recommendations and proposals prepared by GDI, the identity of GDI customers, client specific information, source documents and other confidential proprietary information of GDI (all of which is hereinafter referred to together is "GDI Confidential Information").

15. On or about June 19, 2007 Michael Provencher ("Provencher") entered into a written employment agreement with GDI ("the Provencher Employment Agreement") pursuant to which Provencher became employed as a salesman of GDI.

16. In the Rose Employment Agreement Rose also agreed that, during his employment by GDI and for a period of 24 months after termination of his employment by GDI: he would not divulge any of the GDI Confidential Information to any person or entity other than GDI; make use of it for his own purposes; make use of it for the purposes of any person or entity other than GDI; he would not solicit or conduct business with any GDI customer on behalf of any entity other than GDI; and he would not solicit any employee of GDI for any other prospective employer.

17. The Rose Employment Agreement and the Provencher Employment Agreement both provided that when they left GDI they were obligated to return to GDI all of the property belonging to GDI and all the documents and materials pertaining to GDI's business in their possession.

18. When Rose and Provencher became employees of GDI they were each given a copy of the GDI handbook.

19. The GDI Employee handbook clearly stated that all company property in the employee's possession must be returned to the employee's manager upon separation from employment before the final pay check would be released.
20. On or about August 6, 2008 GDI's employment of Rose was terminated and, very soon after August 6, 2008, Gallagher employed Rose as a salesman.
21. On the day that Rose left GDI he stole the GDI laptop computer containing GDI Confidential Information that GDI had provided him to use as an employee of GDI.
22. Gallagher persuaded Rose to violate the Rose Employment Agreement in order to provide Gallagher with all of the GDI Confidential Information within the knowledge, possession or otherwise available to him.
23. Gallagher began utilizing the Confidential Information it obtained from Rose to gain an unfair advantage in its competition with GDI.
24. In an effort to prevent Rose from giving Gallagher an unfair competitive advantage GDI commenced litigation against Rose in the Illinois 18th Judicial Circuit in Wheaton, Illinois (the "DuPage Litigation").
25. In the DuPage Litigation against Rose GDI sought to force Rose to return the computer he had stolen from GDI and to have a temporary restraining order entered against Rose to prevent him from sharing GDI Confidential Information with Gallagher.
26. Sometime after GDI commenced its suit against Rose, GDI added Gallagher as a defendant in the DuPage Litigation also in an effort to prevent GDI Confidential Information from being used by Gallagher in its competition with GDI.

27. On or about April 1, 2009 Rose convinced Provencher to leave GDI and become employed by Gallagher.
28. When Provencher left GDI he also wrongfully took with him the computer with GDI Confidential Information on it that GDI had issued to Provencher to use in his employment at GDI.
29. In the DuPage Litigation Rose was forced to return to GDI the computer he had stolen from GDI.
30. Unfortunately, when Rose returned the computer to GDI all of the data on it had been professionally completely deleted.
31. Even more unfortunately, the court in the DuPage Litigation refused to enter the temporary restraining order GDI had sought and deemed the restrictive covenant in the Rose/GDI employment agreement unenforceable and granted Rose judgment on the pleadings. (See Exhibit 1 attached).
32. The computer that Provencher took with him when he left GDI has never been returned to GDI.
33. GDI realized that, despite its efforts, Gallagher had possession of GDI Confidential Information and was using it to compete with GDI.
34. Instead of wasting further time and incurring additional trouble and expense in what had become a useless effort to prevent Gallagher from having and using GDI Confidential Information, GDI elected not to pursue Provencher and in December 2009 GDI voluntarily dismissed its claims against Gallagher in the DuPage Litigation.

35. When GDI voluntarily dismissed Gallagher from the DuPage Litigation, at that time it did not also dismiss its claims in the DuPage Litigation against Rose because Rose had a pending counterclaim which required GDI to continue to participate in that litigation.

36. However, having failed to obtain a temporary restraining order against Rose, which was the primary purpose of the DuPage Litigation, in May, 2010, GDI elected to voluntarily dismiss its claims against Rose.

FACT BACKGROUND OF THE CLAIMS IN THIS COMPLAINT

37. Most prison bureaus are required to award Non-Lethal Security Fence Systems contracts pursuant to competitive bids.

38. Even though the entire Gallagher company is much larger and better financed than GDI, Gallagher consistently lost competitive bids to GDI because GDI had superior technology and products by which it could earn profits from providing its products and services at lower prices than Gallagher could profitably offer.

39. Gallagher realized that, if it could drive GDI completely out of the Non-Lethal Fence Systems business in the United States, it would be able to sell its products and services for prices that would yield handsome profits.

