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RAZOR eNewsletter FROM O'Connor Carnathan & Mack

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SJC Rejects Presumption of Irreparable Harm in Trade Secret Cases

In Daikin Applied Americas Inc. v. Russo, the Massachusetts Supreme Judicial Court ("SJC") recently concluded that a plaintiff seeking a preliminary injunction on a trade secret misappropriation claim is not entitled to a presumption of irreparable harm, even where it has shown a likelihood of success on the merits. Daikin Applied Americas Inc. ("Daikin"), an HVAC company, sued former employees Joseph

Russo and Andrew Porter, along with their newly formed company RPAC LLC, alleging that Russo and Porter took confidential and trade secret information from Daikin and used it to compete for Daikin's customers.

Daikin sought a preliminary injunction to, among other things, prevent the defendants from soliciting seventy-five Daikin customers for one year. The defendants agreed to return Daikin's confidential information but opposed the requested non-solicitation restriction. The Superior Court denied that portion of Daikin's requested injunction, finding that Daikin had not shown irreparable harm.

On appeal, Daikin argued that once it established a likelihood of success on its trade secret claim, irreparable harm should be presumed. The SJC rejected that argument, affirmed the Superior Court's decision, and held that a plaintiff in a trade secret case must still satisfy the ordinary requirements for a preliminary injunction. Specifically, the SJC stated, "when deciding a motion for a preliminary injunction in a trade secrets case, a judge should consider the specific allegations, the type of irreparable harm likely to arise, and the form of injunctive relief most likely to mitigate any such harm."

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