**CITATION:** Strength-N-U Inc. v. Silva, 2024 ONSC 4009
**COURT FILE NO.:** CV-23-711209-0000
**DATE:** 20240716

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

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| **BETWEEN:** | ) | |
| | ) | |
| STRENGTH-N-U INC. | ) | Daren Frank, for the Plaintiff |
| | ) | |
| Plaintiff | ) | |
| | ) | |
| **– and –** | ) | |
| | ) | Allan Weiss, for the Defendants |
| DANIEL SILVA, JERIKKA NAHIBUAN and PERFORMANCE RECOVERY THERAPY INC. | ) | |
| | ) | |
| Defendants | ) | |
| | ) | |
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| | ) | **HEARD:** July 11, 2024 |



**PAPAGEORGIOU J.**

## Overview

[1] The plaintiff alleges that the defendants Daniel Silva ("Silva") and Jerikka Nahibuan ("Nahibuan") breached fiduciary obligations as well as contractual and other obligations related to a competitive health services business they are now operating, the defendant Performance Recovery Therapy Inc. ("PRT"). The plaintiff and PRT both provide fitness, training, nutrition and therapy services. Silva and Nahibuan previously worked at the plaintiff as a chiropractor and physiotherapist, respectively, and now provide these services at PRT. They are now also directors and officers of PRT.

[2] The plaintiff seeks injunctive relief.

[3] The original relief requested was that Silva and Nahibuan be restrained from owning, managing or being involved in a competing health services business within a fifty-kilometer radius of the plaintiff's premises in Scarborough and Mississauga. It also sought to restrain the defendants from soliciting in any way or marketing to the plaintiff's "customers" in connection with a business which is in direct competition with the plaintiff. The relief requested was not limited in duration.

[4] By the time of the motion, the plaintiff changed the relief requested to orders that the defendants:

- be prohibited from carrying on or engaging in the practice of offering chiropractic and/or physiotherapy services to the plaintiff's "patients" until January 11, 2026.

- be prohibited from soliciting, contacting, calling upon, approaching, or in any way marketing to the plaintiff's "patients" in connection with a health services business, which is in direct competition with the business of the plaintiff until January 11, 2026.

- be prohibited from inducing any employees and other service providers from leaving the plaintiff's employment or from severing their contracts with the plaintiff until January 11, 2026.

- be prohibited from causing or inducing any other person or entity to engage in a health services business, which is in direct competition with the plaintiff until January 11, 2026.

- be prohibited from using and/or disclosing confidential information.

**Decision**

[5] For the reasons that follow, I dismiss the motion.

**Issues**

- Issue 1: Has the plaintiff demonstrated a substantial issue to be tried, and/or a strong prima facie case where required?

    - Has the plaintiff established a strong prima facie case that the individual defendants were fiduciaries and breached fiduciary duties?

    - Has the plaintiff established a substantial issue to be tried as to whether or not the defendants have misappropriated and used confidential information?

    - Has the plaintiff established a substantial issue to be tried as to whether Silva or Nahibuan have breached enforceable contractual restrictive covenants?

- Issue 2: Has the plaintiff demonstrated irreparable harm?

- Issue 3: Who does the balance of convenience favour?

**Analysis**

**Issue 1: Has the plaintiff demonstrated a substantial issue to be tried, and/or a strong prima facie case where required?**

**The Injunction Test**

[6] Pursuant to *RJR MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, at p. 334, the usual test for an interlocutory injunction is as follows:

(a) Is there a serious issue to be tried?

(b) Will the party requesting the injunction suffer irreparable harm if the injunction is not granted? and

(c) Does the balance of convenience weigh in favour of granting an injunction or denying it?

[7] In *RJR MacDonald*, the Court indicated that, although rare, there are exceptions where the moving party must establish a more stringent "strong *prima facie* case": at p. 339.

[8] Courts have applied the more stringent "strong *prima facie* case" test in the following circumstances:

a. Where the injunction will as a practical matter amount to a final determination of the action: *RJR MacDonald*, at p. 338.

b. Where the plaintiff seeks an interlocutory injunction alleging breach of post-employment fiduciary obligations: *Benson Kearley & Associates Insurance Brokers Ltd., v. Jeffrey Valerio*, 2016 ONSC 4290, at para. 46; *Lockwood Fire Protection Ltd. v. Jason Caddick et al.*, 2015 ONSC 6320, at para. 36.