40. After experiencing new found success competing with GDI by utilizing improperly obtained GDI Confidential Information, in August, 2010 Gallagher embarked on a scheme to completely eliminate GDI from being able to participate in the Non-Lethal Security Fencing Systems business anywhere in the United States.

41. Since GDI and Gallagher had been the only two firms engaged in providing Non-Lethal Security Fencing Systems in the United States, Gallagher embarked on its campaign to entirely eliminate GDI from that business so Gallagher could achieve a self-serving monopoly.

42. The conduct of Gallagher in carrying out its scheme to monopolize the Non-Lethal Security Fence Systems business in the United States by driving GDI completely out of that business has certain similarities with certain conduct engaged in by Gallagher prior to 2010.

43. Gallagher's earlier conduct was unfair competition developed from improperly obtained GDI Confidential Information. This Complaint is based on different, subsequent conduct which is being utilized by Gallagher to monopolize the Non-Lethal Security Fence Systems business.

44. Pursuant to a concept known as "Preclusion" there are Illinois cases where a plaintiff has been precluded from asserting the same claims in a lawsuit that had been, or could have been, included in a previous lawsuit which had been voluntarily dismissed by that plaintiff less than one year earlier.

45. The two leading cases in which the Illinois Supreme court has affirmed decisions based on the concept of Preclusion are: *Rein v. David A. Noyes & Co.*, 172 Ill.2d 325, 216 Ill. Dec. 642, 665 N.E.2d 1199 (1996) and *Hudson v. The City of Chicago*, 228 Ill.2d 462, 321 Ill. Dec. 306 889 N.E.2d 210. Careful reviews of the opinions in those cases reveal that the holdings in them do not apply to the claims in this Complaint.

46. In *Rein* bond purchasers brought a suit against a securities dealer and a salesman seeking rescission of their purchases based upon state securities law and for recoveries based on theories of common-law fraud, breach of fiduciary duty and failure to register securities. After the rescission counts were dismissed, the Plaintiffs voluntarily dismissed the other counts

and appealed the dismissal of the rescission counts. After the plaintiffs lost that appeal, they brought a new suit on multiple rescission and common-law counts to recover for their losses on exactly the same bond purchases. The Illinois Supreme Court held that the purchasers were precluded from bringing another, new suit to recover for the same losses on which their original case was based because they had voluntarily dismissed those claims when their rescission claim was denied.

47. In *Hudson* the parents of a child who died of acute asthma exacerbation filed a claim against the city and city employees based on theories of negligence and willful and wanton misconduct. When the negligence claim was dismissed, the plaintiffs voluntarily dismissed the willful and wanton misconduct claim. Subsequently, the plaintiffs refiled their claim for compensation for exactly the same death based only on a theory of willful and wanton misconduct. The Illinois Supreme Court confirmed the holding in the lower court that the plaintiffs were precluded from refiling a willful and wanton complaint for exactly the same occurrence on which the original complaint was based.

48. The claims presented by this Complaint are more like those in the Seventh Circuit United State Court of Appeals case of *Russian Media Group, LLC v. Cable America, Inc.* 598 Fed. Reporter 2d 203 (7th Cir. 2010). In that case the Seventh Circuit Court stated (at pages 310 and 311):

“The defendants cannot fit their theft of TVR’s programming in 2001 and their theft of DIRECTV’s and Dish Network’s programming in 2006 into one set of operative facts. Certainly there are similarities in terms of modus operandi and the identity of the competitor-victim. But the defendants’ argument is akin to saying that the theft of a

victim's car in 2001 and theft of the same victim's car in 2006 constitute on one set of operative facts, so that a lawsuit based on the earlier theft would bar one based on the latter. Res judicata does not preclude a suit arising from a completely different event, no matter how similar the defendant's misconduct. See *D'Last Corp. v. Ugent*, 299 Ill. App. 3d 216, 224 Ill. Dec. 30, 681 N.E.2d 12, 17 (1997). ("The doctrine of res judicata does not bar claims for continuing conduct complained of in the second lawsuit that occur after judgment has been entered in the first lawsuit"), citing *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 75 S. Ct. 865, 99 L. Ed. 1122 (1955)".

49. The concept of Preclusion can prevent certain claims that have been voluntarily dismissed from being reasserted in a new lawsuit. However, precluding a claim from being asserted cannot be tantamount to a finding that the precluded claim must have been legal or permissible.

