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Not So Fast Defendants: Second Department Holds Denial of Preliminary Injunction Does Not Constitute Law-of-the-Case Ruling

Can a court’s findings in connection with an early-stage preliminary injunction motion form the basis of a summary judgment decision later in the case? According to the Second Department, the answer is “No.” In a recent case arising from a dispute over a [covenant not to compete](#), the appellate court made clear that findings made at the preliminary injunction stage do not become the law of the case. Because they are not considered adjudications on the merits, provisional relief decisions are not dispositive at summary judgment.

The Case: *Fox v. Nocella*, No. 605201/20 (2d Dep’t Dec. 10, 2025)

In August 2018, the plaintiff purchased an Allstate insurance agency in Ronkonkoma from the defendant Michael Nocella. The agreement included a five-year noncompete prohibiting Nocella from engaging in the insurance or securities business within five miles of the agency. The plaintiff later alleged that Nocella breached that agreement by opening a nearby insurance business and commenced an action seeking declaratory relief.

The plaintiff then moved for a preliminary injunction to enforce the noncompete and to prohibit Nocella from selling insurance within five miles of the agency the plaintiff purchased. The Supreme Court, Suffolk County, denied the motion in a June 2021 order, finding that Nocella’s interpretation of the agreement’s proximity language, measuring the distance between the parties’ insurance agencies utilizing the highways as the most direct driving route, was reasonable and undermined the plaintiff’s likelihood of success on the merits.

Nocella then cross-moved for summary judgment, arguing that the court’s prior ruling in the June 2021 order constituted the law of the case and required dismissal of the plaintiff’s complaint. The Supreme Court granted the motion, dismissing the plaintiff’s complaint. In its reasoning, the court explained that it had addressed and dismissed the plaintiff’s argument in the June 2021 order, and that the plaintiff had not shown or alluded to newly discovered evidence or other sufficient cause necessary to oppose an award of summary judgment.

On appeal, the Second Department reversed the Supreme Court’s order granting summary judgment in favor of Nocella. The Second Department emphasized that the law-of-the-case doctrine applies only to issues necessarily decided on the merits. Rulings on preliminary injunctions—being provisional in nature—do not have that effect. Here, the Supreme Court’s prior order

merely found Nocella's interpretation reasonable in the context of the plaintiff's likelihood of success on the merits; it did not actually resolve the issue on the merits so as to preclude reconsideration of that issue at a trial on the merits.

The Second Department further held that Nocella failed to establish his prima facie entitlement to summary judgment, as he did not submit sufficient evidence demonstrating that his business fell outside the five-mile restriction. Accordingly, the motion should have been denied regardless of the sufficiency of the plaintiff's opposition.

The Takeaway

Rulings on preliminary injunctions do not constitute the law of the case or decide the issue on the merits. This principle is particularly critical to defendants who successfully defeat a preliminary injunction motion. When it is time to move for summary judgment, that motion must be sufficiently supported by evidence to demonstrate the absence of any material issues of fact, irrespective of the court's preliminary injunction ruling. Failing to make a *prima facie* showing and instead relying on a provisional ruling is a fast track to a summary judgment loss.