[9] When considering whether a strong *prima facie* case exists, courts must conduct a more extensive review of the merits of the case: *RJR MacDonald*, at p. 339.

[10] In *Benson*, at para. 21, Charney J. described the high standard which must be met to establish a *prima facie* case as follows:

> A strong *prima facie* case is one in which there is "a substantial likelihood of success in the action that justifies extraordinary relief at the very commencement of the proceeding." (See: *Factor Gas Liquids Inc. v. Jean*, 2010 ONSC 2454 (CanLII), 264 O.A.C. 46 (Div. Ct.), at para 42). It is not enough to establish that the case will succeed on a balance of probabilities: the plaintiff must establish that he or she is "clearly right and almost certain to be successful at trial" (*Barton-Reid Canada Ltd. v. Alfresh Beverages Canada Corp.*, 2002 CanLII 34862 (ON SC), 2002 CanLII 34862 (Ont. S.C.), at para 9, and *Accreditation Canada International v. Guerra*, 2016 ONSC 3595 at para 41).

[11] In my view, the higher strong prima facie case test is applicable to the issue of whether or not the defendants were fiduciaries and breached fiduciary duties. The lower threshold of substantial issue to be tried applies to the remaining issues which are whether the defendants breached a duty of confidence or breached contractual restrictive covenants: *Parkeh et al v. Schecter et al*, 2022 ONSC 302 at para 34.

**a) Has the plaintiff established a strong prima facie case that the individual defendants were fiduciaries and that they breached fiduciary duties?**

[12] It has not.

[13] The general characteristics of a fiduciary relationship are as follows:

> (i) the fiduciary has scope for the exercise of some discretion or power; (ii) the fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests; and, (iii) the beneficiary is peculiarly vulnerable to, or at the mercy of the fiduciary holding the discretion or power: *Boehmers Box v Ellis Packaging*, 2007 CanLII 14619 at para 41 quoting *Frame v. Smith*, [1987] 2 S.C.R. 99

[14] In *Imperial Sheet Metal Ltd. et al v Landry and Gray Metal Products Inc*., 2007 NBCA 51, the Court noted that there are two approaches to determining whether an employee is a fiduciary. The broad approach focuses on the degree of vulnerability of the employer to competition from the employee. The Court rejected this approach for policy reasons including the fundamental right of everyone to make a living. It also concluded that the broad approach is inconsistent with *Can. Aero v. O'Malley,* [1974] SCR 592, which focused on whether the employee was a "key" employee. See also *Boehmers* at para 46 which references the "key employee" test.

[15] The Court in *Imperial Sheet Metal* applied the following considerations in determining whether an employee is a "key employee":

> (1) whether the employee is integral and indispensable to the management team that guides the employer's business affairs.
>
> (2) whether the employee is necessarily involved in the decision-making process.
>
> (3) whether the employee has broad access to confidential information that if disclosed would significantly impair the competitive advantages that the former employer enjoyed.

[16] As noted by Brown J., in *Boehmers*, the results in various cases are fact driven: *Boehmers* at para 48. Brown J. set out a number of relevant factors including exclusive relationships, the ability to unilaterally bind the employer in contract, the ability to set prices, and supervisory responsibility over other employees: *Boehmers* at para 52.

[17] Because the imposition of fiduciary obligations restricts competition, courts should be cautious "in imposing restrictive duties on former employees in less than clear circumstances": para 39.

[18] Most of the factors that courts consider in determining whether an employee is a fiduciary are in the defendant's favour:

- Silva was a part time chiropractor with the plaintiff before he was terminated on July 10, 2023. He began working with the plaintiff in 2018 and signed a part-time contractor agreement on February 15, 2018.

- Nahibuan was a part-time physiotherapist with the plaintiff before her position was terminated on July 10, 2023. She began working with the plaintiff on October 2, 2018. On August 9, 2021, she signed a contract called an "Independent Contractor Agreement".

- There is a dispute as to whether they were employees or independent contractors, but it is not necessary to resolve this issue for the purposes of this motion.

- Silva and Nahibuan were only two of 44 of the plaintiff's staff members.

- There is no evidence that Silva nor Nahibuan had the power to "guide and direct" the affairs of the plaintiff.

- There is no evidence that they had the power to set prices.

- There is no evidence that they had exclusive relationships with patients.

- There is no evidence that they were integral to the plaintiff's operations.

- There is no evidence that they were able to bind the plaintiff in contract.