50. In the DuPage Litigation the only adverse ruling was not a finding on any of the merits of the dispute, it was simply a denial of a prayer for a temporary restraining order and the unenforceability, as a matter of law, the restrictive covenant as to Rose.. The denial of the prayer for a temporary restraining order should not be expanded to become a finding sufficient to preclude the reassertion of substantive claims that were voluntarily dismissed based upon information obtained from stolen computers and commercial disparagement.

51. Even if the denial of the prayer for a temporary restraining order and the declaration that a restrictive covenant is unenforceable as a matter of law were sufficient to preclude GDI from being permitted to assert the claims in the DuPage Litigation that GDI voluntarily

dismissed, it can not be said that such Preclusion amounts to a final, binding finding that the conduct engaged in by Gallagher was legal and proper.

52. Through the actions Gallagher has taken since August, 2010, which will be described below, Gallagher has succeeded in almost completely keeping GDI from conducting any business anywhere in the United States.

53. This Complaint is seeking relief for actions and claims that did not exist at the time when GDI voluntarily dismissed its claims in the DuPage Litigation. Moreover, the amount of damages caused by Gallagher's conduct were still speculative when the DuPage Litigation was voluntarily dismissed.

54. There is ample authority for bringing a subsequent suit even for claims which existed when an earlier suit was decided, if damages were still speculative at the time of the decision in the earlier suit. For example, the Seventh Circuit has even been interpreted in *Green v. Illinois Department of Transportation*, 609 F.Supp. 1021 (1985) by Judge Aspen to hold that "res judicata did not bar a later claim for damages based upon conduct which occurred before verdict in a previous suit, because the damages had been speculative when the first trial took place" citing *Ohio-Sealy Mattress Mfg. Co. v. Kaplan*, 745 F.2d 441 (7th Cir. 1984)."

55. In *United v. City Foods*, 878 F.Supp. 122 (1995) Judge Nagle said: "However, a defendant's continuing course of conduct, even if related to conduct complained of in the earlier lawsuit generally creates a separate cause of action.

56. In *Junction Solutions, LLC v. MBS DEV Inc.*, 2007 WL 4233995 (N.D. Ill. 2007), another case which is in agreement with the *Green* and *Ohio-Sealy* cases, the court held that "although Junction could have sought injunctive relief in its first suit which might have prevented the acts

being complained of in this current suit, *Lawlor* makes it clear that Junction was not compelled to address defendant's future behavior at the time of its first suit."

GALLAGHER'S WRONGFUL CONDUCT

57. Gallagher formulated plans to secure for itself a total monopoly of all the Non-Lethal Security Fence Systems business in the United States.

58. In order to carry out its monopoly intentions, in July or August, 2010, with the assistance of its employee Rose, who was previously employed by GDI, Gallagher implemented a program to have GDI disqualified everywhere in the United States as an acceptable provider, installer or servicer of Non-Lethal Security Fence Systems for prisons.

59. GDI is informed and believes that Provencher opposed the attack on GDI that Gallagher was instituting and, as a result, he was fired.

60. In carrying out its plan to have GDI disqualified to provide, install or service Non-Lethal Security Fence Systems everywhere in the United States Gallagher has disseminated and circulated false, misleading and defaming information and misrepresentations about GDI, its integrity and its products and services; Gallagher has also engaged in trade disparagement about GDI, its integrity and its products and services.

61. Gallagher has succeeded in disseminating false, misleading, and defamatory information and misrepresentation about GDI, its integrity and its products and services to:

- a) The department, bureau or agency in charge of correctional facilities in almost every state in the United States
- b) The Federal Bureau of Prisons
- c) All of the commercial firms that contract to operate or manage governmental

correctional facilities pursuant to contracts

- d) Former dealers and agents of GDI
- e) Professionals who design and supervise the construction of correctional facilities and who recommend vendors, suppliers and contractors for materials, supplies and services used in the construction and maintenance of correctional facilities.

62. Gallagher has succeeded in having firms in the states of Colorado and New Mexico that formerly represented GDI convert from being GDI dealers to become Gallagher dealers.

63. At the present time, as a direct and proximate result of the attack on GDI by Gallagher, GDI has been informed and believes that no bid or proposal by GDI to provide products for or to install or service Non-Lethal Security Fence Systems will be entertained or accepted by the Federal Bureau of Prisons or by any state prison supervising body or agency, other than the states of Alaska, Hawaii, Illinois and Texas.

64. Richard F. Fairborne, an architect with the Durant Group, a firm which regularly designs correctional facilities for most of the states in the United States, has informed GDI and GDI believes that Gallagher is now engaged in contracting for and installing Non-Lethal Security Fence Systems for the state of Iowa and many other customers who or which had formerly relied on GDI as their sole source for the installation of Non-Lethal Security Fence Systems.

