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Merrill Lynch Denied Bid To Block Rival Firm's Launch

By **Kelcey Caulder**

Law360 (September 30, 2025, 10:56 PM EDT) -- A Georgia federal judge on Tuesday refused to grant Merrill Lynch's bid for a temporary restraining order against a dozen former employees, Charles Schwab and Dynasty Financial Partners in a case concerning an alleged attempt to start a new independent financial advisory firm with Merrill's staff and confidential information.

Ruling from the bench, U.S. District Court Judge Victoria Calvert said Merrill failed to meet its burden to show an injunction was necessary in its suit alleging a dozen senior employees "abruptly" resigned as part of an alleged plan to form a competing entity affiliated with Schwab and Dynasty.

Though attorney Rachel Carp, representing Merrill, argued that the firm would be irreparably harmed without something to prevent the defendants from poaching more financial advisers, support staff and clients from Merrill, Judge Calvert said she did not see any threat of irreparable harm when it "seemed" that all the clients and employees who wanted to join the new entity — OpenArc Corporate Advisory — had already done so.

The judge also noted she saw no evidence of the solicitation that Merrill alleged took place or evidence that what is known as "the protocol" — an agreement for how client data can be handled when a financial adviser moves between firms — was violated.

Merrill had also requested expedited discovery, but Judge Calvert said she thought that would best be left up to the Financial Industry Regulatory Authority, considering that all parties agreed Tuesday the agency would eventually handle the dispute.

In its **complaint filed Sept. 23**, Merrill argued it had to sue in order to stop a "pre-meditated corporate raid of its Atlanta-based global corporate and institutional advisory services" business, which provides a range of financial services to "ultra-high net worth individuals," large businesses and institutional investors.

Carp reiterated many of those arguments Tuesday, accusing the defendants of improperly soliciting 170 financial advisers and support staff assigned to Merrill's global corporate and institutional advisory services, or GCIAS, business to work for OpenArc while still employed at the firm. Those actions, she said, left the GCIAS business "severely destabilized" in a way reminiscent of a "ghost town."

Carp said 53 employees are left to do the work of hundreds, adding that a raid of a corporate unit "this big and this large" was "unprecedented."

"The defendants have jeopardized the future of an entire business unit," Carp said. "Without a [temporary restraining order], defendants will try to finish the job."

Carp described scenarios in which the defendants who worked for Merrill allegedly offered presentations to coworkers about OpenArc and its "synergies" with Schwab and Dynasty. She alleged former employees used confidential client lists, financial strategies and other trade secrets to solicit business and support staff, including strategies for how to treat "C-suite" executives.

"Those are Merrill's strategies," Carp said. "Those are Merrill's plans. They do not belong to these individuals."

Attorney Michael Bresson, representing OpenArc and the individual defendants, argued there was "no

clear evidence" of Merrill's claims and that it was instead engaging in "speculation" and telling a "story."

The former employees who left Merrill did not engage in solicitation before leaving the firm, he said. Instead, Bresson argued, they were allowed to and did "prepare to compete" while following all rules laid out in "the protocol."

He explained that the protocol allows advisers moving to new firms or starting their own financial advisory businesses to take with them client names, mailing addresses, email addresses, phone numbers and account titles. That information, he said, is all that was taken.

"Preparing to compete is not illegal," Bresson said.

Bresson added that the individual defendants and other members of Merrill's GCIAS business were a "team" and discussed the potential of starting a new firm only in that capacity. When anyone expressed interest in joining, he said, they were asked to sign nondisclosure agreements that required them to not engage in any preresignation solicitation and to continue doing their "best work" for Merrill in the meantime.

"There is nothing wrong with people coming together and saying they want to stay together as part of a team," Bresson said.

What's more, Bresson said his clients would be filing their own claims with FINRA, in which they would allege Merrill is engaging in unfair competition and that it filed its suit in order to create problems for OpenArc. He added that 68 clients have paused their "transitions" because of media reports following the filing of the suit.

Attorney Robert Miller, for Dynasty, told Judge Calvert there wasn't a "single affidavit" from a Merrill client saying they were presolicited. Likewise, he said, there was nothing to support Merrill's contention that anyone offered presentations to firm employees about OpenArc.

"Merrill has come into this court with admittedly no evidence," Miller said.

The launch of OpenArc was announced Wednesday in a press release saying it was already one of the largest independent firms in the corporate benefits and private wealth sectors. The release said OpenArc had received a capital investment from Dynasty and that the new company would introduce a "new model that integrates corporate benefits, executive services, and private wealth management – delivered through a high-touch, open architecture platform."

OpenArc will be helped by "Charles Schwab's broad capabilities and Dynasty Financial Partners' advanced tech platform," according to the release.

Merrill Lynch is represented by Tala Amirfazli of Burr & Forman LLP, Rachael L. Carp, Christopher S. Koller and Benjamin S. Levine of Rubin Fortunato & Harbison PC.

The former Merrill employees and OpenArc are represented by Charles A. Wood Jr., C. Jade Davis, Jarrod J. Malone, Michael D. Bressan and Michael S. Taaffe of Shumaker Loop & Kendrick LLP, and Joseph B. Alonso of Alonso & Wirth Law LLC.

Dynasty is represented by Barry R. Lax, Matthew C. Plant and Robert R. Miller of Lax Neville & Intelisano LLP, and Benjamin B. Watson and Joshua P. Gunnemann of Councill Gunnemann & Chally LLC.

Schwab is represented by Faith Gay and Joshua S. Margolin of Selendy Gay PLLC, and Michael P. Elkon of Fisher Phillips.

The case is Merrill Lynch Pierce Fenner & Smith Inc. v. Bjerke et al., case number 1:25-cv-05437, in U.S. District Court for the Northern District of Georgia.

--Editing by Lakshna Mehta.

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