- There is no evidence that they had a supervisory role over other staff.

- There is no evidence that they were integral and indispensable to the management team that guided the plaintiff's business affairs.

[19] The primary basis for the assertion that they were fiduciaries is that they had access to confidential information as follows:

a) The plaintiff uses a third-party software known as Jane Clinic Management (the "Software"). This Software operates an online platform for health and wellness practitioners for scheduling, charting, billing and payments from customers. Silva and Nahibuan had access to the Software for certain purposes. The plaintiff says that as a result Silva and Nahibuan had access to all of the plaintiff's customer lists, information stored on the Software, business proposals, business plans and confidential information as well as personal contact information. The defendants deny this broad access and say they only had access to their own patient information. The plaintiff did not provide any supportive documentary evidence, other than bald statements, that the defendants had access to anything other than customer lists and client information noted above.

b) As well, in or around January 2023, the plaintiff and Silva had discussions about him potentially investing $50,000 in a third location that the plaintiff was planning to open in Vaughan. They entered into a Confidentiality Agreement and Non-Disclosure Agreement to facilitate negotiations (the "NDA"). The plaintiff says that Silva became aware of and was entrusted with corporate documents, business plans, financial statements, client lists and significant confidential information as a result. Silva asserts that all he received was revenue numbers, simple projections and a generic pitch deck related to the prospective third location. The plaintiff did not provide any supportive documentary evidence, apart from bald

statements, that Silva received anything more than projections, revenue numbers and a pitch deck related to the proposed new location.

[20] While access to confidential information is one factor a court may consider, the plaintiffs did not demonstrate that Silva and Nahibuan had the kind of broad access to confidential information that if disclosed would significantly impair the competitive advantages that the plaintiff enjoyed. As noted, the only documentary support related to customer lists and client information.

[21] If Silva and Nahibuan are considered fiduciaries because they had access to the Software, then all staff who provided medical treatment to the plaintiff's patients would be considered fiduciaries because all such staff used the Software.

[22] Taking into account all the factors, the plaintiff has failed to demonstrate a strong prima facie case that Silva and Nahibuan were fiduciaries.

**b) Has the plaintiff established a substantial issue to be tried as to whether or not the defendants have misappropriated and used confidential information?**

[23] The elements of the tort of breach of confidence are: i) the documents have a quality of confidence, 2) the documents were imparted to the employee in circumstances importing an obligation of confidence, and 3) they were used in an unauthorized manner: *Cantol v. State Chemical*, 2019 ONSC 531 citing *RBC Dominion Securities* at para 55. *Boehmer* at para 62 citing *Stenada Marketing Ltd. v Nazareno*, [1990] B.C.J. No. 2118; *Lac Minerals Ltd. v. International Corona Resources Ltd*., [1989] 2 S.C.R. 574 at para 152.

[24] The plaintiff must prove that the use of the confidential information by the employee caused the employer losses: *Cadbury Schweppes Inc. v. FBI Foods Ltd*., 1999 CanLII 705 (SCC) at paras 61, 91 & 93.

[25] The plaintiff has established a substantial issue to be tried relating to the misappropriation and use of confidential information.

[26] The primary confidential information that the plaintiff says Silva and Nahibuan took and used was exported client information from the Software which they say Silva and Nahibuan used to solicit its former clients.

[27] On July 6, 2023, Silva and Nahibuan say that they had a meeting with the plaintiff where they advised it of their plans to resign and start a new clinic, although this is denied by the plaintiff who says it was merely advised they were resigning. Once the plaintiff knew they were leaving, the plaintiff restricted their access to the Software so that they could not access client/customer reports.

[28] The plaintiff alleges that in or around July 9, 2023, it found evidence that Silva and Nahibuan had accessed the Software and exported customer/client reports over a number of months at various times which it says was an early and planned attempt to take customer information for a competing business the plaintiff says they had been planning since early 2023. This information included customer/client names, phone numbers, email addresses, last date of visit, the treatment received and the staff member who performed the treatment.

[29] After the plaintiff discovered this, it terminated their engagement with cause on July 10, 2023.

[30] Silva and Nahibuan began their competing business, PRT, the next day.