65. The loss by GDI of the ability to bid for or obtain contracts for providing, installing or servicing Non-Lethal Security Fence Systems is the direct and proximate result of the wrongful conduct that Gallagher has commenced engaging in since July or August, 2010.

66. Such wrongful conduct by Gallagher constitutes:

- a) A substantial lessening of competition in violation of § 7 of the Clayton Act (15 U.S.C.A. § 18);
- b) A restraint of trade in violation of § 1 of the Sherman Act (15 U.S.C.A. § 1);
- c) An attempt to monopolize and the monopolization of a line of commerce in violation of § 2 of the Sherman Act (15 U.S.C.A. § 2);
- d) The misappropriation of trade secrets in violation of the Illinois Trade Secrets Act (7635 ILCS 1065/1 et. seq.);
- e) Unlawful Commercial Disparagement of GDI;
- f) Tortious interference with GDI contracts and relationships; and
- g) Tortious interference with prospective economic advantages of GDI.

67. GDI has been reliably informed and believes that since Gallagher has achieved nearly a complete monopoly of the Non-Lethal Security Fence business in the United States it has dramatically increased his prices.

68. GDI has brought this cause to enjoin Gallagher and its employees, agents and representatives from committing any further wrongful, illegal acts or actions against or with respect to GDI and to recover compensation and punitive damages from Gallagher.

WHEREFORE, GDI respectfully requests this Court to provide it the following relief:

- A. Promptly issue a Temporary Restraining Order that restrains Gallagher and all those who are acting at Gallagher's direction or in concert with Gallagher from:
 - 1) Violating any Anti-Trust Law of the United States;

- 2) Continuing to misappropriate the trade secrets of GDI;
 - 3) Continuing to unlawfully commercially disparage GDI;
 - 4) Tortiously interfering with GDI contracts and relations; and
 - 5) Tortiously interfering with prospective GDI economic advantages.
- B. After issuing the requested Temporary Restraining Order, schedule a timely hearing for issuance of a Preliminary Injunction to enjoin Gallagher and all those who are acting at Gallagher's direction or in concert with Gallagher from all the acts that have been restrained by the Temporary Restraining Order.
- C. After a hearing for the issuance of the requested Preliminary Injunction, issuing such Preliminary Injunction.
- D. After the issuance of such Preliminary Injunction schedule a timely hearing for the issuance of a Permanent Injunction to permanently enjoin Gallagher and all those who are acting at Gallagher's direction or in concert with Gallagher from all of the acts to which the Preliminary Injunction is applicable.
- E. After a hearing for the issuance of the requested Permanent Injunction issue such Permanent Injunction.
- F. After the issuance of the requested Permanent Injunction enter an Order that:
- 1) Requires Gallagher and those acting at Gallagher's direction or in concert with Gallagher;
 - a) To return to GDI any and all GDI Confidential Information which

has been misappropriated by any one or more of them and all copies thereof that contain or in any way rely on any misappropriated GDI Confidential Information, whether created by any one more of them or by any third party.

b) To destroy all other documents, whether in paper, electronic or any other format and whether created by any one or more of them or any third party, which contain or rely in any way on misappropriated GDI Confidential Information.

2) Authorizes a court appointed auditor, whose services and expenses are to be borne by Gallagher, to examine all computers, computer networks, storage devices and files of Gallagher and all those who have acted at Gallagher's direction or in concert with Gallagher to verify that each of them has returned to GDI, or caused to be returned to GDI, all of the documents, of any nature whatsoever, that this Court has ordered to be returned to GDI and that each of the documents, of every nature whatsoever, that this Court has ordered to be destroyed have, in fact, been destroyed.

- G. Award compensatory damages to GDI against Gallagher in an amount to be determined at trial, but not less than \$30 Million Dollars.
- H. Award punitive damages to GDI against Gallagher in such amount as may be determined by this Court to be appropriate, fair and just.
- I. Require Gallagher to reimburse GDI for all of the costs and expenses incurred

by GDI in bringing and prosecuting this cause, including, but not limited to, reasonable attorney fees.

J. Grant GDI such other and further relief as this Court may determine that justice requires.

Respectfully submitted,

By: ___s/Arthur S. Gold _____
One of their Counsel

Gold & Coulson
A Partnership of Professional
and Limited Liability Companies
11 S. LaSalle St., Suite 2402
Chicago, IL 60603
Telephone: (312) 372-0777
Facsimile: (312) 372-0778

Ronald L. Boorstein, Esq.
150 S. Wacker Drive
Suite 450
Chicago, Illinois 60606
Telephone: (312) 726-2900
Facsimile: (312) 726-2905

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