[31] Silva and Nahibuan say they only accessed client reports for the purpose of informing clients that they would be leaving the plaintiff pursuant to their obligations as members of the College of Physiotherapists of Ontario ("CPO") and the College of Chiropractors of Ontario ("CCO"), to ensure the smooth transition of care for their patients. The CPO Guidelines related to physiotherapists attached to the plaintiff's affidavit does indicate that whenever a physiotherapist leaves, they should notify everyone affected. The plaintiff says that the CCO guidelines have no provisions related to this, but no one placed these Guidelines before me. Instead, the plaintiff provided an email from someone at the CCO that confirmed that from the CCO's perspective, patients should be notified about a change in practice or a member leaving so that they may make an informed decision on where they wish to continue receiving chiropractic care.

[32] Silva and Nahibuan also say they only had access to information regarding patients who they treated and that they deleted all exported material from the Software once the plaintiff confronted them.

[33] The plaintiff has produced reports that it says show Silva and Nahibuan accessed all customer information and not just their own; the defendants dispute they even had such access and also dispute that this documentation proves that they did.

[34] I cannot resolve this issue on this paper record but agree that the plaintiff has established a substantial issue to be tried that the defendants accessed confidential client information from the Software.

[35] With respect to whether or not they used this exported material, Silva and Nahibuan revealed that they have provided treatment to 274 of the plaintiff's former clients as part of their answers to undertakings. They deny that this was because they used the exported material to contact these clients. They say that after they advised these clients that they were leaving in accordance with professional obligations above, the clients who they treated have sought them out.

[36] There is very little additional evidence related to the alleged use of this information to contact the plaintiff's clients. The plaintiff provided evidence from one client who says that Nahibuan solicited her at their last treatment session together, and also with an Instagram message. The plaintiff also filed an affidavit from one employee who alleged that he had a conversation with Silva where he said he planned to export and use the information from the Software. The plaintiff also asks that I draw an adverse inference from the defendants' refusals related to their communications with the 274 former clients.

[37] While the defendants did refuse to provide this information, in my view, doing so was justified because of privacy issues. I add that the plaintiff could have used its own records to determine which clients no longer seek treatment from the plaintiff and then contact them to understand why.

[38] Nevertheless, in all the circumstances, I agree that the plaintiff has established a substantial issue to be tried as to whether Silva and Nahibuan breached a duty of confidence by using exported

confidential information from the Software to contact and solicit former clients, particularly given the significant number of the plaintiff's former clients who the defendants now treat and other evidence before me. I agree that the plaintiff has provided evidence from which inferences can be made that are more than mere suspicion: *Benson* at para. 58.

**c) Has the plaintiff established a substantial issue to be tried as to whether Silva or Nahibuan have breached enforceable contractual restrictive covenants?**

[39] It has not.

[40] Silva's part-time contractor agreement does not contain any non-competition or non-solicitation clause. While he did sign the NDA, it related to materials he received in respect of the third location and consisted of projections and a pitch deck. There is no evidence before me that this information was used in the new business other than speculation.

[41] The NDA did not prevent Silva from competing with the plaintiff or soliciting the plaintiff's clients.

[42] Nahibuan's updated Independent Contractor Agreement dated August 9, 2021, also did not contain any provision that restricted her from competing, although it did include two provisions that the plaintiff relies upon to assert that she breached a non-solicitation clause, as follows.

[43] Paragraph 4 provided:

> The contractor shall not, directly or indirectly, solicit any **patient** or **clients** of Strength-N-U. [Emphasis added]

[44] This provision is not limited as to duration. It also provides no definition for what is considered a "patient" or "client". As such there is a strong argument that this provision is impermissibly broad and unenforceable. In *Parekh*, the provision in question had a specific duration as well as a specific definition so that the employee would be able to determine who it could not solicit.

[45] Paragraph 5, also relied upon by the plaintiff, provides as follows:

> The Contractor hereby agrees that. during the term of this Agreement and for one (1) year following the termination hereof, the Contractor will not (i) recruit, attempt to recruit or directly or indirectly participate in the recruitment of any Company employee or (ii) directly or indirectly solicit, attempt to solicit. canvass or interfere with any **customer** or supplier of the Company in a manner that conflicts with or interferes in the business of the Company as conducted with such customer or supplier. [Emphasis added]

[46] This provision is limited to a one-year period but it also contains no definition of "customer". The absence of a definition is particularly important given that paragraph 4 references "patient" and "clients", while paragraph 5 references "customers." Nahibuan argues that the way "customer" is used in this paragraph relates to non-medical persons who provide services and not "clients" or "patients" who receive medical treatment. I note that the plaintiff does provide non-medical services including fitness and training.

[47] I agree that there is a strong argument that as a matter of contractual interpretation, the use of the different wording in paragraphs 4 and 5 means that these paragraphs refer to different parties, and that those parties receiving physiotherapy or chiropractic services are more likely to be considered "patients" or "clients" as opposed to "customers" such that paragraph 4, which is prima facie unenforceable as being impermissibly broad, applied.

[48] Further, given that the provisions in question would restrict competition, even if the plaintiff is correct that paragraphs 4 and 5 both refer to the kinds of services provided by Silva and Nahibuan, there is also a strong argument that the two paragraphs, together, are impermissibly ambiguous, vague and overly broad so as to be unenforceable: *Labrador Recycling Inc. v. Folino*, 2021 ONSC 2195, at para 23. As noted by Sharma J. in *Parekh*, at para 35, an ambiguous restrictive covenant will be prima facie unenforceable because the party seeking to enforce it will be unable to demonstrate it is reasonable in the face of the ambiguity.

**Issue 2: Has the plaintiff demonstrated irreparable harm?**

[49] The plaintiff has failed to demonstrate that it will suffer irreparable harm if the injunction does not issue.

[50] In *RJR MacDonald*, at p. 341, the Court described irreparable harm as follows:

> "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision. (*R.L. Crain Inc. v. Hendry* (1988), 48 D.L.R. (4th) 228 (Sask. Q.B.)); where one party will suffer permanent market loss or irrevocable damage to its business reputation (*American Cyanamid, supra*); or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined (*MacMillan Bloedel Ltd. v. Mullin*, [1985] 3 W.W. R. 577 (B.C.C.A.)). The fact that one party may be impecunious does not automatically determine the application in favour of the other party who will not ultimately be able to collect

[51] The plaintiff's evidence as to irreparable harm must be clear and not speculative: *2158124 Ontario Inc. v. Pitton*, 2017 ONSC 411.

[52] Absent clear evidence that irreparable harm will result, an interlocutory injunction should not be granted: *Stress-Crete Limited v. Harriman*, 2019 ONSC 2773, at para. 58. It is well established that irreparable harm is not made out simply because damages may be difficult to quantify. The plaintiff must prove that the alleged harm cannot be quantified in monetary terms: *Stress-Crete*, at para. 59.

[53] The plaintiff's evidence regarding irreparable harm is as follows:

> 50. While not enough time has passed since Silva and Nahibuan began competing with the Company for me to determine the full extent of damages that may result from their wrongdoing, I believe that if the Defendants are permitted to continue to use the Company's confidential information, to our clients, they will destroy the

> business that I have spent years building with the rest of the executive team at the Company.
>
> 51. I believe that the Defendants' use of the Company's property to compete, has already resulted in the loss of clients and I believe that will continue if they are not ordered by the court to stop. As the losses are ongoing, I do not believe that a monetary award will capture the losses adequately.
>
> 52. I believe that the Defendants continued use of the Company's property will result in a loss of the goodwill that the Company has built over the years and that a monetary award will not capture the loss of goodwill adequately.

[54] Courts regularly conduct assessments of damages in cases where there are allegations of breach of confidence, which is the only ground that I have found there is a substantial issue to be tried in respect of. Courts also regularly consider and assess damages related to the loss of goodwill and there is no hard and fast rule that loss of goodwill can never be quantified: *Parekh* at para 74.

[55] If the plaintiff succeeds in this case, it will be able to quantify its damages with reference to the income earned by the defendants from customers improperly solicited using confidential information. The plaintiff has claimed monetary damages in its Statement of Claim with a detailed formula which suggests that the harm, if proven, can be quantified in monetary terms.

[56] Further, the evidence related to the loss of its loss of goodwill, is highly speculative. The plaintiff has not provided any financial information as to its current circumstances given this competitive business and/or how the loss of the 274 clients has affected the way it is perceived in the marketplace. It has not provided evidence specific to the industry that might support the inference that the defendants' conduct, if proven to have been a breach of some obligation, would cause a loss of goodwill. The plaintiff has not provided evidence as to how competitive this field is, which might impact the analysis of whether there would be a loss of goodwill.

[57] Further, the plaintiff continues to operate two locations and these are successful enough that it is seeking investors for a third location.

[58] This case is not like *Parekh*, heavily relied upon by the plaintiff.

[59] In *Parekh*, Sharma J. was faced with an entirely different fact scenario. The plaintiff in that case had purchased a dental practice. This practice had been passed on from a father to a son. The father continued to work there as an associate. Then, the son sold the dental practice to the plaintiff for $5.6 million, with $4 million of the purchase price being quantified in the Share Purchase Agreement to be the value of the goodwill. A term of the Share Purchase Agreement was that the father would enter into an Associate Agreement with the plaintiff and that he would continue to work there for four years. The Associate Agreement contained a provision that the father would not compete within a 5 km radius thereafter and that he would not solicit former patients, again, who were specifically defined.

[60] Sharma J. found that these provisions were prima facie reasonable and enforceable.

[61] The father subsequently resigned and worked at a dental office within the 5 km radius. He also admitted that he took patient records and it was agreed that he treated 29 former patients.

[62] Sharma J. found as a fact that the goodwill of the dental practice referenced in the Share Purchase Agreement was attached to the father and that the non-competition clause and non-solicitation clause flowed from the bargain struck regarding the sale of the business. The Associate Agreement also specifically set out that the plaintiff would suffer irreparable harm in the event of a breach. There was therefore a presumption of irreparable harm: para 71.

[63] Given the strong prima facie case that the father had promised not to compete and then did, the court placed less weight on the irreparable harm criteria: paras 74 & 76. The defendant in that case was simply prevented from doing that which he had already promised not to do and which the court had found was prima facie enforceable.

[64] These are not the facts here. There is no evidence before me that the plaintiff's goodwill is connected to Silva and Nahibuan. Indeed, they had only worked there part-time for five years which makes any such conclusion improbable.

**Issue 3: Does the balance of convenience weigh in favour of granting an injunction or denying it?**

[65] The balance of convenience does not favour granting an injunction.

[66] In *RJR Macdonald*, at p. 342, the Court explained that in considering the balance of convenience the question is which of the parties would suffer greater harm from the granting or refusal to grant an interlocutory injunction pending a decision on the merits. The court further stated at p. 342 that "the factors which must be considered in assessing the 'balance of convenience' are numerous and will vary in each case." When everything else is equal, "it is counsel of prudence to…preserve the status quo": *RJR MacDonald*, at p. 347.

[67] Of the approximately 2,800 patients treated at the plaintiff at the time of Silva and Nahibuan's terminations, only 274 have continued to seek out Silva and Nahibuan for treatment.

[68] On the other hand, if the injunctions sought issue, the plaintiff will continue operating its two, much larger locations as usual, and will have stifled the competition that the defendants represent.

[69] Indeed, many of the complaints raised by the plaintiff relate to the simple fact that Silva and Nahibuan are competing at all, something that mere employees are entitled to do absent some enforceable contractual restriction. It complains that Silva and Nahibuan offer the same types of services in the competing business, undercut the prices charged by the plaintiff, have a similar set up, are only 3.3 kilometers away from the plaintiff's business, and that they advertise their services in competition with the plaintiff.

[70] The original relief claimed by the plaintiff sought to restrain Silva and Nahibuan from competing within a fifty-kilometer radius of either of the plaintiff's premises altogether.

[71] Even the revised relief still requests orders that have nothing to do with the alleged breach of confidence related to the Software including seeking orders that Silva and Nahibuan be restrained

from soliciting the plaintiff's employees and even requesting that they be prohibited from inducing any person or entity to engage in a health services business in competition with the plaintiff until January 11, 2026.

[72] It appears that the plaintiff's real complaint is that Silva and Nahibuan are competing at all. Competition is healthy and something our society values: *Boehmer* at para. 49.

[73] I add that the injunction sought would interfere with the treatment of 274 patients who have decided that they want to have the defendants provide them with medical care.

[74] The motion is dismissed.

[75] I strongly encourage the parties to resolve costs. If they cannot, the parties may make submission on costs as follows: i) the defendants within 7 days and the plaintiff within 7 days thereafter.

Papageorgiou J.

Released: July 16, 2024

**CITATION:** Strength-N-U Inc. v. Silva, 2024 ONSC 4009

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

STRENGTH-N-U INC.

Plaintiff

**– and –**

DANIEL SILVA, JERIKKA NAHIBUAN and PERFORMANCE RECOVERY THERAPY INC.

Defendants

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**REASONS FOR JUDGMENT**

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Papageorgiou J.

**Released:** July 16, 2024